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IBA General Principles for the Legal Profession

**Adopted by the International Bar Association on 20
September 2006**

IBA Corporate Counsel Forum

**Explanatory notes on the application of the IBA General Principles for the Legal Profession
to In-house Counsel**

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General Principles for the Legal Professional

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Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the Courts, and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world. In addition, the purpose of adopting these General Principles is to promote and foster the ideals of the legal profession. These General Principles are not intended to replace or limit a lawyer's obligation under applicable laws or rules of professional conduct. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind.

CCF Position.

In-house Counsel ("IC") are members of the legal profession, but they encounter distinct demands and unique challenges following from the fact that they serve a single client who is also the IC's employer .

As member of the legal profession each IC is well advised to follow the national or local regulator or bar rules in the jurisdiction of the IC to the extent applicable, regardless of whether or

not the IC is licensed by his regulator or admitted as member of the said bar, next to rules which may apply to the IC on account of the membership of an In-house Counsel Association.

The Corporate Counsel Forum (“CCF”) of the IBA has considered the specific position of IC and has concluded that it is in the interest of IC that in addition to rules possibly already in existence for IC in their home jurisdictions, being rules of their local bars or local IC association or both, the IBA General Principles for the Legal Profession is the most appropriate set of principles and guidelines in the performance of the IC’s responsibilities.

In order to address the specific position of IC as an employed lawyer with a single client the CCF herewith presents explanatory notes on the application of the IBA General Principles for the Legal Profession to IC.

1. Independence

A lawyer shall maintain and be afforded protection of independence to allow him or her to give his or her clients unbiased advice or representation. A lawyer shall exercise his or her independent, unbiased professional judgment upon advising his or her client as to the likelihood of success of the client’s case and upon the client’s representation.

CCF Explanatory Note.

Having due regard to his/her duty as an “officer of the court” or “servant of justice”, the IC has the responsibility at all times to render his/her legal professional advice in full independence without any regard being had of or influenced by facts, interests or circumstances which are not relevant for the advice. In particular the IC should not be guided by instructions or expectations of the person(s) representing his company as employer in his/her advice. Best practice would be to insert a clause to this effect in the employment contract of the IC, specifying that the giving of the legal advice in full independence in the interest of the company as such will not give rise to dismissal or to other consequences detrimental to the IC career advancement.

2. Honesty, integrity and fairness

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the Court, his or her colleagues and all those with whom he or she comes professionally into contact.

3. Conflicts of interest

A lawyer shall not place himself or herself in a position in which his or her client's interests conflict with those of himself or herself, his or her partners or another client, unless otherwise permitted by law or, if permitted, by client's authorisation.

CCF Explanatory notes.

It should be clear, and in case of doubt be specified in the employment contract, that the company is the IC's client. It is not the Board of Directors, the executive management or the business client having requested the specific advice.

In case of a group of companies, the question may arise whether the group as a whole, the parent company or the subsidiary company being advised is the client. In general, unless there is a – potential – conflict between members of the group of companies, the group of companies as such must be considered the client. In case of a – potential – conflict, the IC acting for the member of the group with an interest contrary to that of the group as a whole is well advised to arrange for a clear understanding on his/her role with the group general counsel.

In case the client is a member of a group of companies the advice should spell out the potential conflicts between the member and the group together with the relevant legal positions and IC should make those conflicts transparent to the decision makers in order that the decisions are taken on a well educated basis.

In case the IC has a direct reporting line to business management, he/she should always be aware that in circumstances in which the decision to be taken by local business management is contrary to the client company interests, the IC has a professional duty to inform the general counsel of the

organisation. If reporting to the general counsel is not possible or ineffective or the general counsel is the reporter himself, then the report should be made to the CEO or the Chairman as appropriate. There should also be an obligation to follow-up and ensure that action has been taken.

The IC should advise employees of the company that the IC is not and cannot be their personal legal adviser in any situation where that could conflict with their duty to represent the organisation itself. IC should advise such employees to take separate representation.

4. Confidentiality/ professional secrecy

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of his or her present or former clients, unless otherwise required or permitted by law or, if permitted, by client's authorisation

CCF Explanatory Notes.

Since the IC's client is the company (or group of companies) the duty of confidentiality aims at the protection of the interest of the company and this should be the guideline for the IC in the assessment of the reach of the confidentiality outside and within the company. In particular in relation to the legal privilege which applies to the IC advice to the company as client, the IC should carefully consider the need to know basis for his/her communications.

In case the IC is member of the Board of Directors the IC should not proffer legal advice to the Board, unless the IC has advised the Board explicitly that he/she does not participate in the decision making process. It is noted that this exception is only available in case applicable law allows Board members to excuse themselves with the legal effect that they are not held responsible for the decision.

5. Clients' interest

A lawyer shall treat the interests of his or her clients as paramount, subject always to his or her duties to the Court and the interests of justice, to observe the law and to maintain ethical standards.

CCF Explanatory Note.

IC should bear in mind that the interest of the company is not only compliance with the law but also with ethical principles and the legitimate expectations of society, which go beyond the law and non-observance of which may have a bearing on the company's reputation. In this context the IC is expected to provide his/her advice in the interest of the company, which is the interest of all relevant legitimate stakeholders in the company in the case at hand and not necessarily that of one or more specific stakeholders (e.g. the shareholders).

6. Lawyers' undertaking

A lawyer shall honour any undertaking given in the course of his or her practice, until the undertaking is performed, released or excused.

7. Clients' freedom

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional rules or by law, a lawyer shall be free to take on or reject a case.

8. Property of clients and third parties

A lawyer shall account faithfully for any property of his or her clients or a third party which come into his or her trust, and shall keep it separate from his or her own property.

9. Competence

A lawyer shall carry out his or her work in a competent and timely manner and shall not take on work which he or she does not reasonably believe he or she will be able to carry out in that manner.

10. Fees

A lawyer is entitled to a reasonable fee for his or her work. A Lawyer shall not generate unnecessary work.

