

## **REGULATIONS ON PROFESSIONAL COOPERATION WITH NON-LAWYERS**

### Article 1

A lawyer must ensure his independence, partiality and the preservation of his professional privilege, as well as avoid any potential conflict of interests in his professional cooperation with non-lawyers.

### Article 2 (this article was revoked following the Court of Cassation ruling of 25.09.2003)

Lawyers may not form a group with non-lawyers or enter into an alliance with a view to professional cooperation as this compromises independence, partiality, professional privilege and the concern for professional practice without conflicts of interest.

The following, inter alia, are prohibited:

1. the direct or indirect holding of all or part of the capital of the group or alliance by individuals who do not have the status of lawyers;
2. the use by these individuals of the name under which the group or alliance operates;
3. the *de facto* or *de jure* exercise of authority within the group or alliance by these individuals;
4. the direct or indirect apportionment of fees or general expenses among lawyers and these individuals.

### Article 3 (this article was revoked following the Court of Cassation ruling of 25.09.2003)

The existence of a prohibited group or alliance within the meaning of Article 2 will be presumed, inter alia, when lawyers and non-lawyers directly or indirectly, for consideration or otherwise:

1. jointly occupy, use or make available to one another offices, office buildings or other immovable property;
2. jointly use or make available to one another movable items such as office furniture, office automation, hardware and software and/or networks;
3. make payments, mutually or otherwise, to or on behalf of each other for goodwill or the referral of clients;
4. jointly take up credit, loans or advances, jointly furnish security, grant credit, loans or advances or furnish security, mutually or otherwise, to or for the benefit of the other;
5. jointly hire personnel or third parties, or make personnel or service providers available to the other;
6. do not invoice services or goods provided or costs incurred directly to their clients, but via the other;

7. develop or distribute information, communication or advertising jointly or via the other;
8. grant or receive any monetary or other advantage directly or indirectly to/from each other, without there being proof of lawyer's services being provided in return.

#### Article 4

A lawyer may not tolerate suggestions or allegations that he forms part of a prohibited group or alliance and must respond adequately thereto.

#### Article 5

These regulations do not prohibit a lawyer from forming a group or alliance with lawyers in other EU countries, who observe the statutory and ethical rules in force for that country's subjects there, and when practising their activity in Belgium observe the laws and ethical rules in force here in Belgium.

#### Article 6

Article 8 of the regulations "Practising the profession of lawyer in an alliance" of 8 March 1990 of the general board of the National Bar Council is revoked for all lawyers of the bars that constitute the Flemish Bar Council.

### **Commentary**

#### Commentary on Article 1

"Partiality" must be interpreted as regarding the lawyer as the champion of the party interest.

The independence of lawyers forms part of the rules of public order of the profession, as is evident from Arbitration Tribunal ruling no. 23/97 (Tambue ruling) of 30 April 1997, and Brussels, 1 October 1987, (Jur. Liège, 1987, 1453).

A "potential" conflict of interests refers to the fact that the mere possibility or even the semblance of a conflict of interests must be avoided.

Grounds 100-107 of the Nova I judgment of the European Court of Justice of 19 February 2002 emphasises the essential rules of the profession of lawyer, namely the obligation to defend a client completely independently and in the client's exclusive interest, the obligation to avoid any risk of a conflict of interests and the obligation to strictly observe professional privilege.

Commentary on Article 2 (this article was revoked following the Court of Cassation ruling of 25.09.2003)

Various groups or forms of alliances are possible, such as an integrated collaboration, a partnership of resources or grouping agreement, and a network or referral system, however there

are still many other names that can be used, such as national or international partners or partnership, operational cooperation, affiliated offices, integrated consultancy offering or service, inter-professional referrals or an economic alliance.

Groups or alliances of lawyers among themselves or with third parties are often embodied in a single brand policy, through common or shared websites, press statements, the communal use of hardware or software, buildings, reception areas, entertainment areas and libraries.

The concepts referred to in the second paragraph of this article refer to Article 477*octies*, § 5 of the Belgian Judicial Code (as amended by the Act of 22 November 2001), and to Article 11, § 5 of Directive 98/5/EC of 16 February 1998.

Point 4 refers to the prohibition on dichotomy, traditional in the profession of lawyer, and is extended to the apportionment of costs, which is often just a veiled form of fee sharing and is difficult to control.

Commentary on Article 3 (this article was revoked following the Court of Cassation ruling of 25.09.2003)

This deals with the suggestions that a group or alliance negatively affects the key values of the profession and should therefore be prohibited.

It is up to the lawyer involved to prove the contrary.

Approved at the general meeting of the Flemish Bar Council of 22.01.2003.

Notice given in accordance with Article 497 of the Belgian Judicial Code on 24.01.2003.

Suspended under the application of Article 611 of the Belgian Judicial Code.

**Articles 2 and 3 were revoked following the Court of Cassation ruling of 25.09.2003 (Cass. Ruling: NJW no 43, 8 October 2003).**