

Guidance Note on International Practice Issue Date - April 2018

1. This Guidance Note explains an amendment to the Terms of Cover offered by Bar Mutual Indemnity Fund Limited (“**Bar Mutual**”), in order to cure a potential ambiguity in relation to the indemnity provided for the international practice of its Insureds. The amendments to the Terms of Cover are effective from 1 April 2018.
2. Although there is no definition of international practice in the Terms of Cover, the definition of Foreign Work in the BSB Handbook (Third Edition, April 2017, updated February 2018) provides a useful starting point. The Handbook defines foreign work as legal services of whatsoever nature relating to:
 - a. court or other legal proceedings taking place or contemplated to take place outside England and Wales; or
 - b. if no court or other legal proceedings are taking place or contemplated, any matter or contemplated matter not subject to the law of England and Wales.
3. Two general principles inform Bar Mutual's approach to providing an indemnity for international practice. The first is that, where an Insured requires authorisation to provide Legal Services (as defined in the Terms of Cover) in systems of laws or in a jurisdiction outside England and Wales, the indemnity should be conditional on the Insured complying with any requirements of practice in the foreign jurisdiction, unless the Insured has good reasons for not having met the requirements. The second guiding principle is that Bar Mutual should not insure the foreign practice of a dual-qualified lawyer, where that foreign practice is separate from as opposed to being incidental to the Insured's practice in England and Wales.
4. To reflect these principles, three provisions in Bar Mutual's Terms of Cover have been amended. These are the exclusion at clause 3.1(xii) and the definitions of Foreign Lawyer and European Lawyer.
5. Clause 3 lists a number of exclusions from cover. Clause 3.1(xii) has been amended as follows to clarify when international work will be covered. (The amendments are shown in red.)
 - (xii) Claims or Disciplinary Proceedings arising out of or in any way in connection with the provision of Legal Services in a system of law and/or **in a jurisdiction where such Legal Services may not be provided without authorisation and in which** the Insured is not authorised to provide **such Legal Services by in that system of law and/or in that jurisdiction by either a competent professional, judicial or other body, unless the Insured has reasonable grounds for not having obtained such authorisation.**
 - ~~(a) the BSB; or~~
 - ~~(b) any competent professional body; or~~
 - ~~(c) any judicial or other body;~~

6. The definitions of European Lawyer and Foreign Lawyer have also been amended as follows:

European Lawyer ~~As defined in the BSB Handbook.~~ A person who is a national of a Member State and who is authorised in any Member State to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 other than the supply of Legal Services as a Self-Employed Barrister, a Registered European Lawyer or, in the case of an Entity, falling within the scope of the authorisation granted to it by the Bar Standards Board.

Foreign Lawyer ~~As defined in the BSB Handbook.~~ A person who, other than incidentally to their Insured Practice as a Self-Employed Barrister, a European Registered Lawyer or Entity falling within the scope of the authorisation granted to it by the Bar Standards Board, is a member, and entitled to practice as such, of a legal profession regulated within a jurisdiction outside England and Wales.

7. Four broad categories of international practice can be distinguished. The first is international arbitrations. As Insureds acting as advocates in such arbitrations are not normally required to be authorised, they will be covered by Bar Mutual under its Terms of Cover. Insureds acting as arbitrators in international arbitrations will also be covered because doing so falls within the definition of Insured Practice in the Terms of Cover, and authorisation to act in this capacity is not normally required by a local regulator or judicial body. This is all, however, subject to the Insured's work not being work as a Foreign Lawyer (see paragraph 9 below).
8. The second broad area of international work is the provision of Legal Services in a system of law and/or in a jurisdiction outside England and Wales where authorisation in the relevant foreign jurisdiction is required for the work and the work is carried out other than as a member of a foreign legal profession. Insureds will be covered for this work if it is carried out under an authorisation to provide Legal Services in that foreign jurisdiction or if the Insured has reasonable grounds for not having obtained such authorisation. Where authorisation to provide Legal Services is not required in the relevant foreign jurisdiction, the exclusion will not apply.
9. The third broad category of international work is where the Insured not only provides Legal Services in a system of law and/or jurisdiction outside England and Wales but also does so as a member of a foreign legal profession and as a person entitled to practise in the relevant foreign jurisdiction. Insureds in these circumstances will usually be dual-qualified. Bar Mutual will provide an indemnity for this work where it is incidental to the Insured's practice as a self-employed barrister in England and Wales. A touchstone as to whether such work is incidental to the Insured's practice in England and Wales will be whether the relevant work is handled through the Insured's Chambers in England and Wales as opposed to through some firm, entity, office or other facility or arrangement outside England and Wales. Otherwise, Bar Mutual will treat this aspect of an Insured's practice as falling within the definition of Foreign Lawyer in the Terms of

Cover and only provide cover for this work where (i) the Insured has applied to Bar Mutual for such cover and (ii) Bar Mutual has exercised its discretion to provide it. Bar Mutual is not a “difference in conditions” insurer, so its indemnity is not intended to fill a gap in the insurance available to, or obtained by, an Insured for this sort of international work where in reality it is carried out as part of a separate foreign practice.

10. The fourth and final category of foreign work is temporary overseas secondments. The amended provisions in clause 3.1(xii) will apply in these cases.
11. Any Insured requiring additional guidance on the operation of the Terms of Cover can contact Bar Mutual at info@barmutual.co.uk for assistance.