

The Regulation of In-House Counsel – Overview of International Trends

In order to better understand the regulation of the legal profession in different legal jurisdictions, and in particular the regulation of in-house legal advisors, information has been compiled for 70 countries, including:

- **Entry to Legal Profession**: information regarding the body that oversees admission to the legal profession, and the requirements for an individual to be admitted into the profession.
- **Regulation of In-house Counsel**: whether or not a lawyer who is working as in-house counsel is permitted to be a member of the bar. In certain jurisdictions in-house counsel are permitted, but not required, to be members of the bar, and this has been reflected in the data collected.
- **Rules Regarding Foreign Lawyers**: the data for each country also indicates whether there are rules that would permit foreign lawyers to register in the jurisdiction, as an indication of what kinds of reciprocal benefits are available to US-licensed attorneys (or other foreign lawyers) in that jurisdiction.

The overarching trend based on the information collected is that there is a division between common law jurisdictions and civil law jurisdictions: whereas civil law jurisdictions generally restrict in-house lawyers from maintaining active bar membership, most common law jurisdictions require bar membership for in-house counsel. The following provides a brief summary of the trends on a regional basis.

1. Europe

We collected data on 24 European countries.¹ More than 60% of the European countries (63%) surveyed do not require in-house counsel to be members of the bar,² some countries like Italy, France or Sweden do not even allow a lawyer to be a member of the bar while practicing in-house. This trend is mostly observed in civil law countries. Thus, for most of the countries in Europe, an in-house attorney would not be able to obtain a certificate of good standing from a bar association, or provide evidence of a current professional license.

The other 37% of European countries surveyed either require bar membership for in-house counsel (e.g. the United Kingdom and Ireland, both common law jurisdictions), or allow in-house counsel to remain members of the bar, provided that certain conditions are met. For example, German lawyers are permitted to work in-house and remain members of the bar provided that the attorney is able to demonstrate that his permanent employment relationship does not endanger his independence – so admission to the bar for an in-house lawyer in Germany is conditional, and not automatic.³

The countries that do not allow bar membership for in-house counsel still impose stringent requirements for lawyers to be admitted to the practice of law. Most countries require candidates to the bar to complete a year or more of professional legal training, and the completion of a bar exam, in

¹ Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Norway, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Spain, Sweden, and the United Kingdom.

² Austria, Belgium, Croatia, Czech Republic, Finland, France, Hungary, Italy, Lithuania, Luxembourg and Sweden all prohibit in-house counsel from remaining members of the bar.

³ A 2004 Report prepared by the Council of Bars and Law Societies of Europe, “Regulated legal professionals and professional privilege within the European Union, the European Economic Area and Switzerland, and certain other European jurisdictions”, provides more detail regarding the regulation of in-house lawyers in various European jurisdictions. (available at:

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/fish_report_enpdf1_1184145269.pdf)

addition to a law degree. The number of years of training required varies between jurisdictions – Italy requires the shortest amount of training (18 months), while Austria requires 5 years of training in order to become a lawyer. It is interesting to note that most lawyers, who would suspend their bar membership in order to start employment as an in-house counsel, would probably already have completed these intensive training and educational requirements in order to qualify as a lawyer at the outset. In some countries, such as France, a lawyer who would have started her career in house without going through private practice and the bar exam (in France the bar only regulates lawyers in private practice) is, upon completing a number of years of practice as an in-house lawyer, eligible to be automatically admitted to the bar based on her legal education and years of experience as a lawyer, without examination and without the need to complete the many months of training in a bar school that are otherwise required.

2. Asia

We collected data for 7 Asia –Pacific countries.⁴ Among those countries, the trend was again towards not requiring a bar registration to practice as an in-house counsel, with more than 50% of the countries not requiring such membership. Unsurprisingly, common law jurisdictions such as New Zealand and Australia require bar membership for in-house lawyers, while in-house lawyers in Korea, a civil law jurisdiction, are able to maintain their bar membership.

In contrast, China, Japan and India do not allow bar membership for in house counsel (notwithstanding the fact that India is a common law jurisdiction). Neither of the two most populous countries in the world allows in-house counsel to maintain their lawyer’s professional license.

3. Africa & Middle East

We collected data on 32 countries located in Africa and the Middle East.⁵ Africa is composed of a majority of civil law countries, which reflects the general trend of no requirement of registration to the bar in order to practice as an in-house counsel. More than 80% of those countries do not require such memberships, many of them prohibiting in-house lawyers from remaining members of the bar, which would make it impossible for in-house lawyers in those jurisdictions to obtain a certificate of good standing from a bar association..

The legal education is the same for all lawyers, whether they practice in-house or in private practice. Most of those countries require at least a master in law (LLM), in order to be able to practice law.

Americas

Data was compiled for 7 countries in the Americas,⁶ only one of which, Canada, is a common law jurisdiction. In contrast with Europe, many civil law jurisdictions in the Americas permit in-house counsel to remain members of the bar, however one significant difference is that in many of the Latin American jurisdictions membership in a bar is not mandatory, and professional licenses are not necessarily issued by the Bar, but by the court system instead. For example, in Chile, licenses to practice law are granted by the Supreme Court, and the legal profession is not overseen by a bar committee, at either the Federal or Regional level (there are regional bar associations, but they do not have regulatory powers).

⁴ Australia, Japan, India, New Zealand, People’s Republic of China, Thailand, and Republic of Korea.

⁵ Algeria, Benin, Burkina Faso, Burundi, Cameroun, Comoros, Israel, Ivory Coast, Djibouti, Gabon, Guinea, Equatorial Guinea, Madagascar, Mali, Niger, Republic of Centrafrica, Democratic Republic of Congo, Republic of Congo, Rwanda, Senegal, Seychelles, Chad, Toggo, Lebanon, Morocco, Tunisia, Kigali, Kenya, Tanganyika, Uganda, Qatar and Zanzibar.

⁶ Argentina, Brazil, Canada, Chile, Colombia, Mexico and Peru.

Conclusion

The information compiled demonstrates that in much of the world (more than 70% of the researched countries) in-house counsel would not be able to obtain a certificate of good standing, because professional licenses and bar membership are prohibited for in-house counsel.

The data also indicates that many jurisdictions impose comparable education requirements to the US in order for a lawyer to be admitted to the practice of law, and in many instances, in particular in Europe, impose rigorous legal training requirements for all lawyers. Even though many lawyers who are now working in-house could not provide a current certificate for a bar or comparable licensing authority, they have already completed the domestic training and education requirements necessary to gain entry to the profession.