

REGULATIONS ON ALLIANCES AMONG LAWYERS AND ON SINGLE SHAREHOLDER COMPANIES OF LAWYERS

Part I: Explanatory Note

- a. These regulations govern two subjects, namely the necessary rules on alliances *among* lawyers (Chapter I) and the necessary rules on single shareholder companies *of* lawyers (Chapter II). Whether a rule is *necessary*, must be determined with regard to professional practice. The regulations must only conform to that need if professional practice requires a deviation from, adaptation to or specification of general law (law of obligations or company law).
- b. Accordingly, the regulations do not contain any rules on what are known as *service companies*. The general law does not require any adaptation for this purpose. The Bar Council furthermore has no hold over this segment of the market. Initiatives by private-law market players that focus exclusively, mainly, regularly, or merely occasionally on the legal profession (e.g. Regus-type business centres, legal secretarial services, IT support, administrative services, etc) exist regardless.
- c. The *definitions* follow under *Article 1*. The definitions establish the outlines of the regulations.

For the application of these regulations, cooperation between lawyers must be *enduring*. Occasional situations (e.g. when lawyers work together on a case or help each other during holidays) are not covered by these regulations. Likewise, matters that do not relate to the handling of cases or clients (e.g. sharing a car or a collection of journals) are not covered here (Article 1.1).

The endurance needed to fall under the scope of these regulations entails a mutual undertaking between the members of the alliance. This means that in addition to the mutual undertaking of lawyers, cooperation that is not characterised by a mutual undertaking, but by a mere contractual and independent form of collaboration is possible. Accordingly, the legal relationship between a lawyer or law firm on the one hand, and independent workers on the other, is not governed as such by these regulations.

The enduring nature also entails organised cooperation. The intensity of the cooperation determines the nature of the cooperation. The most intensive form of cooperation between lawyers is the Association. A less intensive form of cooperation is the Grouping, whilst the least intensive form is the Network.

The main emphasis within an Association is the *apportionment* of fees (or losses)

among the associates (Article 1.2). Associates may keep certain activities outside an Association. In that case, they do not transfer their entire activity to the Association. For instance, an associate could keep his practice as an arbitrator or receiver/official liquidator outside the Association and that income would then not be shared. However, it is not permissible to practice the profession of lawyer in more than one Association (see Article 3.4).

Fees (or losses) are not apportioned within a Grouping. Costs are indeed shared (Article 1.3). The members of a Grouping determine among themselves how this is arranged. There is no reason to establish minimum provisions. Lawyers determine for themselves which specific costs are to be shared and how the apportionment of the shared costs among themselves will take place.

The members of a Network practice their profession independently from each other (Article 1.4). Depending on the arrangements among them, they do however refer clients to one another (e.g. for reasons such as specialisation, geographical considerations, etc).

For the sake of uniformity and simplicity, it has been decided to use one concept throughout these regulations (i.e. Grouping and not *cost association*; and Network and not *referral system*).

The regulations do not consider whether the cooperation calls for the establishment of a legal entity. The lawyers must determine that themselves.

In order to facilitate readability, a number of definitions are used to illustrate the limits of the Flemish Bar Council's regulatory powers (i.e. "Flemish Lawyers" and "Flemish Jurisdiction" in Articles 1.5 and 1.6).

Lastly, there is a description of what must be understood under "documents" for the purpose of these regulations (Article 1.7). It must be clear that all Alliances distribute documents in paper form, by means of electronic files, via post, fax, the Internet or any other current or future means of communication. Irrespective of the carrier or the technique used, the regulations on Alliance documents may enforce specific rules.

- d. Part 2 summarises the *general rules* that apply to all Alliances.

Practice shows that it is not always clear which form of cooperation is involved. Some Alliances display different types of characteristics: the strictest classification will then be applied (Article 2.1).

The intention is for these regulations to become a benchmark. Specific rules that

may have to be applied to specific forms of cooperation would have to be dealt with in other specific regulations, such as the multidisciplinary alliance ("*... without these provisions affecting what is laid down by other regulations*" in Article 2.2).

In some foreign legal systems, lawyers may associate with certain professionals who are not lawyers (e.g. notaries or tax consultants, etc). Flemish Lawyers may belong to such Alliances; however that Alliance may only perform lawyers' services within our jurisdiction (Article 2.6).

In principle - yet always within the limits of these regulations - lawyers choose the form of the legal entity that they wish to establish or join, as the case may be (full legal personality or otherwise, partnership or company limited by shares, domestic or foreign legal entity, etc – also see Article 2.3).

The Alliance must obviously always have a civil purpose (Article 2.2).

In order for these regulations to apply, it does not matter whether a lawyer joins an Alliance in his personal name or via a single shareholder company. A lawyer may, for instance, be a shareholder in a legal entity in his personal name and an executive of that legal entity via his single shareholder company, or vice versa. The circumstances that lead a lawyer to that decision do not relate to ethics (Article 2.7).

In the same way, lawyers may establish a holding company and be a shareholder of an Alliance via that holding company.

Cooperation with other professionals, who are not lawyers, as permitted under Article 2.6, will result in the capital of certain Alliances not being held fully by lawyers (Article 2.5). This may be accepted provided that Alliance only performs lawyers' services within our jurisdiction. At any rate, that activity may not be inconsistent with other professional rules (e.g. independence).

The answer to the question of whether a lawyer may - as part of his family or other estate planning - only participate in an Alliance as the usufructuary of shares of an Alliance, cannot be determined hypothetically in these regulations. Granting such permission may be considered in a limited number of very specific circumstances. The regulations determine that the shares registered in the lawyer's name must be recorded. Based on fundamental ethical rules, this means that the lawyer must, in principle, be the full owner of his shares. This does not prevent a lawyer in the event of such specific circumstances (more specifically under a family estate planning arrangement) from presenting his situation to the chairman of the Bar Council and demonstrating on the basis of amended articles of association -

wherein in each case the rights of the usufructuary lawyer must make it absolutely impossible for non-lawyers to interfere in the running of the firm and the practice of the profession of lawyer - that in his specific case, the shares are registered in his name, both in fact and in law, as intended by the regulations. This also applies when a lawyer practices his profession via a single shareholder company.

Alliances may be associated with other Alliances (Article 2.8). The existence of such a relationship has consequences for conflicts of interest.

Some Alliances require the intervention of different domestic or foreign bar councils. The Alliance must conform to the conditions of all authorities involved and, where applicable, observe the strictest conditions (Article 2.9).

The cooperation agreements must be concluded in writing (Articles 2.10 and 2.11).

In relation to conflicts of interests it is generally accepted that Networks on the one hand and Groupings and Associations on the other, must be treated differently (Article 2.12). For instance, if a member of an Association or Grouping may not or cannot act in a matter, another member may then likewise not act in that matter. That rule does not apply within Networks (Article 2.13).

However, it does not suffice to just be a Network on paper to circumvent the issues of conflicts of interests, for instance. If lawyers create the impression that they belong to an Association or Grouping, they will be treated as such (Article 2.14).

The Alliance is free to choose its name and, if desired, to use a logo of its own preference. This issue is subject to the general law (free choice and non-misleading character). What must specifically be regulated is what happens to the name or logo of an Alliance which uses the name of a member if that member leaves the Alliance (Article 2.15).

As the public must know who they are dealing with, the Alliance must not only state its nature and form, but also that it relates to an Alliance among lawyers (Article 2.16).

The public must also be able to easily determine the members of an Alliance. Accordingly, the stationery (front and reverse side) used by the Alliance in the Flemish Jurisdiction and the website (if one exists) must state the names of the members of the Alliance who practise the profession of lawyer within the Flemish Jurisdiction (Article 2.17). If the Alliance has members in addition to those whose name must be mentioned and the stationery does not mention the names of those other members, clients and interested third parties must be able to obtain the names of those other members by simple request. The stationery must state that

this is possible. All members of an Association or Grouping are obliged to use the same stationery for their activity within the Association or Grouping.

Certain rules must be observed when there is a lack of understanding within the Alliance (Article 2.18). Disputes must be settled with respect for professional privilege and any liquidators must be lawyers. In principle, unless the members of the Alliance so desire, the Alliance will not cease to exist when one member leaves the Alliance. The departure of a member, or the break up of an Alliance, may never alter the fact that it is ultimately the client who decides who handles his case.

e. Part III deals with the specific rules for Associations.

It is not appropriate that a full board of the Bar Council must be concerned with the establishment or membership of an Association. The instruction of the chairman as the contact person appears more appropriate. Given the many problems that are experienced in the day-to-day practice of Associations, it is fitting that the chairman of the Bar Council approves plans instead of exercising control after the fact (following a report) (Article 3.1).

A lawyer may only practice the profession of lawyer in one Association (Article 3.4).

The articles of association of an Association must lay down rules for the following:

- only lawyers or law firms allied with the Association may be an executive (Article 3.5.a). The executive may not be an associate, but must work within the Association;
- if an executive or associate ceases to be a lawyer, he must resign from the executive organ and transfer his shares or rights (Article 3.5.b);
- the withdrawal of a lawyer from the Association will not bring the Association to an end, unless the articles of association determine otherwise (Article 3.5.c);
- lastly, the articles of association must determine what a former associate or his successors-in-title may lay claim to when he or his successors-in-title cease to be an associate of the Association (Article 3.5.d).

As many foreign Associations are active in Belgium and do not have structures that can be reconciled with Belgian laws (e.g. because non-lawyers hold office in the executive organs), Flemish Lawyers must ensure that the local rules are observed within the Flemish Jurisdiction (Article 3.5.e).

Anybody working within an Association may not act as legal counsel for another lawyer within that Association (Article 3.6).

- f. Part IV deals with the specific rules for Groupings.

As the Alliance per se, in the case of a Grouping, is subordinate from the clients' point of view to the individual professional practice by the members of the Grouping, the stationery must always mention the names of the members of the Grouping (Article 4.5).

If the Grouping also acts in public under a common name, the external distinction with an Association is small and the chairman of the Bar Council must therefore approve plans, as in the case of Associations (Article 4.1). In the case of a *traditional* Grouping, which does not use a common name, reporting to the chairman of the Bar Council will suffice (Article 4.2).

The distinction between Associations and Groupings can become vague under certain circumstances. Members of a Grouping who publicly create the impression that they have formed an Association will be answerable for the consequences of that choice (including with regard to liability), when applicable, although the issue is not an ethical question.

- g. Part V deals with Networks.

In principle, the members of a Network will not work together on a specific case or use each other's infrastructure. However, if this just happens occasionally, the cooperation will remain a Network. It is appropriate that these new regulations clearly confirm this principle.

- h. Part VI deals with single shareholder companies.

This part of the regulations does not contain anything new, but is more detailed.

The stationery of a single shareholder company must state the name and address of the shareholder as part of the professional practice, in addition to the name or logo coined for the single shareholder company, where applicable.

Part II: Regulations

REGULATIONS ON ALLIANCES AMONG LAWYERS AND ON SINGLE SHAREHOLDER COMPANIES OF LAWYERS

Chapter I: Alliances among lawyers

1. Definitions

- 1.1. An Alliance is an enduring cooperation among lawyers which contemplates practising the profession of lawyer or supporting such practice and requires a mutual undertaking among its members.
- 1.2. An Association is an Alliance to which the members have fully or partially transferred the practice of the profession of lawyer and have contractually determined how the profits or losses of the Alliance will be apportioned among them.

In the case of a full transfer to an Association, the members of the Alliance have contractually determined that they will exclusively practice the profession of lawyer within the Alliance.

In the case of a partial transfer to an Association, the members of the Alliance have contractually determined which parts of the practice of the profession of lawyer will be practised within the Alliance.

- 1.3. A Grouping is an Alliance whose members have only contractually determined how they will organise themselves to support the professional practice of the members' mutual services and share the costs thereof.
- 1.4. The Network is an Alliance whose members practice the profession of lawyer independently from each other, but recommend the other members of the Network to their clients.
- 1.5. For the purpose of these regulations, Flemish Lawyers are lawyers as referred to in Article 498 of the Belgian Judicial Code.
- 1.6. For the purpose of these regulations, the Flemish Jurisdiction is the part of Belgian territory that is made up by the judicial districts covered by the bars that constitute the Flemish Bar Council.
- 1.7. For the purpose of these regulations, documents are all possible paperwork with which the Alliance acts in public, regardless of the carrier and the means with which such

documents are distributed.

2. General rules

- 2.1. An Alliance that displays characteristics of more than one of the types of Alliances below is subject to the most restrictive provisions that may apply according to these regulations, regardless of the classification of that Alliance by its members or the manner in which the Alliance or its members act in public.
- 2.2. Every Alliance must have a civil purpose.
- 2.3. Flemish Lawyers may enter into an Alliance by concluding agreements under Belgian or foreign law, or by establishing or joining a legal entity under Belgian or foreign law.
- 2.4. Flemish Lawyers may enter into an Alliance with other Flemish Lawyers, with lawyers at the Court of Cassation, with one or more domestic or foreign lawyers or their respective Alliances, or join an existing Alliance, without this provision affecting what is laid down by those other regulations.
- 2.5. Insofar as it is not prohibited by other professional regulations, a Flemish Lawyer or a single shareholder company may join Alliances established outside the Flemish Jurisdiction whose shares are also held by non-lawyers, provided that Alliance and its members always observe Article 2.6.
- 2.6. When Flemish Lawyers and other lawyers participate in an Alliance, the Flemish Lawyers must ensure that the Alliance and the other members of the Alliance only practice activities that are compatible with the profession of lawyer within the Flemish Jurisdiction and observe the professional rules to which Flemish Lawyers are subject within the Flemish Jurisdiction.
- 2.7. All the shares of an Alliance with legal personality must always be registered in the name of the shareholders in the share register.
- 2.8. An Alliance may be associated with another Alliance as referred to in Article 11 (1) of the Belgian Companies Code. In that case, any conflicts of interest existing within an Alliance or with regard to the members of that Alliance will extend to the other associated Alliances or members of those Alliances.
- 2.9. Decisions and measures that must be taken according to these regulations by the respective boards of the Bar Councils, their chairmen, or corresponding foreign authorities will only be final if they were taken by each of those Bar Councils or

authorities.

If the Bar Councils or authorities referred to in the previous paragraph enforce different conditions, all the conditions will be applied cumulatively.

If the Bar Councils or authorities referred to in the previous paragraph enforce mutually incompatible conditions, the most restrictive set of conditions will be applied.

Every decision or measure that the board of a Bar Council or a chairman takes will always be deemed, by operation of law and where applicable, to have been taken subject to the condition precedent of the approval or non-objection of the other competent authorities.

- 2.10. The establishment, alteration, dissolution or termination of an Alliance, or the joining of or resignation from an Alliance must take place in writing.
- 2.11. The agreement, internal regulations, deed of incorporation or articles of association of an Alliance must determine that they are subordinate to the rules of these regulations and the ethical rules of the profession, and that they must be interpreted according thereto.
- 2.12. Within an Association or Grouping, members may not promote interests that are incompatible with those promoted by the other members of the same Association or Grouping.
- 2.13. If statutory and ethical rules or rules of incompatibility within an Association or Grouping lead to a member of that Association or Grouping not being able to act in a specific matter, another member of that Association or Grouping may likewise not act in that matter.
- 2.14. Lawyers that create the impression that they belong to an Association or Grouping, notwithstanding the lack of corresponding written, contractual arrangements, will be regarded for the purpose of these regulations as members of an Association or Grouping, as the case may be.
- 2.15. If an Alliance uses the name of a member of that Alliance in its name or logo, the Alliance and its members will immediately ensure that the name of that member is removed from the name and logo of that Alliance and that the Documents of the Alliance are adapted in that sense, if:
 - a. the lawyer in question resigns to practice the profession outside the Alliance;
 - b. the lawyer in question is struck from the lawyers' roll under a final disciplinary

- ruling;
- c. the lawyer in question is excluded from the Alliance;
 - d. the lawyer in question no longer practises as a lawyer and no agreement has been reached with him or his successors-in-title about the further use of his name by the Alliance;
 - e. the lawyer in question is left out of the Alliance to practice a profession that is incompatible with that of a lawyer, as referred to in Article 437 of the Belgian Judicial Code.
- 2.16. The documents of the Alliance must truthfully state their nature and form and make it clear that they are being issued by lawyers.
- 2.17. At least the names of the lawyers who are members of the Alliance and practise the profession of lawyer in the Flemish Jurisdiction must be mentioned on the front and reverse side of stationery of the Alliance that is used in the Flemish Jurisdiction and, if applicable, on its website. If the stationery also mentions the names of members other than the Flemish Lawyers of the Alliance, this must always be done by listing or referring to the bar or professional organisation of those members.

If the Alliance has members other than those whose names are mentioned on the stationery, the stationery must state that the names of the non-listed members will be made available to any client or interested third-party upon request.

All members of an Association or Grouping are obliged to use the same stationery for their activity within the Association or Grouping.

- 2.18. Regardless of whether provision is made for dispute resolution in the articles of association, the members of an Alliance must observe professional privilege when settling disputes among themselves.

With a view to protecting professional privilege, only lawyers may be liquidators of an Alliance.

Notwithstanding any provisions of the Belgian Companies Code, the Alliance will not be dissolved by operation of law due to the death or resignation for any reason of one of its members.

The dissolution of Alliances or resignation of members from Alliances, which in turn have entered into a further Alliance, will not lead to the dissolution of this latter Alliance.

In the event of the dissolution of an Alliance, or the resignation of a member, the cases will be divided according to the arrangements that have been made, which may in no

way alter the client's freedom of choice regarding who is going to handle the file.

2.19. These regulations in no way alter the ethical obligations to which a lawyer is subject.

3. Special rules with regard to Associations

3.1. Regardless of their form or title, agreements or written arrangements regarding the establishment of a new Association, or the alteration of an existing Association may only be concluded after approval by the chairman/chairmen of the relevant Bar Council(s).

3.2. A lawyer who joins an existing Association that was previously approved by the chairman/chairmen of the Bar Council(s) of that lawyer and whose articles of association are not amended by him joining, must report his membership to the chairman/chairmen.

3.3. A lawyer who joins an existing Association that was not previously reported to the chairman/chairmen of the Bar Council(s) of that lawyer must submit both the membership agreement and the existing agreements to the chairman/chairmen in advance.

3.4. A lawyer may not practice the profession of lawyer as a member of more than one Association.

3.5. The articles of association of an Association under Belgian law must provide for the following:

a. Only lawyers who work within an Association or within associated law firms within the sense of Article 11 of the Belgian Companies Code may serve on the executive organs of that Association.

b. If a lawyer loses its capacity to act as a lawyer, he must resign as an executive by operation of law and transfer his shares or rights either to the other associates, the firm, or another lawyer within the conditions laid down by the articles of association.

c. The death, permanent ban on professional practice, suspension, legal incapacity, evident inability to pay debts, exclusion or resignation of an associate will not lead to the dissolution of the firm, unless the law or articles of association prescribe otherwise.

d. The articles of association must determine the rights and obligations of the former

associate or his successor-in-title in the event of a loss of the capacity of associate, for any reason whatsoever.

- e. Flemish Lawyers who join Associations that were not established under Belgian law must ensure that the Association in question observes the rules that apply to Associations within the Flemish Jurisdiction.

3.6. A lawyer who works within an Association may not act as the lawyer of the members of the Association or as the lawyer of the Association in court.

4. Special rules with regard to Groupings

4.1. Regardless of their form or title, agreements or written arrangements regarding the establishment of a new Grouping that acts in public under a common name, or the alteration of such a Grouping may only be concluded after approval by the chairman/chairmen of the relevant Bar Council(s).

4.2. Regardless of their form or title, agreements or written arrangements regarding the establishment of a new Grouping that does not act in public under a common name, or the alteration of such a Grouping must be reported to the chairman/chairmen of the relevant Bar Council(s). The chairman may impose alterations.

4.3. A lawyer who joins an existing Grouping that was previously approved by the chairman/chairmen of the Bar Council(s) of that lawyer and whose articles of association are not amended by him joining, must report his membership to the chairman/chairmen.

4.4. A lawyer who joins an existing Grouping that was not previously reported to the chairman/chairmen of the Bar Council(s) of that lawyer, must submit both the membership agreement and the existing agreements to the chairman/chairmen in advance.

4.5. The Grouping must list the name of all its members on its stationery.

4.6. A lawyer may only be a member of one Grouping.

4.7. A lawyer who works within a Grouping may not act as the lawyer of the members of the Grouping or as the lawyer of the Grouping in court.

5. Special rules with regard to Networks

5.1. Regardless of their form or title, all agreements or written arrangements regarding the

establishment, joining or alteration of the Network must be immediately reported by the lawyers involved to the chairman/chairmen of the Bar Council(s) where they are registered. The chairman may impose alterations.

- 5.2. A lawyer who joins an existing Network that was not previously reported to the chairman/chairmen of the Bar Council(s) of that lawyer, must submit both the membership agreement and the existing agreement(s) to the chairman/chairmen in advance.
- 5.3. Members of a Network may only use each other's infrastructure occasionally.
- 5.4. If the members of the Network refer in their stationery to their participation in that Network, such reference must be made so that the public is not given the impression that the lawyer practices within an Association or Grouping.

Chapter II: Single shareholder companies of lawyers

6. The single shareholder company

- 6.1. A lawyer may be a shareholder of one or more professional single shareholder companies.
- 6.2. The deed of incorporation or the deed of amendment for a single shareholder company must be immediately reported by the lawyer involved to the chairman/chairmen of the Bar Council(s) where he is registered. The chairman may impose alterations.
- 6.3. A single shareholder company may be the member of an Alliance.
- 6.4. A lawyer who is the shareholder of one or more single shareholder companies may not practice the profession of lawyer in more than one Association or Grouping.
- 6.5. The articles of association of a single shareholder company must include the following clauses or comply with the following conditions:
 - a. The purpose of the single shareholder company may only be to practise the profession of lawyer (either alone, or with others) and all related activities that are compatible with the status of lawyer, such as acting as an arbitrator, judicial agent, officer, liquidator and receiver, performing legal mandates, presenting courses and lectures, and publishing articles and books, to the exclusion of any trading activities.
 - b. The single shareholder company may invest its cash resources in movable or

immovable property, however without this constituting a trading activity.

- c. The single shareholder company must observe the rules applicable to practising the profession of lawyer in the performance of its activity.
- d. The business manager of a single shareholder company must be the sole shareholder.
- e. The articles of association must determine the rights and obligations of the former shareholder or his successor-in-title in the event of a loss of the capacity of shareholder, for any reason whatsoever.
- f. The stationery that the single shareholder company uses to practise the profession of lawyer must always state the shareholder's surname, first name and his capacity as a lawyer.

Chapter III: Replacement of the regulations of 8 March 1990 of the Belgian National Bar Council on the practice of the profession of lawyer in an alliance

The regulations of 8 March 1990 of the Belgian National Bar Council on the practice of the profession of lawyer in an alliance are replaced by these regulations for the lawyers of the bars that form part of the Flemish Bar Council.

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