



The City of London Law Society

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Briefing

NEW YORK BAR PROPOSALS TO CLARIFY CHOICE OF LAW IN CONDUCT RULES

Proposed amendments

The New York Bar has approved a proposal which widens the scope of the “predominant effect” rule to allow New York lawyers practising both in the US and abroad to comply just with the rules of the country where their work has predominant effect. The proposal is now subject to approval by the Appellate Division of the New York courts.

“Predominant effect” - current position

Currently, New York lawyers working in New York must comply with US professional conduct rules. New York lawyers practising abroad are subject to the professional rules of the jurisdiction where their work has predominant effect. This only applies to NY lawyers working abroad where they are formally licensed to practise in that overseas jurisdiction.

Impact of amendments

The amendments, which are not guaranteed but likely to be introduced (and have already been introduced in Pennsylvania), clarify which professional rules apply to New York lawyers.

The changes have particular impact in the context of conflicts rules. They allow New York admitted lawyers to take advantage of less draconian conflicts rules in other jurisdictions where the predominant effect of their work is in a country outside the New York. More significantly, if a similar approach was adopted by other countries, the issue as to which conflict rules would apply on any international matter would be greatly simplified; just the rules of the country which is the focus of the matter would apply, wherever the lawyers working on it are admitted.

CLLS view

The CLLS supports increased clarity in deciding which professional rules apply in international matters. It proposes that regulators and bars around the world consider introducing amendments to their own codes similar to those proposed by New York, at least in so far as conflict rules are concerned. This would benefit solicitors working on international deals in a number of different jurisdictions. It would also create a level playing field for international law firms competing globally. In some countries, there may - apart from bar rules - be common law or statute which governs conflict issues and which might be more

difficult to amend. If this is the case, the nature and extent of such law should be ascertained as a first step.

About the CLLS

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership. Its 50 corporate members include some of the largest international law firms in the world. These firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

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