

IBA RESOLUTION ON MULTI-DISCIPLINARY PRACTICES (Adopted 1998)

WHEREAS the IBA has as its first objective the ready access to justice and legal services for every member of society together with the preservation of the interests of clients and the public rather than the economic protection of lawyers;

WHEREAS the fundamental standards and principles distinguishing the legal profession are for the protection and benefit of the public – the community at large – and not simply for the benefit of those who happen to be clients of a lawyer at any particular time;

WHEREAS the fundamental principles underlying the provision of legal services, designed to protect the public, are embodied in the IBA General Principles of Ethics for Lawyers, including principles 4 and 8 regarding the avoidance of conflicts of interest and the preservation of lawyer independence and principle 5 regarding client privilege and confidentiality.

WHEREAS ways must be found to preserve these principles where law is practised within the environment of a multi-disciplinary practice (hereinafter called 'MDP');

WHEREAS MDP is a term used to denote the various forms of integrated co-operation between lawyers and non-lawyers;

WHEREAS respect for the rule of law is a principle that has found universal acceptance and encompasses the principle that citizens have recourse to the law, not only for the resolution of disputes, but also for protection against arbitrary actions of public authorities and abuse of power by other institutions, since under the rule of law, the law is equally binding upon all concerned, citizens, powerful or not, and public authorities alike;

WHEREAS recognition of the rule of law places heavy emphasis on the necessity for adequate access to justice and lawyers form an essential element of access to justice so that the legal profession is a necessary element in the implementation of any system based on the rule of law;

WHEREAS for the proper functioning of a legal profession it is of prime importance that clients trust their lawyers and communicate frankly and honestly with them without fear of any prejudicial effect and this requirement of trust has at least three important consequences:

- a) firstly, lawyers must work under circumstances which eliminate external influences or pressures deviating from the client's interest by which a lawyer should be exclusively led and this constitutes the core of the rules common to almost all jurisdictions, and essential to the rule of law, that lawyers should be independent;

- b) secondly, and arising out of the same considerations as the requirement that lawyers should be independent, lawyers should scrupulously avoid any involvement with more than one party, where the parties have conflicting interests or even potentially conflicting interests;
- c) thirdly, the lawyers must preserve complete confidentiality as to the information entrusted to them by their clients and to protect this confidentiality information provided to a lawyer by his client should be protected by client privilege;

WHEREAS for the proper functioning of lawyers under the rule of law the need for client confidence and therefore for client privilege is evident;

WHEREAS these issues are in many ways unique to the legal profession because they differ from similar aspects peculiar to other professions in that other professions do not play the pivotal role in the administration of justice and the upholding of the rule of law which the legal profession plays: for other professions, the principles relevant to independence, confidentiality and the avoidance of conflicting interests differ widely from those applying to the legal profession – accountants, for example, in many jurisdictions have duties in which interests of others than their own client must be given due consideration and fulfilment of such duties may lead to an actual obligation to disclose and report information obtained for a client without that client's consent;

WHEREAS commercial interests that militate for MDPs, with factors such as economies of scale and one-stop shopping, must be viewed in the light of the overriding public interest in maintaining the essential principles and qualities of the legal profession in particular as concerns independence, avoidance of conflicting interest and confidentiality;

WHEREAS where a law practice is conducted in an integrated organisation with other professions the lawyer may be subject to influences which affect his independence in that he may be subject to rules requiring him to take other interests into account other than the interest of his client which he has been engaged to promote;

WHEREAS the variety of interests dealt with in such an organisation also presents obvious problems in the field of conflicting interests and co-operation between professionals bound to confidentiality and professionals under a duty to report faithfully and to disclose client information which puts both professionals under severe pressure;

NOW THEREFORE the Council of the International Bar Association RESOLVES:

- 1 THAT countries should ensure that the fundamental principles protecting clients and the public embodied in the IBA General Principles of Ethics for Lawyers are adequately addressed in the context of any rules permitting or affecting the operation of MDPs.

- 2 THAT Regulators, including authorities responsible for regulating and/or promoting trade in services, be made aware of the factors which make core services provided by the legal profession unique and distinct (being those set out in the IBA Resolution on the Regulation of the Legal Profession dated 6 June 1998 and those mentioned above) and which necessitate that the regulatory framework for the legal profession be given separate consideration, distinct from that given to other professions.
- 3 THAT in the process, such regulators and authorities consider the possible risks to clients and the public that may be posed by MDPs, taking into account the vital role of the legal profession in upholding the rule of law.
- 4 THAT regulators and authorities be encouraged to provide and to maintain rules on the integrated cooperation between lawyers and non-lawyers which address the essential features of the legal profession set out in the above-mentioned IBA Resolution and which provide proper safeguards.
- 5 THAT such rules should regulate lawyers practising in or associated with MDPs in such a way as to minimise risk to clients and the public of undermining the lawyer's independence, allowing the representation of conflicting interests and eroding confidentiality and client privilege.
- 6 THAT such rules might contain:
 - a) precise requirements on the avoidance of conflicting interests which exclude the possibility of combining, for example, auditing services with consulting services or legal representation;
 - b) precise rules on restriction of access to confidential information;
 - c) provisions setting out the minimum degree of ownership and/or voting control which lawyers must hold in MDPs;
 - d) a requirement that in the case of inconsistent or conflicting rules of conduct between lawyers and other regulated professionals, the rule providing greatest protection of client and public interests is to prevail.
- 7 THAT this subject should be kept under continuous review by the Council of the IBA through the establishment of an IBA Standing Committee on MDPs to monitor, consult and advise, and consider further policies which regulatory authorities could emulate.