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Findings From the Directory of Regulators of the Legal Profession

International Bar Association
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Introduction

The IBA Bar Issues Commission is conscious of a growing interest in the regulation of lawyers, whether from individual IBA members who need to contact regulators in other jurisdictions, or Bar Associations who wish to understand how others undertake their regulatory tasks. In order to meet this need, the BIC has created a directory of legal regulators as a resource for the profession. The intention is to identify those who regulate the major stages in the 'life cycle' of a lawyer, from qualification/entry to the profession, through ethics and conduct rules to disciplinary matters. The resulting directory will indicate those organisations that regulate these different facets of legal practice, with contact information and embedded links to further information.

This report sets out a bit more detail around the directory, including what wider deductions it allows us to make about the regulation of lawyers around the world.

Which countries does the Directory cover?

The objective of this project was to create a directory/mapping of how legal regulation is conducted around the world.

The directory aims to cover the widest range of countries possible and the 163 countries of the WTO were selected as the starting point. However, where the opportunity arose during the compilation of the directory to add additional countries (e.g. Sudan) or sub-national jurisdictions with special status (e.g. Guam and US Virgin Islands), regulatory information on these jurisdictions was incorporated.

A number of countries are not covered in this version and these mostly fall into one of the following categories:

- Countries that are in the process of negotiating WTO membership. This group includes: Algeria, Bosnia, Ethiopia, Iran, Iraq, Lebanon and Libya, amongst others. Afghanistan, Kazakhstan and Liberia have joined the WTO during the process of constructing this directory.
- Relatively new states, post-conflict states, or states that have recently reengaged internationally which have yet to apply for WTO membership formally: Somalia, Eritrea, South Sudan, East Timor.
- States not engaged with the international community: North Korea.
- Small island states: Most South Pacific Islands (Micronesia, Kiribati, Marshall Islands, Tuvalu, Nauru and Palau), Comoros and some Caribbean states.
- States of disputed status which nonetheless have existing and separate legal systems: Kosovo and Palestine.

There are also some dependent territories and smaller jurisdictions which come under the sovereignty of countries included in directory that have not been covered (e.g. Channel Islands, Cayman Islands, Gibraltar) and the smaller emirates of the UAE (Sharjah, Ajman, Fujairah, Ras al-Khaimah, and Umm al-Qaiwain).

What issues does the Directory Cover?

The directory contains the following information:

- The key 'lawyer' titles in each country/jurisdiction
- An indication of the existence of separate jurisdictions in each country covered
- An indication of the organisations responsible in each jurisdiction for the three key stages of the lawyer 'life-cycle: Admission, ongoing registration/conduct and discipline/exit.
- Contact details and links to the websites of each regulator, where possible.
- An indication of any other bodies (e.g. complaints ombudsmen etc) involved in the regulation of lawyers in each jurisdiction covered.
- Information about legislation governing the regulation of lawyers and legal services, or on the constitution and functioning of a bar association or its equivalent.

How was the information contained in the Directory obtained?

The basic starting point for the directory was desk research to find national legislation on legal services regulation and information about its application in practice. This drew particularly on resources such as:

- Links from regional and national legal information institutes (e.g. SAFLII, BAILII, CANLII and other World Law Library resources)
- National parliamentary databases and national gazettes
- The US Library of Congress

This was supplemented with information from national courts, especially where no legislation exists, and from the bars and other regulatory bodies themselves.

The data which was collected through desk research was then verified. This verification process took the following approach:

- Where possible, verification was sought from the regulators themselves. This happened in 18% of cases.
- If this was not possible, the help of the organised bar was sought, even if their role was largely representative rather than regulatory. This was the case in 41% of cases.
- If no response could be obtained from regulators or organised bars, assistance was sought from local IBA member firms or individual IBA members, from the respective jurisdiction. This happened in 20% of the directory's jurisdictions.
- Finally, in jurisdictions which had no IBA member organisation or individual IBA member, verification was sought from local lawyers who were recommended by foreign embassies or who had contributed to the World Bank Doing Business Survey, and therefore illustrated their willingness to provide the kind of information being sought, this verification approach was used in 21% of cases.

Over two-thirds of the directory was verified by the time of publication.

What does the Directory tell us?

In total, the directory contains:

- A mapping of responsibilities for key stages of legal services regulation in 158 countries and 233 jurisdictions, which has been verified as a current and accurate picture in 67% of cases.
- Links to primary legislation on legal services regulation in 143 jurisdictions, where possible made available in English.

Overall, the directory covers 83% of UN member states, 98% of WTO members, 97% of the world's GDP¹ and 93% of the world's population².

Who regulates?

The model of lawyer regulation is set out in legislation in 63% of jurisdictions. Although there are many differences in the way in which regulation of lawyers is carried out in practice in different jurisdictions around the world, there are perhaps five distinct models which are observable:

- **Largely court regulated professions:** In this model, the Court, usually the Supreme Court of the jurisdiction, is the main body responsible for lawyer registration and overseeing discipline. Such a model includes both exclusive Court jurisdiction (which usually implies the limitation of any lawyer monopoly of practice rights to representation in court), and possibly some form of prior Bar approval for registration, or investigation and prosecution for disciplinary action. Court regulated legal professions are most commonly found in South America and the Caribbean, and some states of the US which have not adopted the delegated model (see below).
- **The exclusively bar regulated professions:** In this model, the 'Bar' is responsible for every stage of lawyer regulation and, in most cases, will also act as the main representative body for the profession. Where the power to regulate resides exclusively with the Bar, this is universally enshrined in legislation, which may also require particular internal governance arrangements (e.g. the establishment of a disciplinary board). One feature of this model is that it is not uncommon for regulatory responsibilities to be held primarily at a local, district court level, even where a national legislative framework is in place. This model is most prevalent in Europe as well as Francophone and Lusophone Africa.
- **The predominantly or exclusively government regulated professions:** In this model, it is the government which makes the key decisions relating to entry into and exit from the profession. A bar, where it exists, may play a role in promulgating the code of conduct and supporting lawyers in day to day practice but it is the government which calls the shots. This model is most commonly found in the Gulf (e.g. Saudi Arabia, Qatar, Oman and the UAE), and in some countries of Central and East Asia (e.g. Tajikistan, Kyrgyzstan, Taiwan, People's Republic of China and Vietnam). In some others (e.g. Laos and Yemen) there is some form of a Bar or lawyers' organisation which may play a nominal role in regulation, but is in practice an emanation of, or effectively under the control of the State.
- **Legal professions predominantly regulated by independent or delegated authorities:** In this model, separate regulatory organisations are usually set up under the auspices of the ultimate statutory or constitutional authority responsible for lawyer regulation (eg, England and

¹ [GDP and its breakdown at current prices in US Dollars](#)". United Nations Statistics Division. December 2014. Retrieved 10 June 2015.

² Source: UN World Population Prospects 2012 United Nations Department of Economic and Social Affairs, Population Division, Population Estimates and Projections Section. 13 June 2013

Wales, a number of US states, Canada, and parts of Australia). The distinguishing feature of such authorities is usually their exclusive regulatory competence, separated from any representative interests of the practising profession. In many states in the United States for example, the ultimate authority is the State Supreme Court but day to day regulatory authority has been delegated to professional regulators and it is therefore worth distinguishing this from the model of court regulation which is largely about the maintenance of the registration list. . In Canada, regulation is carried out by independent provincial and territorial law societies mandated by statute to regulate in the public interest.

- **Legal professions predominantly regulated on a mixed or shared basis** by representatives of different organisations. Characteristically, a 'General Legal Council', or similar, is established to oversee the key stages of lawyer regulation and will involve some combination of the Attorney General, possibly Ministry of Justice, judiciary, bar association representatives and separately elected members of the profession. This model is most likely to be found in parts of West Africa, such as the Gambia and Ghana and in parts of the Caribbean, like Belize and Jamaica.

There are, naturally, jurisdictions whose regulation is hard to categorise according to the above typology and to some extent value judgments have been made in allocating jurisdictions to any particular category. This is why the word 'predominantly' has been used in defining the above categories and in producing the illustration shown in the infographic provided at annex 1.

It becomes easier to place jurisdictions into the above categories once the different regulatory functions are broken down into different stages, since the same regulator is responsible for the entire lawyer life cycle in only 52% of the jurisdictions examined. In 48% of cases, different bodies are responsible for the different stages of regulation³.

It is also important to point out that what is actually implied by the same regulatory model could vary significantly in practice from one jurisdiction to another. Local bar regulation means a very different thing in the Netherlands, for example, compared to India or Russia. This is partly due to the regulatory activities undertaken by any individual regulator but is also related to the extent of any lawyer monopoly, which in turn determines whether 'lawyer regulation' and 'legal services regulation' are synonymous.

Who admits lawyers to practise?

The table below shows responsibility for lawyer admission and illustrates national or local Bars are collectively the most significant admitting authority but still account for less than half of all regulators of admission. The court would also be second most important admitting authority, given its importance to lawyer regulation in the United States, were this task not delegated in many US States to State Boards of Bar Examiners, who are here classified as 'independent or delegated authorities'. The distinction between those States in which the admitting authority has been counted as a court and those in which it has been counted as independent, depends on the degree of separation. Those States which have Boards of Examiners with their own governance arrangements and websites have been distinguished from States in which admission is handled by a committee of department within the Court itself.

Table 1: Regulators of Admission

³ Organisations have been treated as separate here despite the fact that they might have been set up under the auspices of the same ultimate authority e.g. in the US, a number of States have a Board of Bar Examiners and a State Disciplinary Commission which are both responsible to the Supreme Court, however these are treated as separate entities where they have separate governance arrangements. In countries where the Bar has an admissions board and a separate disciplinary board these have been treated as the same organisation as they operate under the same overall governance arrangements.

Predominant regulator of admission	Number	Percentage
Court Admission	27	12%
National Bar Admission	71	32%
Local Bar Admission	22	10%
Government Regulated Admission	16	7%
Independent or Delegated Regulatory Authority	58	26%
Mixed or shared responsibility	29	13%
Total	223	100%

Government departments play a role in lawyer admission in Iceland and Denmark even though these are otherwise predominantly Bar led regulatory environments. Elsewhere government involvement is limited to countries in which regulation is entirely government dominated.

Who regulates lawyers in practise?

Once admitted, lawyers are then predominantly 'regulated' in practice by Bar associations. Regulation in practice is defined here as the promulgation and monitoring against a code of conduct but may also include the renewal of practising certificates, the imposition and monitoring of continuous education or training requirements and professional indemnity insurance, and any oversight of anti-money laundering requirements imposed on lawyers. In many jurisdictions, however, there is little active monitoring of the legal profession post-admission.

Table 2: Regulators of Practice

Predominant regulator of practice	Number	Percentage
Court	42	19%
National Bar	114	52%
Local Bar	17	8%
Government	14	6%
Independent or Delegated Regulatory Authority	24	11%
Mixed or shared responsibility	8	4%
Total	219	100%

Who disciplines lawyers?

Table 3 shows the predominant disciplinary authority for handling of complaints about lawyer discipline at first instance. Although the courts are not often the first port of call for lawyer discipline, in many jurisdictions they are involved at some stage of the process but this is not shown in the table below.

Table 3: Lawyer Disciplinary Authorities

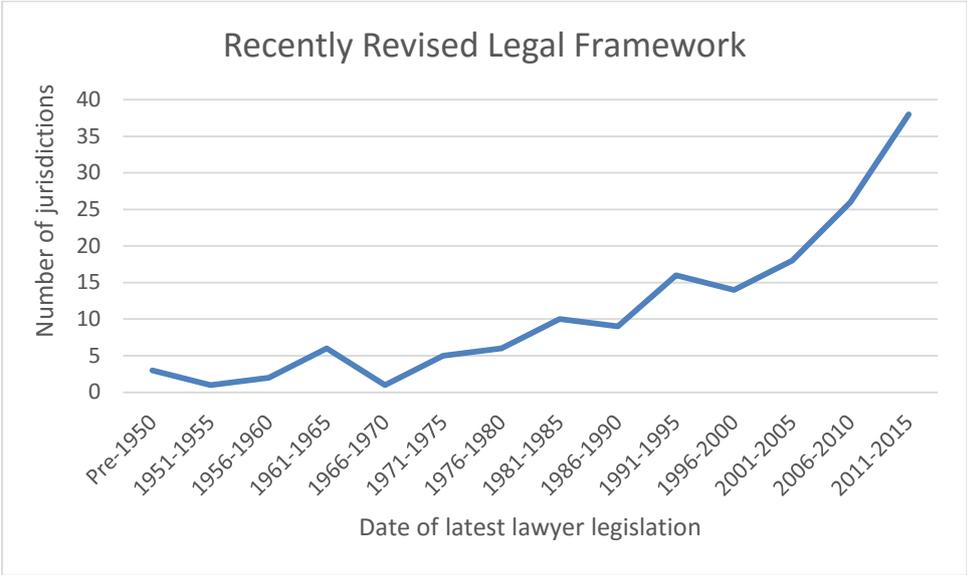
Predominant disciplinary authority	Number	Percentage
Court	27	12%
National Bar	100	46%
Local Bar	16	7%
Government	13	6%
Independent or Delegated Regulatory Authority	51	24%
Mixed or shared responsibility	9	4%
Total	217	

Although Bars (national and local) are responsible for discipline in the majority of jurisdictions covered, there are a significant number of independent authorities who are also involved.

Are there any evident trends in regulation?

There are a number of interesting trends which appear from the evidence collected:

- Lawyer legislation is being reviewed and updated at a quickening pace. 27% of all of the jurisdictions with legislation in force to govern legal practice have revised or introduced new legislation in the past five years.
- However 47% of jurisdictions have legislation in force that predates the millennium and 3% have pre-1950 legislation. Around a quarter of those with pre-2000 legislation still in force are African jurisdictions and the majority are developing or emerging jurisdictions.



There have been a number of themes in the new legislation that has been introduced:

- A shift towards national systems of regulation away from decentralised local regulation (e.g. Netherlands, South Africa)
- A shift towards greater harmonisation in federal systems (e.g. Canada and Australia).
- A shift to greater openness to foreign lawyers (e.g. Malaysia, Israel, Republic of Korea).
- A shift away from exclusive professional body oversight of the complaints and disciplinary system and the introduction of complaints commissioners or separate disciplinary agencies (e.g. Ireland, Northern Ireland, Queensland, Victoria and New South Wales in Australia).
- This accompanies another theme in lawyer regulation which is towards the greater isolation of regulation from professional representation. Where this is being done it tends either to take the form of ringfenced regulatory arrangements under the auspices of the Bar or Law Society (e.g. Netherlands) but there are examples of jurisdictions in which there has been a conscious separation of regulatory and representational responsibilities into different legal entities (e.g. Denmark, Canada).
- Where the profession was split between barristers and solicitors (e.g. former British colonies) or into multiple professions (e.g. France) it has increasingly been fused.
- On the other hand some jurisdictions have introduced new 'stepping stone' professions e.g. Romania, Poland, Washington State or are regulating paralegals alongside lawyers (e.g. Ontario, Scotland)
- There has been a move towards national legislation removing limitations on practice by lawyers from elsewhere in the country in different court districts (e.g. Greece). There are now few places where separate, non-federal jurisdictions have barriers to practise imposed at a sub-national level (i.e. prevent lawyers from the same country to practise outside their local jurisdiction). Nonetheless echoes of these restrictions still remain in the treatment for example of law firms, which are stymied by rules that assume a lawyer can only have one practising address
- A trend towards the professionalization of lawyer regulation with the creation of more specialist agencies (e.g. the Legal Services Regulation Authority in Singapore).

On the other hand, there is little evidence that lawyer regulation is shifting from its traditional focus on individual practitioners and their conduct. Although some jurisdictions are paying more attention to the vehicles through which lawyers work (e.g. England and Wales and Singapore), so-called "entity regulation" is still highly unusual and legal services market regulation⁴ even rarer. In Canada, however, greater attention is being paid to this regulatory approach. In Nova Scotia, "entity regulation" is being implemented and it is being studied in a number of other Canadian provinces.

Moreover, although there also has been some consolidation in regulators, the number of separate bodies involved in lawyer regulation remains very high in some jurisdictions, with tens and sometimes hundreds of local bars engaged in monitoring lawyer conduct and issuing practising certificates. Overall, nearly 1200 separate bodies are involved in the regulation of lawyers in the 232 jurisdictions reviewed. This staggering number raises important questions about capacity, particularly in the light of the growing number of functions which lawyer regulators are being called on to perform, as well as consistency of approach.

⁴ Market regulation means a focus on supply and demand and hence levels of competition within the defined market