

## Transnational Legal Practice (International)

LAUREL S. TERRY\*

The companion piece to this article described U.S.-based transnational legal practice developments.<sup>1</sup> This article describes developments outside the United States that have been the subject of discussion within the United States and that have the potential to impact U.S. transnational legal practice.

### I. U.K. Issues Alternative Business Structures (ABS) Licenses

The 2007 U.K. Legal Services Act has been the source of many significant developments.<sup>2</sup> As the 2009 Year in Review explained, the 2007 U.K. Legal Services Act radically transformed regulation of the legal profession.<sup>3</sup> The U.K. Legal Services Board (LSB) is the overarching regulator for the legal profession in England and Wales, the Solicitors Regulatory Authority (SRA) is the “front-line regulator” for solicitors in England and Wales, and the Bar Standards Board (BSB) is the front-line regulator for barristers in England and Wales.<sup>4</sup> The LSB, the SRA, and the BSB have been engaged in a number of important activities, including the SRA’s adoption of a system of “outcomes based regulation” and its 2011 issuance of a new handbook of ethics rules, which has been updated several times, most recently in October 2012.<sup>5</sup>

By far the most noteworthy activity, however, has been the SRA’s actions with respect to alternative business structures, commonly referred to as ABS. The 2007 Legal Services Act created a framework that allows lawyers and non-lawyers to share legal fees and allows

---

\* Laurel S. Terry, Professor of Law, Penn State Dickinson School of Law, LTerry@psu.edu. All urls were accurate as of February 12, 2013.

1. See Laurel S. Terry, *Transnational Legal Practice (United States)*, 47 ABA/SIL YIR (n.s.) 449 (2013).

2. See Legal Services Act, 2007, c. 29 (U.K.).

3. See Laurel S. Terry, Carole Silver, & Ellyn Rosen, *Transnational Legal Practice*, 44 INT’L LAW. 563, 565-66 (2010) [hereinafter *2009 Year in Review*].

4. See, e.g., *Approved Regulators*, LEGAL SERVS. BOARD, [http://www.legalservicesboard.org.uk/can\\_we\\_help/approved\\_regulators/index.htm](http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/index.htm) (last visited Feb. 12, 2013).

5. See, e.g., SOLICITORS REGULATION AUTHORITY, ABOUT THE SRA HANDBOOK (2013), available at <http://www.sra.org.uk/handbook/> (last visited Feb. 12, 2013) (includes links to an electronic version of the Handbook and information on outcomes-based regulation). See also Laurel S. Terry, Steve Mark & Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 FORDHAM L. REV. 2661 (2012) (discussing the SRA’s “outcomes based regulation” as an example of one of the trends in lawyer regulation).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

486 THE YEAR IN REVIEW

outside investment and non-lawyer ownership of legal services firms.<sup>6</sup> In December 2011, the SRA was recognized as an approved regulator for solicitor-led alternative business structures.<sup>7</sup> In March 2012, the SRA approved the first of a number of ABS licenses.<sup>8</sup> One of the highest profile ABS licensees was The Co-operative, which is a mutually-held company with a number of retail businesses, including grocery, travel, financial services, funeral services, and now legal services.<sup>9</sup> According to 2012 news reports, The Co-operative plans to add 3,000 solicitors in the next five years and will challenge traditional “High [Main] Street” firms.<sup>10</sup> Additional ABS applications have come from entities related to the Australian publicly traded law firm Slater & Gordon (Russell Jones & Walker), U.K. law firm Irwin Mitchell, and the transatlantic law firm DLA Piper (LawVest).<sup>11</sup>

The SRA’s issuance of ABS licenses has the potential to significantly change not only the U.K. legal landscape, but also the global provision of legal services.<sup>12</sup> For example, several Canadian provinces are actively monitoring the U.K.’s ABS developments.<sup>13</sup> The

---

6. See *2009 Year in Review*, *supra* note 3, at 565-67.

7. See, e.g., News Release, Solicitors Regulation Auth., SRA Announces Start Date for ABS Applications (Dec. 1, 2011), <http://www.sra.org.uk/sra/news/press/abs-start-date.page> (noting that the Order designating the SRA as a licensing authority for ABS will come into force on Dec. 23, 2011 and that the SRA would begin accepting applications on January 3, 2012).

8. See, e.g., News Release, Solicitors Regulation Auth., SRA Announces Its First ABS (Mar. 28, 2012), <http://www.sra.org.uk/sra/news/press/sra-authorises-first-abs.page>; *Register of Licensed Bodies (ABS)*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/absregister/> (last visited Feb. 12, 2013).

9. See *About Us*, CO-OPERATIVE GROUP, <http://www.co-operative.coop/corporate/aboutus/> (last visited Feb. 12, 2013).

10. See, e.g., Owen Bowcott, *Co-Op to Hire 3,000 Lawyers in Challenge to High Street Solicitors*, THE GUARDIAN (May 28, 2012, 9:21 AM), <http://www.guardian.co.uk/law/2012/may/28/co-op-3000-lawyers-challenge-solicitors>.

11. See *Register of Licensed Bodies (ABS)*, *supra* note 8. The Slater & Gordon affiliated ABS received its license in April 2012; the Irwin Mitchell ABS received its license in August 2012. *Id.*

12. There are at least two separate reasons why U.K. developments might have an impact outside that jurisdiction. First, U.S. and U.K. firms compete for business. Second, developments in one country increasingly are cited in the regulatory debates in other countries. See, e.g., Complaint at 3, *Jacoby & Meyers Law Offices, LLP v. Justices of the Supreme Court of N.J.*, No. 3:11-cv-02866 (D.N.J. May 18, 2011), *available at* <http://legalaccessforall.org/wp-content/uploads/2011/05/NJComplaint.pdf>. The Australian and U.K. ABS developments were cited in the recent lawsuits filed in federal courts in New York, New Jersey, and Connecticut by the U.S. law firm of Jacoby & Meyers in its challenge to state ethics rules that prohibit outside investment in law firms. *Jacoby & Myers, L.L.P. v. The Presiding Justices of the First, Second, Third & Fourth Dept’s, Appellate Div. of the Supreme Court of the State of N.Y.*, 488 F. App’x 526 (2d Cir. 2012). In November 2012, the Second Circuit ruled that plaintiffs should be allowed to file an amended complaint, vacating the Southern District of New York’s dismissal of the case. *Id.* See also Debra Cassens Weiss, *Jacoby & Meyers Sues to Overturn Bans on Nonlawyer Ownership of Law Firms*, ABA J. (May 19, 2011, 4:43 AM), [http://www.abajournal.com/news/article/jacoby\\_meyers\\_sues\\_to\\_overturn\\_bans\\_on\\_nonlawyer\\_ownership\\_of\\_law\\_firms/](http://www.abajournal.com/news/article/jacoby_meyers_sues_to_overturn_bans_on_nonlawyer_ownership_of_law_firms/). For a conference intended to alert U.S. state supreme court justices about the ABS developments elsewhere in the world, see Am. Bar Ass’n, Ctr. for Prof’l Responsibility & Standing Comm. on Prof’l Discipline & Georgetown Ctr. for the Study of the Legal Profession, *The Future Is Here: Globalization and the Regulation of the Legal Profession — Recent Global Legal Practice Developments Impacting State Supreme Courts’ Regulatory Authority Over the U.S. Legal Profession* (May 26–27, 2009), [http://www.americanbar.org/content/dam/aba/migrated/cpr/regulation/conf\\_materials.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/regulation/conf_materials.authcheckdam.pdf); see also Laurel S. Terry, *A “How To” Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course*, 51 ST. LOUIS U. L.J. 1135 (2007) (discussing the impact of regulatory developments in one country on another country’s lawyer regulation).

13. See, e.g., Laurel S. Terry, *Trends in Global and Canadian Lawyer Regulation*, 76 U. SASKATCHEWAN L. REV. (forthcoming 2013).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 487

American Bar Association (ABA) Commission on Ethics 20/20 (20/20 Commission) cited the U.K. developments when it circulated for discussion a proposed revision to Rule 1.5 that would have allowed U.S. lawyers to share fees with a law firm that included nonlawyers provided the law firm was entitled to practice in that format in its jurisdiction.<sup>14</sup> The Commission also circulated a discussion paper on ABS structures.<sup>15</sup> After receiving a number of negative comments,<sup>16</sup> the 20/20 Commission announced that it would not seek any changes to the ABA rules prohibiting nonlawyer ownership of firms.<sup>17</sup> Despite the ABA's failure to act, many within the global legal community are watching the U.K. developments with interest and wondering what the impact will be.

## II. The Influence of the "Troika"

Another significant development is the emergence of the so-called "Troika" as a new regulatory influence. The Troika refers to the International Monetary Fund (IMF), the European Central Bank, and the European Commission; together they have been active in several different arenas that affect regulation of the legal profession. For example, on October 9, 2011, the Irish government unveiled a controversial draft Legal Services Bill.<sup>18</sup> The Troika reportedly was one of the major forces calling for changes to the structure of

---

14. ABA Comm'n on Ethics 20/20, Initial Draft Proposal for Comment, Choice of Law — Alternative Practice Structures (2011), available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20111202-alps\\_choice\\_of\\_law\\_r\\_and\\_r\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111202-alps_choice_of_law_r_and_r_final.authcheckdam.pdf).

15. Letter from ABA Comm'n on Ethics 20/20 Working Grp. on Alt. Bus. Structures, to ABA Entities, Courts, Bar Ass'ns, Law Schools, & Individuals, Requesting Comments on Alt. Bus. Structures (Apr. 5, 2011), available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/abs\\_issues\\_paper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf) [hereinafter ABA Ethics 20/20 Comm'n Letter on ABS]. For a discussion of the work of the ABA Commission on Ethics 20/20, see Terry, *supra* note 1.

16. See *All Comments Received To Date (Listed By Issue)*, ABA COMM'N ON ETHICS 20/20, [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/ethics\\_20\\_20\\_comments/all\\_comments\\_received\\_to\\_date\\_by\\_issue.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/ethics_20_20_comments/all_comments_received_to_date_by_issue.authcheckdam.pdf) (last updated Feb. 12, 2012).

17. See Press Release, ABA, ABA Commission on Ethics 20/20 Will Not Propose Changes to ABA Policy Prohibiting Nonlawyer Ownership of Law Firms (Apr. 16, 2012), <http://www.abanow.org/2012/04/aba-commission-on-ethics-2020-will-not-propose-changes-to-aba-policy-prohibiting-nonlawyer-ownership-of-law-firms/>; see also James Podgors, *Ethics 20/20 Commission Suspends Campaign to Draft a Proposal on Nonlawyer Ownership of Law Firms*, A.B.A. J. (Apr. 16, 2012, 11:06AM), [http://www.abajournal.com/news/article/ethics\\_20\\_20\\_commission\\_suspends\\_campaign\\_to\\_draft\\_a\\_proposal\\_on\\_nonlawyer/](http://www.abajournal.com/news/article/ethics_20_20_commission_suspends_campaign_to_draft_a_proposal_on_nonlawyer/).

18. See *Legal Services Regulation Bill 2011 (Bill No. 58/2011) (Ir.)*, available at <http://www.oireachtas.ie/viewdoc.asp?DocID=19208&&CatID=59>; Niall Tierney, *Ireland Goes Further than UK and Unveils Independent Regulation of Lawyers*, LEGAL FUTURES BLOG (Oct. 6, 2011), <http://www.legalfutures.co.uk/latest-news/irish-government-goes-further-than-uk-and-unveils-independent-regulation-of-lawyers> ("The Legal Services Regulatory Authority, which will have a lay majority, will take over regulation from the Law Society and Bar Council of Ireland, who will pay for it through a levy. The government rejected a 2006 recommendation from the Irish Competition Authority that it introduce an English-style arrangement, with an oversight regulator and full separation of regulatory and representative functions within the Law Society and Bar Council."); *Submission of the Bar Council of Ireland to the Joint Committee on Justice, Defence and Equality on the Legal Services Regulation Bill 2011*, BAR COUNCIL, ¶¶ 14–15 (Mar. 2012), available at [http://www.lawlibrary.ie/documents/news\\_events/BarCouncilSubmissionJointComm032012.pdf](http://www.lawlibrary.ie/documents/news_events/BarCouncilSubmissionJointComm032012.pdf) ("The Bar Council has concerns in relation to a number of aspects of the Bill and believes that they are not and have not been shown to be in the public interest. . . . (1) The lack of independence of the Legal Regulation Authority (the 'Authority') from the Minister and the Government and the extent of involvement and ministerial over and involvement in the powers and functions of the Authority."); *Rule of Law Under Threat: Legal Independence and the Public Interest*, L. SOC'Y GAZETTE (Dec. 2011), available at <http://www.lawsociety.ie/Documents/Gazette/Gazette%202012/>

SPRING 2013

**PUBLISHED IN COOPERATION WITH**  
**SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

488 THE YEAR IN REVIEW

lawyer regulation in Ireland.<sup>19</sup> According to news reports, the Irish legal profession was one of three professional sectors “targeted . . . as ‘sheltered’ and in need of reform to make [it] more competitive and cost-effective.”<sup>20</sup> In response to criticism that the Troika-inspired proposed reforms were too radical because they gave the Irish government the power to nominate and remove members of the proposed new overarching regulator, the Irish government announced that it would submit a revised version of the legal services draft bill.<sup>21</sup> At the time this report was written, Ireland had not yet enacted its legal services reform bill.<sup>22</sup>

In addition to its actions in Ireland, the Troika has called for changes in legal profession regulation in Greece and Portugal.<sup>23</sup> One illustration of the controversy that has emerged is the fact that the ABA and the Council of the Bars and Law Societies of the European Union (CCBE) jointly authored a letter to IMF Managing Director Christine Lagarde to “convey our growing concern about disturbing trends affecting the independence of the legal profession.”<sup>24</sup> While there are differing views about the desirability of the Troika’s

---

January2012\_GazetteSpecial.pdf (includes the Law Society’s critique of the regulatory structure found in the Draft Bill).

19. See, e.g., Press Release, Council of Bars and Law Societies of Europe (CCBE), European and US Lawyers Alert IMF Against Troika-Imposed Reforms Affecting the Independence of the Profession in ‘Bail-Out’ Countries (Jan. 5, 2012), [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/PR\\_on\\_CCBEABA\\_lette1\\_1325761475.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/PR_on_CCBEABA_lette1_1325761475.pdf).

20. See *Legal Services Bill for Cabinet Today*, IRISH TIMES, Sept. 8, 2011, at 8, (“The other two professions are medicine and pharmacy.”); CCBE Press Release, *supra* note 19 (some commentators have attributed the pressure for change to the Troika, which includes the European Commission, the International Monetary Fund, and the European Central Bank).

21. See, e.g., *Important National Developments: Troika*, 30 CCBE INFO 9 (May 2012), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/newsletter\\_30\\_enpdf1\\_1347517429.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/newsletter_30_enpdf1_1347517429.pdf).

22. See Bill No. 58/2011 (Ir.). For the bill’s legislative steps, with hyperlinks, see <http://www.oireachtas.ie/viewdoc.asp?DocID=19208&&CatID=59>.

23. See, e.g., Press Release, Int’l Monetary Fund, No. 10/496, IMF Executive Board Approves 22.5 Billion Extended Arrangement for Ireland (Dec. 16, 2010), <http://www.imf.org/external/np/sec/pr/2010/pr10496.htm>; Int’l Monetary Fund [IMF], County Report No. 11/279, *Portugal: First Review Under the Extended Arrangement* (Sept. 2011), available at <http://www.imf.org/external/pubs/ft/scr/2011/cr11279.pdf>; Int’l Monetary Fund, County Report No. 10/111, *Greece: Request for Stand-By Arrangement* (May 2010), available at <http://www.imf.org/external/pubs/ft/scr/2010/cr10111.pdf>; Int’l Monetary Fund, County Report No. 11/175, *Int’l Monetary Fund, Greece: Fourth Review Under the Stand-By Arrangement and Request for Modification and Waiver of Applicability of Performance Criteria* (July 2011), available at <http://www.imf.org/external/pubs/ft/scr/2011/cr11175.pdf>. The author is indebted to John Flood’s blog for direct links to these IMF documents. See John Flood, *Tesco (Ireland) Law?*, JOHN FLOOD’S RANDOM ACAD. THOUGHTS (Nov. 27, 2011, 5:04 PM), <http://johnflood.blogspot.com/2011/11/tesco-ireland-law.html>; John Flood, *The Troika Rampages Across Europe*, JOHN FLOOD’S RANDOM ACAD. THOUGHTS (Nov. 29, 2011, 1:46 PM), <http://johnflood.blogspot.com/2011/11/troika-rampages-across-europe.html>; John Flood, *PI(D)GS Might Fly!*, JOHN FLOOD’S RANDOM ACAD. THOUGHTS (Jan. 6, 2012, 12:55 AM), <http://johnflood.blogspot.com/2012/01/piigs-might-fly.htm>; see also *Meeting with Viviane Reding*, 29 CCBE INFO 11 (Jan. 2012) (reporting on conversations with Commissioner Reding regarding “the pressure exerted by the Commission-European Central Bank-International Monetary Fund ‘Troika’ in some Member States (i.e. Greece, Ireland, Portugal) to reform their legal systems as a condition of bail-out from their financial crisis, and the consequences on justice in general and on the legal profession in particular”).

24. See Letter from Council of Bars & Law Soc’ys of Eur. & Am. Bar Ass’n to Christine Lagarde, Managing Director, Int’l Monetary Fund (Dec. 21, 2011), [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/CCBE\\_and\\_ABA\\_letter\\_1\\_1325686329.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_and_ABA_letter_1_1325686329.pdf); see also Press Release, Council of Bars & Law Soc’ys of Eur., European & US Lawyers Alert IMF Against Troika-Imposed Reforms Affecting the Independence of the Profession in ‘Bail-Out’ Countries (Jan. 5, 2012), [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocu](http://www.ccbe.org/fileadmin/user_upload/NTCdocu)

VOL. 47

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 489

involvement in lawyer regulation,<sup>25</sup> there can be no doubt that the involvement of the Troika as a behind the scenes player in lawyer regulation is a significant new development since the last Year-in-Review.

**III. Global Liberalization and Contraction in Market Access for Foreign Lawyers**

Since the last Year in Review, there have been a number of changes across the globe in market access rules for foreign lawyers.<sup>26</sup> Some of these changes have liberalized the market, and some reflect efforts to contract market access for foreign lawyers. Korea, Singapore, and Malaysia are examples of jurisdictions that have taken steps to expand market access for foreign lawyers; whereas, Brazil, Vietnam, and India provide examples of countries that have taken actions to restrict market access.

Singapore has taken a number of steps to liberalize its legal services market as part of its efforts to become a global legal industry hub.<sup>27</sup> For example, in 2012, the Singapore Government announced that it would be issuing additional Qualified Foreign Law Practice licenses to global law firms to supplement the six licenses it previously had issued.<sup>28</sup> Singapore also amended its legal profession act to expand the scope of ad hoc admission of Queen's Counsel from overseas jurisdictions to appear in Singapore courts.<sup>29</sup>

Korea's market access for foreign lawyers also expanded with its implementation of the Korea-U.S. Free Trade Agreement, which took effect in March 2012, the EU-Korea Free Trade Agreement, and other trade agreements.<sup>30</sup> According to the Wall Street Journal, by

---

ment/PR\_on\_CCBEABA\_lette1\_1325761475.pdf; Letter from the Int'l Monetary Fund to Georges-Albert Dal, President, Council of Bars & Law Soc'ys of Eur. & William T. Robinson III, President, Am. Bar Ass'n (Feb. 3, 2012), available at [http://www.lawlibrary.ie/documents/news\\_events/IMFResponseToCCBEABALetter03022012.pdf](http://www.lawlibrary.ie/documents/news_events/IMFResponseToCCBEABALetter03022012.pdf).

25. See, e.g., *PI(D)GS Might Fly!*, *supra* note 23 ("It's clear that the Troika isn't signaling the death of the legal profession. Far from it, it is demanding proper regulation and accountability which lawyers have avoided.")

26. For information about developments regarding the WTO's General Agreement on Trade in Services (GATS) and U.S. free trade agreements, see Terry, *supra* note 1.

27. See, e.g., *Careers @ Singapore: Legal Services*, CONTACT SING. (Feb. 2012), available at [http://www.contactsingapore.sg/Library/1/Pages/307/Factsheet\\_Legal%20Services\\_Feb2012.pdf](http://www.contactsingapore.sg/Library/1/Pages/307/Factsheet_Legal%20Services_Feb2012.pdf) (this joint publication of the Singapore Economic Development Board and Ministry of Manpower states: "Singapore's vision for this industry. . . Singapore is looking to strengthen its position as a global legal hub . . . Today, Singapore is a key legal hub for Southeast Asia and, increasingly, the Indian subcontinent.")

28. Jessica Seah, *Have QFLPs Worked for Singapore?*, ASIAN LAW. (May 21, 2012), <http://www.law.com/jsp/law/international/LawArticleFriendlyIntl.jsp?id=1202555185632>. The six firms that currently have licenses include four U.K. firms and two U.S. firms: Allen & Overy, Clifford Chance, Latham & Watkins, White & Case, Norton Rose Fulbright, and Herbert Smith. Firms that have said they will apply for a QFLP license include: Watson Farley & Williams, K&L Gates, Jones Day, DLA Piper, Ashurst, and Stephenson Harwood. Others firms have expressed interest. *Id.*

29. See Alison Hook, Report on POLA Conference 2012, 27-29 August to the IBA Int'l Trade in Legal Services Comm. (August 31, 2012) (on file with author).

30. See *New Opportunities for U.S. Exporters Under the U.S.-Korea Trade Agreement*, USTR, <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta> (last visited Feb. 12, 2013); see generally Timothy Brightbill, Joseph A. Laroski Jr., Tatiana Olica Sullican, Pablo M. Bentes, P. Lee Smith & Dave Wharwood, *International Trade*, 46 INT'L LAW. 81, 82 (2012).

SPRING 2013

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

490 THE YEAR IN REVIEW

summer 2012, more than a dozen U.S. law firms had applied to open offices in Korea.<sup>31</sup> Most of the applications to open a Korean office have come from U.S. firms, rather than U.K. or European firms because of the greater number of Korean-speaking U.S. lawyers.<sup>32</sup> The growth in foreign legal services has been dramatic: “Korean companies spent [US] \$678 million on services to foreign law firms in 2006, and more than [US] \$1 billion in 2010.”<sup>33</sup> This number undoubtedly will grow even larger as more foreign firms open offices in Korea.

Malaysia is another example of a jurisdiction that has adopted regulatory changes that permit greater transnational legal practice.<sup>34</sup> Another noteworthy event in Asia was the 2012 decision by the Shanghai Bar Association to invite foreign lawyers to become “special members.”<sup>35</sup> This was particularly noteworthy not only because it was the first Chinese bar association to do so, but also because of its history. In 2006, the Shanghai Bar Association had seemed very hostile towards foreign firms and had asked the Ministry of Justice to crack down on foreign law firms conducting “illegal business activities” and “put in order, regularize, and purify the Shanghai foreign legal services market.”<sup>36</sup>

Although these jurisdictions have liberalized their legal services markets, there have been some high profile contractions. Brazil, for example, made headlines when its national bar association voted in favor of strict regulations that forbid formal alliances between Brazilian lawyers and foreign legal consultants or their law firms.<sup>37</sup> The November

---

31. See Isabella Steger, *Western Law Firms Get Approval for South Korea Offices*, WALL ST. J. (July 17, 2012, 8:47 AM), <http://blogs.wsj.com/law/2012/07/17/western-law-firms-open-for-business-in-south-korea/>; see also Anthony Lin, *Crowding into Korea*, ASIAN LAW. (July 9, 2012), <http://www.americanlawyer.com/PubArticleFriendlyAL.jsp?id=1202562260156>.

32. See Steger, *supra* note 31; see also Lin, *supra* note 31; Jessica Seah, *British Firms Ponder Korea Without Koreans*, ASIAN LAW. (Oct. 29, 2012), <http://www.americanlawyer.com/PubArticleFriendlyAL.jsp?id=1202576630640#>.

33. Steger, *supra* note 31.

34. See Legal Profession (Amendment) Act 2012 (Malay.) Act A1444, 5 Sept. 2012, available at [http://www.federalgazette.agc.gov.my/outputaktap/20120920\\_A1444\\_BI\\_BI%20A1444.pdf](http://www.federalgazette.agc.gov.my/outputaktap/20120920_A1444_BI_BI%20A1444.pdf). According to a report prepared by Alison Hook for the IBA ITILS Committee, the Malaysian Legal Profession bill was expected to be brought into force by the end of the year, but the Malaysian Bar website indicates that as of November 12, 2012, the Minister had not (by notification in the Gazette) appointed the date on which the Amendment Act was to come into operation. Compare *id.*, with Hook, *supra* note 29. This legislation will offer three possibilities for foreign lawyers to practice in Malaysia: (i) in an international partnership with a Malaysian law firm; (ii) as a stand-alone Qualified Foreign Law Firm, although only five such licenses will be granted and these are directly related to the promotion of Malaysia as an Islamic finance center; and (iii) as employees in Malaysian law firms. The scope of practice for foreign lawyers and law firms has been defined as a negative list with specified exclusions relating to areas of local law. In both categories (i) and (ii), 30 percent of the lawyers must be Malaysian lawyers. Licenses will be granted by the Bar Council of Malaysia, and foreign lawyers and foreign firms will be subject to the same rules as local firms. See Hook, *supra* note 29.

35. See, e.g., Jessica Seah, *Chinese Bar Group That Once Railed Against Foreign Firms Now Welcomes Them*, ASIAN LAW. (Oct. 1, 2012), [http://www.americanlawyer.com/PubArticleAL.jsp?id=1202573240587&Chinese\\_Bar\\_Group\\_That\\_Once\\_Railed\\_Against\\_Foreign\\_Firms\\_Now\\_Welcomes\\_Them&slreturn=20121023112051](http://www.americanlawyer.com/PubArticleAL.jsp?id=1202573240587&Chinese_Bar_Group_That_Once_Railed_Against_Foreign_Firms_Now_Welcomes_Them&slreturn=20121023112051).

36. *Id.*

37. See, e.g., Clare Bolton, *Brazilian Lawyers Vote Against International Associations*, LATIN LAW. (Nov. 25, 2011), <http://www.latinlawyer.com/news/article/42745/>. One commentator summarized this vote:

The Brazilian legal profession decided unanimously at the General Assembly of the Brazilian Bar's General Meeting in Curitiba in November 2011 that according to Brazilian laws and regulations:

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 491

2011 vote followed on the heels of several well-publicized opinions by the São Paulo Bar Association that reached similar conclusions.<sup>38</sup> Vietnam has also called for more restrictions on foreign law firms.<sup>39</sup>

Although India has provided examples of both liberalization and resistance to liberalization, the general perception is that India continues to be a relatively closed market for foreign lawyers.<sup>40</sup> U.S. and U.K. law firms, for example, were disappointed by the December 2009 Bombay High Court decision, which held that the Indian Advocates Act covered both litigation and transactional work; therefore, those who were not licensed Indian lawyers could not perform transactional work in India.<sup>41</sup> On the other hand, in February 2012, the Madras High Court dismissed a lawsuit brought by an Indian lawyer against thirty-one foreign law firms, ruling that foreign lawyers were entitled to participate in international arbitration proceedings in India and can advise clients on foreign law on a “fly in fly out” basis.<sup>42</sup> The Madras High Court also ruled that the legal process

---

(i) associations between Brazilian lawyers and foreign legal consultants admitted in Brazil are not allowed, except for a few special cases such as a loose exchange of experience, or to refer clients; and that

(ii) foreign legal consultants or their firms are not allowed to hire or to associate with Brazilian lawyers to practise Brazilian law or render advice on Brazilian law in foreign legal consultants' firms.

Jonathan Goldsmith, *A Coming Struggle on Partnership with Foreign Lawyers*, L. GAZETTE EURO BLOG (Feb. 27, 2012) <http://www.lawgazette.co.uk/blogs/blogs/euro-blog/a-coming-struggle-partnership-foreign-lawyers>.

38. Goldsmith, *supra* note 37 (“This matter was also the object of a ruling by the Ethics Tribunal of the São Paulo Bar Association last year and of two opinions rendered and adopted by the Commission for Foreign Relations of the Brazilian Bar and its Commission of Law Firms. All these rulings and decisions were in the same direction as the decision of the General Assembly. Apparently, there are currently several complaints filed against Brazilian lawyers and foreign legal consultants in State Ethics Tribunals regarding this matter.”); see also *Keep out: Brazilian Lawyers Don't Want Pesky Foreigners Poaching Their Clients*, THE ECONOMIST, June 23, 2011, available at <http://www.economist.com/node/18867851/print>; Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, A.B.A. J. (Nov. 1 2011, 3:19 AM), [http://www.abajournal.com/magazine/article/the\\_new\\_world\\_despite\\_globalization\\_lawyers\\_find\\_new\\_barriers\\_to\\_practicing/](http://www.abajournal.com/magazine/article/the_new_world_despite_globalization_lawyers_find_new_barriers_to_practicing/).

39. See, e.g., Jessica Seah, *In Vietnam, a Push for Restrictions on Foreign Firms*, ASIAN LAW (Nov. 12, 2012), <http://www.law.com/jsp/article.jsp?id=1202578042392>; James Barnes, *Vietnam Lawyers Lobby for Restrictions on Foreign Firms*, GLOBAL LEGAL POST (Nov. 13, 2012, 1:02 AM), <http://www.globallegalpost.com/global-view/vietnam-lawyers-lobby-for-restrictions-on-foreign-firms-63170583/>.

40. See generally Mihaela Papa & David B. Wilkins, *Globalization, Lawyers, and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession*, 18 INT'L J. LEGAL PROF. 175 (2012) (describing the history of foreign law firms in India); see also Jayanth Krishnan, *Globetrotting Law Firms*, 23 GEO. J. LEGAL ETHICS 57 (2010).

41. See *Year in Review 2009*, *supra* note 3, at 574 n.76; see also Lance J. Rogers, *India Court Prohibits Foreign Law Firms from Establishing Branch Offices in India*, 26 LAWS. MAN. PROF. CONDUCT (ABA/BNA) 17 (Jan. 6, 2012).

42. A.K. Balaji v. The Gov't of India, (Madras H.C. Feb. 21, 2012), WP No. 5614/2010, para. 63, available at [http://judis.nic.in/judis\\_chennai/qrydisp.aspx?filename=35290](http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=35290). The opinion stated in part:

After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:

i) Foreign law firms or foreign lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfill the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.

SPRING 2013

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

492 THE YEAR IN REVIEW

outsourcing defendants were not covered by the Advocates Act.<sup>43</sup> The Madras decision has been appealed to the Supreme Court, which issued an interim order on July 4, 2012. Despite the argument that the 2009 Bombay decision required a contrary conclusion, the Supreme Court's Interim Order said that there was "no bar. . . for foreign law firms or foreign lawyers to visit India for a temporary period on a 'fly in and fly out' basis, for the purpose of giving legal advice on foreign law to their clients in India" or "from coming to India and conducting arbitration proceedings in disputes involving international commercial arbitration."<sup>44</sup> The Supreme Court agreed, however, that foreign law firms or foreign lawyers could not practice in India either on the litigation or non-litigation side unless they fulfilled the requirement of the Advocates Act and the Bar Council of India rules; it also directed the Reserve Bank of India not to grant permission to, or register, foreign law firms to set up liaison offices in India under Section 29 of the Foreign Exchange Regulation Act, 1973 (now FEMA 1999).<sup>45</sup> At the time this Article was written, the proceedings were ongoing in the Indian Supreme Court with further briefing expected and the outcome uncertain.<sup>46</sup> Regardless of the result of this lawsuit, it is unclear whether or when the transnational legal practice situation in India will change.<sup>47</sup> In sum, as these examples

---

(ii) However, there is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a fly in and fly out basis, for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.

(iii) Moreover, having regard to the aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers cannot be debarred to come to India and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.

*Id.* See also Ben Lewis, *Foreign Lawyers 'Can Fly In, Fly Out' of India, Court Rules*, ASIAN LAW. (Feb. 23, 2012), <http://www.law.com/jsp/law/international/LawArticleFriendlyIntl.jsp?id=1202543216986>.

43. A.K. Balaji v. The Gov't of India, WP No. 5614/2010, para. 63(iv) ("The B.P.O. Companies providing wide range of customised and integrated services and functions to its customers like word-processing, secretarial support, transcription services, proof-reading services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. However, in the event of any complaint made against these B.P.O. Companies violating the provisions of the Act, the Bar Council of India may take appropriate action against such erring companies."). Madhur Singh, *Indian Court Says Foreign Lawyers Can Only 'Fly-in, Fly-out' to Advise on International Law*, 28 LAWS. MAN. PROF. CONDUCT (ABA/BNA) 133 (Feb. 29, 2012).

44. See *AK Balaji Case: Supreme Court Issues Notice on SLP Filed by BCI; Directs RBI to Refrain from Granting Permission to Foreign Law Firms and Clarifies the Expression "to practice profession of law,"* BAR & BENCH (July 4, 2012), <http://barandbench.com/brief/2/2566/ak-balaji-case-supreme-court-issues-notice-on-slp-filed-by-bci-directs-rbi-to-refrain-from-granting-permission-to-foreign-law-firms-and-clarifies-the-expression-to-practice-profession-of-law>; J. Venkatesan, *Supreme Court tells RBI to Bar Foreign Law Firms*, THE HINDU (July 5, 2012), <http://www.thehindu.com/news/national/article3602986.ece>.

45. See Bar Council of India v. A.K. Balaji & Ors., (S.C. India July 4, 2012), No(s).17150-17154/2012, available at <http://www.legallyindia.com/images/stories/docs/Balaji-SC-appeal-firstorder.txt>.

46. See also Papa & Wilkins, *supra* note 40, at 8. For a useful article on the contemporary Indian legal market, see Jayanth K. Krishnan, *Peel-Off Lawyers: Legal Professionals in India's Corporate Law Firm Sector*, 9 SOCIO-LEGAL REV. (forthcoming 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2151529](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2151529). See generally Carole Silver et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Global*, 22 GEO. J. LEGAL ETHICS 1431 (2009).

47. See, e.g., Papa & Wilkins, *supra* note 40, at 9; Pallavi Saluja, *Conversation with Salman Khurshid, Minister of Law and Justice*, BENCH & BAR (Oct. 12, 2012), <http://barandbench.com/brief/4/2853/conversation-with-salman-khurshid-minister-of-law-and-justice> ("This is a very sensitive and controversial issue. I have only said to the Bar Associations and the Bar Council, 'Ultimately, it is your call.' My advice is that something that

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 493

illustrate, in the past three years, there have been a number of changes across the globe in the market access rules for foreign lawyers.

#### IV. APEC Legal Services Inventory and Other APEC Developments

Since the last Year in Review, the Asia-Pacific Economic Cooperation (APEC) completed its Legal Services Inventory project (Inventory) that collects information about lawyer regulation in the twenty-one APEC member economies.<sup>48</sup> The Inventory includes both a “high level overview” and detailed jurisdictional entries, both of which have now been posted on the APEC website.<sup>49</sup> The Inventory provides a useful starting point and resource for those interested in researching transnational legal practice rights in another country. Among other things, the Inventory includes information on foreign legal consultant licenses, temporary practice, foreign lawyers’ ability to employ or partner with local lawyers, the use of local firms names, and other issues of interest.<sup>50</sup> Another potentially significant APEC development is the September 2012 agreement by APEC representatives to create an Asia-Pacific higher education “space.”<sup>51</sup> While it is too early to tell whether this will have anywhere near the impact that the Bologna Process has had on higher education in Europe,<sup>52</sup> it is a development worth noting.

#### V. Formation of an International Network of Legal Regulators

Another significant development is the emergence of an international network of lawyer regulators. In September 2012, the U.K. Solicitors Regulation Authority (SRA) hosted the first ever International Conference of Legal Regulators.<sup>53</sup> Although there are several other organizations that bring together bar association regulators, including the International Bar Association’s Bar Issues Commission, the International Institute of Law Association Chief Executives (ILACE), and the Chief Executives of European Bar Associations

---

is inevitable in the world is not worth resisting beyond a point.”). It is important to remember, however, that these regulatory developments occur (or fail to occur) alongside market developments. See, e.g., Swati Maheshwari, *Beating a Retreat? Foreign Law Firms Rethink their India Strategies*, 6 INDIA BUS. L.J. 19, 19-20 (Sept. 2012).

48. See 2009 Year in Review, *supra* note 3, at 575-76, nn.81-82.

49. See APEC Legal Services Initiative: High-Level Overview, ASIA-PAC. ECON. COOPERATION, <http://www.legalservices.apec.org/overview.html> (last visited Feb. 12, 2013).

50. See *id.* The ABA Task Force on International Trade in Legal Services (ITILS), with the assistance of the National Conference of Bar Examiners, collected extensive information on U.S. regulation. Unfortunately, the APEC Inventory was never updated to include the U.S. information that was submitted several weeks late. ITILS has the APEC Inventory information on file.

51. See ANNEX D - Promoting Cross-Border Education Cooperation, ASIA-PAC. ECON. COOPERATION (Sept. 8-9, 2012), [http://www.apec.org/Press/News-Releases/2012/~/\\_/link.aspx?\\_id=52C168E4D92346B698EF7830EA311205&\\_z=z](http://www.apec.org/Press/News-Releases/2012/~/_/link.aspx?_id=52C168E4D92346B698EF7830EA311205&_z=z); see also Yojana Sharma, *APEC Summit Moves Towards Asia-Pacific Higher Education Space*, U. WORLD NEWS: GLOBAL EDITION (Sept. 13, 2012), available at <http://www.universityworldnews.com/article.php?story=20120913164520724&mode=print>.

52. For information about the Bologna Process, see Laurel S. Terry, *International Initiatives That Facilitate Global Mobility in Higher Education*, 2011 MICH. ST. L. REV. 305, 324-28; Laurel S. Terry, *The Bologna Process and Its Impact in Europe: Much More than Degree Changes*, 41 VANDERBILT J. TRANSNAT’L L. 107, 110 (2008).

53. The SRA is the front-line regulator for solicitors in England and Wales and has been designated by the U.K. Legal Services Board as a licensed regulator of ABS entities. See *Approved Regulators*, *supra* note 4; Terry, Mark & Gordon, *supra* note 5, at 2665.

SPRING 2013

**PUBLISHED IN COOPERATION WITH**  
**SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

494 THE YEAR IN REVIEW

(CEEBA), this two-day conference seemed to demonstrate a pent-up demand among “day job” lawyer-regulators to discuss the challenges they face and regulatory approaches.<sup>54</sup> The Conference topics included sessions on regulating the changing legal marketplace, proactive regulation, evaluating competence on admission, what to do when things go wrong, and non-lawyer involvement in the delivery of legal services, among other sessions.<sup>55</sup> During the final session, attendees demonstrated by a show of hands their interest in continuing their communication and collaboration with each other.<sup>56</sup> They also agreed to meet in San Francisco in August 2013 as an adjunct to the National Organization of Bar Counsel meeting.<sup>57</sup> By expressing their interest in establishing a network, legal profession regulators join the ranks of other types of industry regulators—such as securities, banking, antitrust, among others—who have established international networks.<sup>58</sup> U.S. attendees included representatives from the National Conference of Bar Examiners, the Conference of Chief Justices, and the National Organization of Bar Counsel.<sup>59</sup> Although attendees have been positive about this development, it has not been without criticism. Some commentators believe that it would be better to have the International Bar Association or another existing entity serve this “network” function.<sup>60</sup>

## VI. Selected Transnational Legal Practice Developments Around the Globe

There have been a number of significant developments in Australia, Canada, the European Union, and the United Kingdom relevant to transnational legal practice. The following developments are especially noteworthy because they concern issues similar to issues present in the United States and because lawyer regulatory developments in one jurisdiction increasingly are discussed (and sometimes imported) into other jurisdictions.<sup>61</sup>

---

54. See, e.g., Dan Bindman, *SRA Throws Weight Behind Global Legal Regulators' Network*, LEGAL FUTURES BLOG (Oct. 1, 2012), <http://www.legalfutures.co.uk/latest-news/sra-throws-weight-behind-global-legal-regulators-network>.

55. The London Conference, Int'l Conference of Legal Regulators (Sept. 27-28, 2012). For a listing of conference topics and presentations, see *The London Conference*, INT'L CONF. LEGAL REG., <http://www.international-conference-of-legal-regulators.org/the-london-conference> (last visited Feb. 12, 2013).

56. See, e.g., Laurel S. Terry, *Address at the Int'l Conference of Legal Regulators: Where Do We Go From Here?* (Sept. 29, 2012), available at [http://www.personal.psu.edu/faculty/l/s/lst3/Laurel\\_Terry\\_London\\_ICLR.pd](http://www.personal.psu.edu/faculty/l/s/lst3/Laurel_Terry_London_ICLR.pd) [hereinafter Terry Presentation]. For additional presentations on this topic, see Laurel S. Terry, *Presentations*, <http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm> (follow topical link to “Global Umbrella Organizations for Lawyer Regulators”). See also Laurel S. Terry, *Preserving the Rule of Law in the 21st Century: The Importance of Infrastructure, and the Need to Create a Global Lawyer Regulatory Umbrella Organization*, 2012 MICH. ST. L. REV. 735.

57. See, e.g., Rachel Rothwell, *Policing Professionals - International Regulators*, L. SOC'Y GAZETTE EURO BLOG (Oct. 4, 2012), <http://www.lawgazette.co.uk/features/policing-professionals-international-regulators>; John Flood, *Legal Regulation Is Not a Uniform Concept*, SOLIC. J. (Oct. 2, 2012), <http://solicitorsjournal.com/comment/legal-regulation-not-uniform-concept>; News Release, Solicitors Regulatory Auth., *Legal Regulators to Launch First Int'l Support Network* (Oct. 2, 2012), <http://www.sra.org.uk/sra/news/press/international-conference-2012.page>.

58. See Terry Presentation, *supra* note 56, at 4.

59. See International Conference of Legal Regulators 2012, Attendance List (on file with author).

60. See, e.g., Jonathan Goldsmith, *Networking Order*, L. SOC'Y GAZETTE EURO BLOG (Aug. 30, 2012), <http://www.lawgazette.co.uk/opinion/state-union/networking-order>.

61. See, e.g., Terry, *A “How To” Guide*, *supra* note 12, at 1138-46.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 495

During the past three years, in response to mobility and other issues, Canada has taken steps to develop more uniform standards on lawyer admission,<sup>62</sup> lawyer conduct rules,<sup>63</sup> and lawyer discipline.<sup>64</sup> The Canadian provinces and territories had previously signed agreements establishing mobility within Canada for Canadian lawyers; they had also agreed to use a uniform approach to foreign lawyer admission.<sup>65</sup> These developments are noteworthy because Canada, like the United States, is a federal system with province-based lawyer regulation.<sup>66</sup>

Australia has also been involved in efforts to make its state-based lawyer regulation system more uniform. There have been incremental steps in the past that culminated in efforts to draft a National Legal Profession Act that would be adopted by individual Aus-

---

62. See *2009 Year in Review*, *supra* note 3, at 568 (discussing the Report of the Task Force on the Canadian Common Law Degree, which was approved by all law societies in 2010); *National Admission Standards*, FLSC, <http://www.flsc.ca/en/national-admission-standards/> (last visited Feb. 12, 2013) (“Work is underway, in close consultation with Canada’s law schools, to ensure that the recommendations are implemented.”); see also FED’N L. SOC’YS CANADA, COMMON LAW DEGREE IMPLEMENTATION COMMITTEE FINAL REPORT (Aug. 2011), available at [http://www.flsc.ca/\\_documents/Implementation-Report-ECC-Aug-2011-R.pdf](http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf). In addition to these legal education requirements, the FLSC recently adopted a document that identifies the competencies required upon entry to the legal profession. See FED’N L. SOC’YS CANADA, NATIONAL ADMISSION STANDARDS PROJECT: NATIONAL ENTRY TO PRACTICE COMPETENCY PROFILE FOR LAWYERS AND QUEBEC NOTARIES (Sept. 2012), available at [http://www.flsc.ca/\\_documents/NASCompetenciesSept2012.pdf](http://www.flsc.ca/_documents/NASCompetenciesSept2012.pdf). The FLSC is also working to develop standards for assessing good character. See *National Admission Standards*, FED’N L. SOC’YS CANADA, <http://www.flsc.ca/en/national-admission-standards/> (last visited Feb. 12, 2013); FED’N L. SOC’YS CAN., *National Admission Standards Project: Phase 1 Report* (Sept. 2012), available at [http://www.flsc.ca/\\_documents/NASReportPhase1Sept2012.pdf](http://www.flsc.ca/_documents/NASReportPhase1Sept2012.pdf) (Appendix D is a draft framework for a National Fitness and Suitability to Practise Standard).

63. The Federation of Law Societies of Canada (FLSC) completed its work on its Model Code of Professional Conduct, which is now in the process of being adopted by Canadian provinces and territories. See, e.g., Law Society of British Columbia Bench Meeting, 15001 (July 13, 2012), available at [http://www.law-society.bc.ca/docs/about/agendas/2012-07-13\\_agenda.pdf](http://www.law-society.bc.ca/docs/about/agendas/2012-07-13_agenda.pdf) (reproducing the FLSC President’s Report to the Law Societies of June 19, 2012, which states:

The Federation’s Model Code is increasingly seen as the authoritative standard on the regulation of legal ethics in Canada and as such, harmonized adoption of the Model Code by Canada’s law societies is an important objective. That process continues to work its way through law societies with the assistance of the Federation’s Standing Committee on the Model Code. The Model Code has been adopted or is in the process of being adopted in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and New Brunswick.)

See *Model Code of Professional Conduct*, FLSC, <http://www.flsc.ca/en/model-code-of-professional-conduct/> (last visited Feb. 12, 2013).

64. The FLSC is working with the law societies to develop “high national standards for how they handle complaints.” *National Complaints and Discipline Standards*, FLSC, <http://www.flsc.ca/en/national-complaints-and-discipline-standards/> (last visited Feb. 12, 2013).

65. For links to the Canadian mobility agreements, see *National Mobility of the Legal Profession*, FLSC, <http://www.flsc.ca/en/national-mobility-of-the-legal-profession/> (last visited Feb. 12, 2013). The provincial law societies have delegated to the National Committee on Accreditation the initial decisions about foreign lawyer admission. See *National Committee on Accreditation*, FLSC, <http://www.flsc.ca/en/national-committee-on-accreditation/> (last visited Feb. 12, 2013) (“Most law societies in Canada require the NCA’s Certificate of Qualification to access their bar admissions process.”).

66. Additional noteworthy Canadian developments have been chronicled by Alice Woolley in a blog entry entitled “The Top Ten Canadian Legal Ethics Stories—2012.” Alice Woolley, *The Top Ten Canadian Legal Ethics Stories – 2012*, ABLAWG.CA (Jan. 3, 2013), <http://ablawg.ca/2013/01/03/the-top-ten-canadian-legal-ethics-stories-2012/>.

SPRING 2013

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

496 THE YEAR IN REVIEW

australian states and territories.<sup>67</sup> In September 2011, the Standing Committee of Attorneys-General (COAG) agreed on a revised draft of the National Legal Profession legislation.<sup>68</sup> COAG anticipated that the next steps would involve technical drafting amendments by the host jurisdictions before adoption and that proposed national rules would be submitted for review to the new, but not-yet-appointed, National Legal Services Board, which was called for under the national law.<sup>69</sup> To date, however, neither has happened. Although it previously appeared that there was broad political support for the national law, and that the national law would be widely implemented by Australian states and territories,<sup>70</sup> support has waned, and it is currently unclear how many, if any, Australian states and territories will implement it.<sup>71</sup>

Although the pace of the Australian national legal profession reforms has been disappointing to some, one noteworthy Australian development concerns an empirical study of incorporated legal practices (ILPs) jointly conducted by Professor Christine Parker and the New South Wales Office of the Legal Services Commissioner (OLSC).<sup>72</sup> Although Australia made headlines when it became the first jurisdiction to have a publicly traded law firm (Slater & Gordon is listed on the Australian Stock Exchange),<sup>73</sup> most of the New South Wales ILPs are small firms that are not publicly traded.<sup>74</sup> The Parker/OLSC study found that client complaints decreased by two-thirds after implementation of the mandatory “appropriate management systems” requirement for New South Wales’ ILPs and that after self-assessment, ILPs had one-third rate of complaints of non-ILPs.<sup>75</sup> This dramatic reduction in client complaints has been the subject of discussion at many venues around the world; thus, transnational legal practice lawyers should not be surprised to see other jurisdictions consider approaches similar to Australia’s “appropriate management systems” requirement.

---

67. See, e.g., Laurel S. Terry, Steve Mark, Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 *FORDHAM L. REV.* 2685, 2710 n.129 (2012) (describing a decade of Australian reforms).

68. See, e.g., *National Legal Profession Reform*, AUSTRALIAN GOV'T: ATT'Y-GEN.'S DEPARTMENT, <http://www.ag.gov.au/Consultations/Pages/NationalLegalProfessionalReform.aspx> (last visited Feb. 12, 2013) (includes links to the national legislation and its legislative history).

69. *Id.* See also *National Profession Project*, L. COUNCIL AUSTRAL., [http://www.lawcouncil.asn.au/programs/national\\_profession\\_home.cfm](http://www.lawcouncil.asn.au/programs/national_profession_home.cfm) (last visited Feb. 12, 2013).

70. See, e.g., Law Council of Australia, *Regulatory Framework for a National Approach to Regulation of the Legal Profession* (Nov. 4, 2009), available at [http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file\\_uid=2F03A63E-1E4F-17FA-D25D-31549684FCD3&siteName=lca](http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=2F03A63E-1E4F-17FA-D25D-31549684FCD3&siteName=lca).

71. See, e.g., Gov't of Queensl. [Aust.] [Media Statement], Queensland Not Signing up to National Legal Profession Reform (Oct. 3, 2012), <http://statements.cabinet.qld.gov.au/Statement/2012/10/3/queensland-not-signing-up-to-national-legal-profession-reform>.

72. See Christine Parker, Tahlia Gordon, & Steve Mark, *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, 3 *J.L. & SOC'Y* 466 (2010). See also *Incorporated Legal Practices*, OFF. LEGAL SERVS. COMMISSIONER, [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_ilm](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilm) (last visited Feb. 9, 2013) (includes a link to information on appropriate management systems).

73. See Laurel S. Terry, Carole Silver, Ellyn Rosen, Carol A. Needham, Jennifer Haworth McCandless, Robert E. Lutz, and Peter D. Ehrenhaft, *Transnational Legal Practice*, 43 *INT'L LAW.* 943, 960-61 (2009).

74. ABA Commission on Ethics 20/20, *Discussion Paper Concerning Alternative Business Structures* (Apr. 5, 2011), at 7-8, available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/abs\\_issues\\_paper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf). As of December 2010, Australia had approximately 2000 ILPs, and the number was growing. *Id.* at 8.

75. See Parker, Gordon & Mark, *supra* note 72; see also *Incorporated Legal Practices*, *supra* note 72.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

TRANSNATIONAL LEGAL PRACTICE INTERNATIONAL 497

The U.K. has had significant transnational legal practice developments beyond those already discussed in this article. They include the many reports as well as research and consultations by the Legal Services Board, the Solicitors Regulation Authority, and the Bar Standards Board, including a request for research on the “cab rank” rule, the SRA’s consultation about the rules that should apply to solicitors practicing overseas, and a report about the implementation of the Legal Services Act.<sup>76</sup>

The European Union has also experienced some significant transnational legal practice developments beyond those discussed earlier. These developments include: (1) two European Court of Justice cases that limit the rights of in-house counsel;<sup>77</sup> (2) the ongoing work on the E-Justice portal;<sup>78</sup> (3) the ten year review of the EU’s Lawyers Establishment Directive (98/5);<sup>79</sup> and (4) a number of important money laundering developments, including a pending case before the European Court of Human Rights and a case recently decided by the European Court of Human Rights, and the EU Commission’s review of

---

76. See *Latest News*, LEGAL SERVICES BOARD, [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/index.htm](http://www.legalservicesboard.org.uk/news_publications/latest_news/index.htm) (last visited Feb. 12, 2013); *Welcome to LSB Research*, LEGAL SERVICES BOARD, <https://research.legalservicesboard.org.uk/> (last visited Feb. 12, 2013); *Consultations*, LEGAL SERVICES BOARD, [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/index.htm) (last visited Feb. 12, 2013); *Consultation and Discussion*, SRA, <http://www.sra.org.uk/sra/consultations.page> (last visited Feb. 12, 2013); *Consultations*, B. STANDARDS BOARD, <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/> (last visited Feb. 12, 2013); *Research Specification: Understanding the Impact of the Cab Rank Rule*, LEGAL SERVICES BOARD (Mar. 2012), <https://research.legalservicesboard.org.uk/wp-content/media/Research-Specification-Cab-rank-rule.pdf>; JOHN FLOOD & MORTEN HVIID, *THE CAB RANK RULE: ITS MEANING AND PURPOSE IN THE NEW LEGAL SERVICES MARKET* (2013), available at [https://research.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule\\_final-2013.pdf](https://research.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule_final-2013.pdf); SOLICITORS REGULATION AUTHORITY, *SRA Consultation on Handbook Amendments Relating to International Practice* (2012), available at <http://www.sra.org.uk/sra/consultations/international-practice.page>; LEGAL SERVICES BOARD, *MARKET IMPACTS OF THE LEGAL SERVICES ACT OF 2007 – BASELINE REPORT (FINAL) 2012* (2012), available at <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>.

77. *Akzo Nobel* reaffirmed the court’s prior case law and denied European-level legal privilege to a currently licensed lawyer who worked as in-house counsel because such lawyers are not sufficiently independent to be entitled to privilege. Case C-550/07 P, *Akzo Nobel Chems. Ltd. v. Comm’n*, 2010 E.C.R. nyr, judgment 14 Sept. 2010, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=82839&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=96336>; see Laurel S. Terry, *Introductory Note to the Court of Justice of the European Union: The Akzo Nobel EU Attorney-Client Privilege Case*, 50 I.L.M. 1 (2011). In *Poland v. Commission*, the Court ruled that in-house counsel may not represent their employer before the European Court of Justice. Cases C-422/11 P, C-423/11 P, *Prezes Urzędę Komunikacji Elektronicznej v. European Commission*, 2012 E.C.R. nyr, judgment 6 Sept. 2012, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=126441&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2861405>.

78. *European E-Justice Portal*, EUR. JUST., <https://e-justice.europa.eu/home.do?action=home> (last visited Feb. 12, 2013); see also *2009 Year in Review*, *supra* note 3, at 564. Anyone interested in the European Union should be sure to consult this powerful website, which was launched since the last Year in Review was published. This website includes information about legal proceedings, defendant rights, legal and judicial professionals, and arbitration and mediation in EU Member States, to name just a few topics. The CCBE has been involved in the development of a number of these enhancements, including the “Find-a-Lawyer” and the E-Codex provisions. See *Important National Developments: Troika*, *supra* note 21, at 7-8.

79. See B-Brussels: Study Evaluating The Legal Framework for the Free Movement of Lawyers Against Market and Regulatory Developments in the Single Market, 2011 O.J./S 5125 (July 2, 2011), available at <http://ted.europa.eu/udl?uri=TED:NOTICE:206538-2011:TEXT:EN:HTML>; see also Jonathan Goldsmith, *A Far-Reaching Study on Lawyers in Europe*, L. SOC’Y GAZETTE EUROBLG (July 15, 2011), <http://www.lawgazette.co.uk/blogs/euro?page=7>. For the text of the EU Lawyer’s Directive, see Council Directive 98/5, 1998 O.J. (L 77) 36.

SPRING 2013

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

498 THE YEAR IN REVIEW

the 2005 E.U. money laundering directive, which is expected to lead to the issuance of a new directive.<sup>80</sup>

The European Union is not alone in having significant money-laundering developments. For example, in September 2011, the British Columbia Supreme Court found that the regulation of the legal profession by Canada's law societies provided an effective and constitutional approach to fighting money laundering and terrorist financing and, accordingly, struck down portions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act that had been the subject of debate for years.<sup>81</sup> This decision may be currently on appeal to the Canadian Supreme Court; the federal government and the law societies previously agreed that all provinces and territories would be governed by the results in the British Columbia case.<sup>82</sup> Thus, the outcome of this appeal will have wide-ranging effects on Canadian legal practice (and possibly elsewhere). The controversy over anti-money laundering requirements is one of the reasons why many legal professionals around the world have welcomed the Financial Action Task Force's (FATF) willingness to conduct a "typology" study in which it analyzes the extent to which, and more importantly, the ways in which lawyers have been used to facilitate money laundering and terrorism financing.<sup>83</sup>

## VII. Conclusion

As the prior pages have shown, during the past three years, there have been a number of transnational legal practice-related developments outside the United States that have the potential to affect transnational legal practice by U.S. lawyers. This continues to be a field that U.S. lawyers should actively monitor.

---

80. See, e.g., *Money Laundering Committee*, CCBE, [http://www.ccbe.org/index.php?id=94&id\\_comite=20&L=0](http://www.ccbe.org/index.php?id=94&id_comite=20&L=0) (last visited Feb. 12, 2013); see also *Anti-Money Laundering*, 28 CCBE INFO 4 (Aug. 2011), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/newsletter\\_28\\_enpdf1\\_1314608345.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/newsletter_28_enpdf1_1314608345.pdf) (describing the review); *Anti-Money Laundering*, 31 CCBE INFO 4 (Nov. 2012), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/newsletter\\_31\\_enpdf1\\_1352876731.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/newsletter_31_enpdf1_1352876731.pdf) (noting the expected new directive). The EU has now circulated its proposed new money laundering directive. See *Proposal for a Directive of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing*, COM (2013) 45 final (Feb. 5, 2013); *Michaud v. France*, Eur. Ct. H.R. 445 (Dec. 6, 2012), available at <http://hudoc.echr.coe.int/webservices/content/pdf/003-4185769-4956436> (non-final Chamber decision). The other European Court of Human Rights money-laundering case was filed by the Monaco Bar against the Monaco government challenging its anti-money laundering legislation. See *Monaco Bar*, 30 CCBE INFO 9, *supra* note 21, at 3.

81. *Federation of Law Societies of Canada v. Canada* (Attorney General), 2013 BCCA 147. See, e.g., *Federation Highlights Law Society Anti-Money Laundering Measures at Senate Committee*, FED'N L. SOC'YS CAN., <http://www.flsc.ca/en/federation-news/2012/money-laundering/> (last visited Feb. 8, 2013).

82. *Federation of Law Societies of Canada*, 2011 BCSC 1270; See also *Agreement Between the Federation of Law Societies of Canada and the Attorney General of Canada*, at 4 (2002), available at <http://www.cba.org/pdf/FLSCagreement.pdf>.

83. See, e.g., Jonathan Goldsmith, *Money Laundering - At Last, the Evidence?*, L. SOC'Y GAZETTE EUROBLG (July 23, 2012), <http://www.lawgazette.co.uk/blogs/blogs/euro-blog/money-laundering-last-evidence>; *Anti-Money Laundering*, 31 CCBE INFO 4, *supra* note 80, at 4. In February 2013, a representative from the FATF Typologies Working Group indicated that they expect to complete their report soon and present it to the FATF. See Email from Peter McNamee, CCBE Senior Legal Advisor to Kevin Shepherd, Chair of the Task Force on Gatekeeper Regulation and the Profession (Feb. 13, 2013) (on file with author). For information about U.S. anti-money laundering developments, see Terry, *supra* note 1.