

Bar Association of Seychelles

Position paper on foreign qualified lawyers

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## **POSITION PAPER ON FOREIGN QUALIFIED LAWYERS**

The Bar Association of Seychelles ("**BAS**") prepared a paper outlining its position with regards to allowing foreign qualified lawyers to practice their laws in Seychelles. It outlined the need for foreign law firms to set up shop in Seychelles as a stimuli for economic growth and cautions against a draft piece of legislation that was circulated locally a few years ago which is being touted by certain sections involved in the offshore corporate and financial services industry as a model law for the purpose of bringing in foreign law firms into the country.

This paper was prepared in December 2010 and was circulated to various stakeholders. It represents the position taken by BAS in an Extra Ordinary General Meeting held on the 29th May 2009 and affirmed by the present Management Committee of the BAS.

Divino Sabino  
Secretary  
Bar Association of Seychelles

January 14, 2011  
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### **Position Paper**

This paper sets out the position of the Bar Association of Seychelles ("**BAS**"), including proposals for legislation, in relation to the following issue:

#### **1. Opening legal practice to foreign lawyers**

##### **1.1 Need for foreign lawyers**

1.1.1 Foreign law expertise is a necessary complement to offshore corporate and financial services in any jurisdiction, considering that most offshore transactions are governed by foreign laws.

1.1.2 This proposition is especially true for the Seychelles offshore industry, where it is estimated that over 80 % of the transactions (e.g. loan agreements; share subscription or sales agreements; security agreements, etc.) involving Seychelles offshore entities are governed by a foreign law and handled by foreign lawyers. But Seychelles might be the only international business centre that does not have legislation allowing foreign lawyers to practice in Seychelles. So, presently, all of the lawyers servicing the Seychelles offshore industry operate

outside Seychelles.

1.1.3 There is, also, an increasing demand for foreign law advice in domestic or onshore transactions, as many domestic companies (mostly subsidiaries of multinationals) choose a foreign law (often English law) to govern their transactions insofar possible.

1.1.4 In the circumstances, BAS is of the view that the interest of the Seychelles as a business centre would be better served if the foreign law expertise were available locally.

1.1.5 In particular, we believe that the proximity of foreign law expertise will make Seychelles a truly "one stop" business centre (assuming we are able to attract reputable firms) and thus has the potential of boosting offshore business for all stakeholders, including the Seychelles lawyers.

1.1.6 BAS will support any effort by Government to prepare appropriate legislation to allow foreign lawyers to practise in Seychelles. This paper makes some proposals as to what should be contained in such legislation (Section 1.2 below). We would be happy to provide drafting support, if required.

1.1.7 However we should guard against any attempt to pass legislation to water-down or otherwise alter existing admission requirements to the Seychelles Bar to allow foreigners to practice Seychelles law (this was one the main thrust of a draft Legal Practitioners Act circulated last year); such legislation will not in any way address the country's need for foreign law practitioners, but will certainly bring down professional standards of Seychelles law practitioners and thus has the potential of hurting the image of Seychelles as business centre. These issues are examined further in Section 1.3 below.

## **1.2 Proposals for new legislation**

1.2.1 New legislation (which could be called the "Registration of Foreign Lawyers Act") should allow foreign lawyers to practice the law of the jurisdiction where they are qualified (home jurisdiction) upon registration as foreign lawyers

in Seychelles.

1.2.2 There are relevant models for such legislations in various parts of the Commonwealth.

1.2.3 It is not necessary that a list of approved home jurisdictions be provided by the legislation but the regulator should be empowered not to register a foreign lawyer if he is of the opinion that the law profession in that lawyer's home jurisdiction is not adequately regulated.

1.2.4 Like Seychelles lawyers, the registered foreign lawyer must also be subject to the Anti-Money Laundering Act the Control and Protection of Clients' Account Act.

1.2.5 The legislation should expressly allow foreign lawyers or firms to establish partnership with lawyers or firms qualified or licenced in different jurisdictions or Seychelles lawyers or firms.

### **1.3 Pitfalls to be avoided**

1.1.3 BAS is opposed to the idea (patent on a draft Legal Practitioners Act circulated last year) that admission requirements existing under the Legal Practitioners Act (CAP 111) should be watered-down to allow foreigners to practice Seychelles law.

1.3.2 In particular, the notion that foreign lawyers should be admitted to the Seychelles Bar ( without undergoing the complete training prescribed under CAP 111, inclusive of pupillage) to practice that part of Seychelles law dubbed "international business law" - referring essentially to Seychelles laws relating to its *offshore* entities - is misconceived

1.3.3 The watering-down of the admission requirements to the Seychelles Bar will not attract foreign lawyers, needed to service our expanding foreign law market but will only make it possible for foreigners to qualify as Seychelles

lawyers and tap the limited Seychelles law market.

1.3.4 The Seychelles Bar has a vital role to both the domestic and offshore law markets. To lower its professional standards (at time when we should be raising it to meet new and more complex challenges of the market place) would hurt the image of the jurisdiction and undermine its competitiveness as a business centre.

1.3.5 These pitfalls should be avoided in preparing new legislation. BAS must engage the Government on the BAS proposal for new legislation in the form of the proposed Registration of Foreign lawyers Act.