

CCBE Guidelines for a Model Foreign Legal Consultant (Status) 25/11/2022

Executive summary

These non-binding Guidelines describe a Model Foreign Legal Consultant Status, including conditions to obtain a licence and a definition of the legal practice that third-country lawyers might perform in a CCBE Member State. The guidelines are intended to provide technical assistance regarding certain questions that may be considered useful by national regulators and legislators when defining such status in their respective jurisdictions. The document is divided into three parts dealing with the conditions for obtaining a licence (Part I), deontology and discipline (Part II), and the scope of practice (Part III).

Introduction

The CCBE, while acknowledging that the competence to define the legal status of third-country lawyers is national, considers that a certain level of compatibility of national legislations on the treatment of third-country lawyers can be of interest. This common ground should be limited to establishing essential elements relating to the international provision of legal services and where a lawyer from a third country wishes to establish him/herself in a CCBE Member State.

These guidelines aim at providing technical aid to the CCBE members while respecting national competence in the field of definition of the legal status of third-country lawyers. Also, any regulation would need to be implemented with respect to the applicable rules of the General Agreement on Trade in Services (GATS). The document takes into account the fact that the situation in every country is different and recognises that the suggested rules can be interpreted in a flexible manner and in order to integrate rules into their national systems.

Accordingly, starting from the GATS principles, the CCBE has drafted these non-binding Guidelines establishing a Model Foreign Legal Consultant (FLC) Status which includes conditions to obtain the licence and a definition of the legal practice that third-country lawyers might perform in a CCBE Member State.

Questions treated

The guidelines are intended to provide clarifications upon certain questions that may be considered useful by national legislators when defining such status in their respective jurisdictions. Such questions are:

- *What are the conditions for the recognition of the qualification obtained by a third-country lawyer?*
- *What are the conditions for obtaining a licence as third-country lawyer in a CCBE Member State (CCBE MS)?*
- *What is/are the competent authority/ies and the procedural fulfilments for receiving the request?*
- *What deontological rules must the third-country lawyer comply with if he/she is authorised to practise in the host State? How to verify the quality of such professional practice (if needed)?*
- *What are the services that can be provided in the hosting State by the third-country lawyer?*

Glossary

Foreign Legal Consultant (FLC) = In the past, the CCBE discussed about the definition and has used the term of Foreign Legal Practitioner. In this document, the term of FLC is used instead, as an indication of the activities that can be authorised to perform, bearing in mind that the national systems can use any other term.

The FLC is recognised by the host country on the basis of Art. VII GATS provided he/she is a member of a comparable independent regulated Bar with a Code of Conduct in line with the Code of Conduct of the CCBE and its member organisations, and has a sufficient and comparable education and/or experience, meets certain requirements, was granted licences or certifications in his/her home country.

Home country/State = country that issued the title/qualification to perform the activity of lawyer.

Host country/State = country in which the third-country lawyer wants to register as FLC.

Part I

Questions covered

- *What are the conditions for the recognition of the qualification obtained by a third-country lawyer?*
- *What are the conditions for obtaining a licence as third-country lawyer in a CCBE MS?*
- *What is/are the competent authority/ies and the procedural fulfilments for receiving the request?*

1. General regulation

May be authorised to practise in a jurisdiction as an FLC a person who is not a citizen of a country and/or is not qualified as a lawyer in a country whose Bar is a full member or an associate member of the CCBE and:

OPTIONS

- This rule is drafted on the ground that temporary or permanent licence are subject to the same conditions.
- Should it be the case, different conditions can be established, for instance, applying lighter conditions for the temporary or *ad hoc* licences.

A) is a lawyer according to the law of his/her home country, which is a member of the World Trade Organisation

This first criterion is based on the principle of recognising the qualification obtained in WTO MS. This approach permits to link the FLC status to the one discussed at the GATS/WTO level.

OPTIONS

- Is a lawyer according to the law of his/her home country, which has an FTA with the host country.
- Is a lawyer according to the law of his/her home country.

B) is a lawyer of a country which applies similar rights to the (host country/state) lawyers on the basis of reciprocity

Reciprocity can be considered as a precondition, and this is consistent to the GATS/WTO principles.

OPTION

- Countries may require no reciprocity.

C) is regularly registered as a lawyer in the professional register of his/her home country

This condition requires that the person requesting the registration as FLC must be currently lawyer in the home country, meeting all the conditions established there.

The lawyer should be able to provide a certificate attesting his/her registration.

In this respect, host country Bars could consider communicating with the home country Bar where they deem it is appropriate.

In case that the home country does not require registration of the lawyer, the host country can request any other evidence in order to prove the qualification as a lawyer.

This condition can be considered in a different perspective in case that the person is no longer a lawyer for specific reasons which are contrary to the rule of law and/or fundamental rights principles (e.g., HR violation, etc.).

Account should be taken of the individual situation of the lawyer having in mind that lawyers may, for example, be unduly charged in their home country.

In case the applicant is not registered as lawyer for reasons contrary to the rule of law and/or fundamental rights principles, this condition can be evaluated as non-binding.

D) has some experience in practicing as lawyer in the home country or in another country

The host country may require from a third-country lawyer to prove a period of previous practice to show the ability to provide legal services as a lawyer. The evidence of this condition can be difficult. However, it can be requested to provide a certificate from the Bar of origin or any other element that can be considered by the (national) authority.

E) meets the requirements of ethics required for a member of the Bar of the (host country) jurisdiction

This condition can be required to apply national requirements of ethics requested for the profession of lawyer. In case where certain personal status in the host country are considered preclusive for being a lawyer, while in the home country they are not, this condition can be relevant.

It may be possible also to require, for instance, that the applicant has not been convicted for a criminal offence; or has not been sanctioned for disciplinary or administrative sanction that would exclude him/her from being a lawyer in the host country.

Another example concerns persons in state of bankruptcy or insolvency.

F) demonstrates to have the means requested by a local Bar

It may be considered to request that the applicant has the means and capacity required at national level, e.g., to have or to join an office to perform the activity of FLC.

OPTION

- It may be considered that this is only a condition to show in the future. For instance, it is possible to provide that if the FLC does not fulfil this obligation within three/or more months from the admission, the qualification is revoked/suspended.

G) demonstrates to have enough knowledge of the national language

OPTIONS

- Enough knowledge of the local language can be required depending on the matter.
- Language requirement can be linked to the reciprocity rule.
- This requirement can be omitted.

2. Application

The application for an FLC status must be submitted to ...

In some States, the register of FLCs is kept at local level, in others by the national Bar or the relevant competent authority. This should be specified to indicate the Bar to which the application should be submitted.

The application shall include the submission of the following documents. The list is indicative.

- A) Written application.
- B) A certificate showing the entitlement to provide legal services as lawyer in the applicant's home country.
- C) Written evidence showing that the applicant is currently registered in the Bar of the home country for at least 3 years. The number of years is indicative/optional.
- D) Evidence that in the home country there is reciprocity in the recognition of the practice of host country lawyer.
- E) Documentation proving the absence of criminal convictions and disciplinary sanctions, or other conditions contrary to national law (e.g. bankruptcy); information to the Bar of any ongoing procedures.
- F) Documentation proving how the activity of FLC will be performed (office, telephone, functioning e-mail box, and any other means allowing further communication with the Bar, according to the national rules).
- G) Proof of professional insurance covering the activity as FLC in the national jurisdiction.
- H) A statement saying that the communication with the competent authority will be done in the national language or other languages if accepted by the Bar.

OPTIONS

- It may be that some documents/certificates are verified by the public authorities of the host country, such as the Ministry of Justice, the Ministry of Foreign Affairs or the Ministry of the Interior (e.g.: documents concerning points B, C, E). Often these ministries also verify the conditions of reciprocity with the third country (point D). In such a case, the competent national or local Bar must simply receive confirmation from the competent public authority in the host country. It may be the case to specify the competent authority to receive the request to certify the relevant status in the host country.
- These documents are related to the points provided above under Rule 1. In case some requirements will be omitted, the relevant/corresponding documentation required under Rule 2 can be removed.
- Other elements can be added according to the national requirements.

3. Special section of the register of lawyers / specific FLC register

The FLC shall be registered under the

It may be possible that the FLC is not registered in the register of lawyers (e.g. in a special section of this register), but in another specific register, that may be kept by an authority different from the national or the local Bar. This information is made public.

Moreover, as stated under Rule 2, in some States, the register of FLCs is kept at local level, in others by the national Bar. This information should be specified.

Every FLC shall execute and file with the host country Bar a written undertaking to notify the host country Bar of:

- A) any change or any proceedings regarding his/her good standing as a member of his/her home country Bar and
- B) any final action of the professional body or public authority imposing any disciplinary censure, suspension, or other sanction upon him/her.

4. Annual fee

The FLC shall pay an annual fee as set by ...

5. Admission to Bar

If a person licensed as an FLC following this model is subsequently admitted as a lawyer of the national Bar under the rules governing admission, that person's FLC status shall be deemed superseded by the licence to practise law as a lawyer of the Bar in that national jurisdiction.

OPTION

- This Rule can be omitted.

Part II

Questions covered

- *What deontological rules must the third-country lawyer comply with if he/she is authorised to practice in the host State? How to verify the quality of such professional practice (if needed)?*

6. Rights and obligations – Deontology

As a principle, an FLC remains subject to the professional rules applicable to lawyers in the home country that issued the title of lawyer.

An FLC is also bound to respect the deontological and professional rules that are imposed on lawyers registered at the host country Bar. A person with an FLC status is registered with the Bar of the host country, when applicable.

Thus, the professional conduct of the FLC in the host country is regulated by the deontological rules of the Bar and/or the ones provided laid down by the competent authorities of the host country, which prevail over the deontological rules of the home country in case of conflict.

Regarding joint exercise of the profession, the FLC may practise subject to host country law regulating activities in association with lawyers or other professions when and to the extent permitted to them.

7. Discipline

An FLC remains subject to professional discipline applicable to lawyers in his/her home country that issued the title of lawyer.

In addition, a person with an FLC status shall be subject to professional discipline in the same manner and to the same extent as for members of the Bar of the host country.

OPTION

- It is possible to add a sentence outlining the possibility to request a commitment from an FLC to respect the discipline, the regulations, the jurisdiction and the decisions of the host country.

8. Revocation of licence

If it is determined that a person's licence as an FLC under these rules no longer meets the requirements for him/her to keep the title, the status shall be revoked.

Part III

Questions covered

- *What are the services that can be provided in the hosting State by the third-country lawyer?*

9. Scope of practice

The FLC must practise in the host country under his/her home country qualification.

OPTIONS

- It may be possible to state that the FLC must practise under the FLC qualification, specifying the home country title.
- Moreover, it may be possible to request that the FLC must translate in host country language the home country title.

The FLC is entitled to provide legal advice only in the law of the country where he/she has obtained his/her professional qualification and/or in international public law (excluding host country law and, as for EU Member States, European Union law).

OPTIONS

- Further options are possible, but always taking into consideration the GATS-WTO limits.
- In the EU, it is no possible to apply EU directives on the internal market on services, qualifications and establishment to FLCs.
- National rules as to what the reserved activities for host country lawyers are may provide the FLC with further opportunities to practise host country law.

Accordingly, a person who acquired an FLC status according to these provisions may render legal services in the host country but shall not be considered admitted to practise law in this jurisdiction or in any way hold himself or herself out as a member of the Bar of this jurisdiction.

OPTIONS

Some other limits can be listed, such as, for example:

- Appear as a lawyer on behalf of another person in any court. The FLC is not permitted to represent anybody in court and before administrative authorities except where no requirement for representation by a lawyer exists.
- Advise on the law of the host country (and the EU Law).

- To prepare any instrument involving the transfer or registration of title to real property situated in the host country (US Model).
- To prepare: 1) wills or deeds of trust involving the disposition - in the event of death - of any property located and owned by a resident of the host Country, 2) any instrument relating to the administration of the estate of a decedent in the host Country (US Model).
- To make any instrument relating to the marital or parental relations, rights, or duties of a resident of the host country, or to the custody or care of the children of such a resident (US Model).