

4TH ANNUAL FUTURE OF LAWYERS CONFERENCE

Cross-Border Risks for International Lawyers Legal, regulatory, and reputational risks How to protect clients in a changing international legal environment

**Presented by:
Foreign Lawyers' Section of
The Geneva Bar Association**

Introduction by Karen A. Monroe, President of the Foreign Lawyers' Section of the Geneva Bar Association, <http://www.wilkauslander.com/staff-monroe.html>

Welcome to everyone—participants and our speakers--to the Foreign Lawyers Section of the Geneva Bar Association's Fourth Annual: Future of Lawyers. I would like to especially welcome those of you who have become members of our section this year and those of you who have remained faithful members since our section was created 7 years ago. We have now 60 members which represents about ½ of the non-Swiss lawyers in private practice in Geneva.

Today's topic as you know is Cross-Border Rules for Lawyers: Legal, Regulatory, and Reputational Risks—How to Protect clients (and YOU) in a changing international legal environment. And although we use a speaker/panel format, we hope we will have as lively an exchange after the presentations as we have had in the past

Why this topic: Here are a list of recent headlines:

- ✓ **A timely warning for Lawyers**—reporting on charges against two Swiss persons, one a Swiss lawyer—for conspiring to defraud the U.S. in connection with the UBS Scandal—"Tax Justice Network Blog", August 21, 2009
- ✓ **Taxing times:** With governments across the world eager for missing tax revenues and the wealth management sector evolving rapidly, specialist lawyers need to practice defensive law, must work differently and can no longer look only at their home country's rules but provide a global perspective—"The Global Legal Post", August 31, 2012
- ✓ **U.S. companies face tougher rules on African war zones**—The SEC recently finalized its rule covering the use of "conflict minerals"—tantalum, tin, gold, and tungsten sourced from the Democratic Republic of the Congo or one

of its nine adjoining neighbors which has and will continue to increase compliance costs of U.S. listed companies and others—"The Global Legal Post", August 24, 2012

- ✓ **Lebanese Bank Case tests U.S. Privacy Law**—involving the interpretation of how bank-privacy laws are interpreted in the U.S. The plaintiff is seeking to force branches of non-U.S. banks to compel their overseas entities to disclose records held overseas. The judge in this case could make a narrow ruling that creates significant change in how foreign institutions understand their vulnerability to discovery in the U.S., especially in cases where they are not parties—"Wall Street Journal" online, July 31, 2012
- ✓ **FINMA position paper on risks in cross-border financial services**—October 22, 2010—FINMA calls on supervised institutions to comply with foreign supervisory law and define an appropriate service model for each target market—FINMA Press Release, October 22, 2010

The presence of different legal systems, complex bureaucratic and governmental systems, political risk, evolving and changing laws and other risks make cross-border transactions challenging.

Corruption, financial fraud, tax evasion and anti-competition activities are top targets for transnational prosecution.

Extraterritorial reach of laws is no longer unique to the U.S. and the U.K.

And the use of whistleblowers—or at least to encourage whistleblowers—is clearly on the rise as evidenced by the Brad Birkenfeld \$104 million award of last week.

International lawyers do not always operate within an existing legal framework but instead must provide much more complex structures to support cross-border transactions because such structures are not provided by the state.

International lawyers must now act creatively in a risky environment and must be adaptable, we must be able to understand different legal systems--many times where laws are quickly being abandoned, evolving, changing, or unclear or there is limited interpretation of the laws. Lack of uniformity in rules, and the absence of global rules for transactions and actions or the prevention of multiple sanctions for the same conduct in different jurisdictions is the new playing field.

And even though international lawyers continue to try to promote their country's law as the best vehicle for cross-border business transactions—New York and English law usually prevails requiring creativity to incorporate the essentials of the laws of other jurisdictions. Finding ways to meld different legal systems has led to the globalization of legal education; and the increased importance of an LLM for lawyers outside the Anglo-American sphere.

We who have been trained to eliminate uncertainty are in an entirely new realm. This legal uncertainty and lack of foreseeability is making our job extremely difficult. But the first step in succeeding is knowing that the risks exist.

In a moment, our moderator for today, Simone Nadelhofer, will introduce our panelist but I want to say a few informal words because I am so very delighted by our fantastic speakers today. Brad Simon is a friend and colleague of mine from New York, and I cannot thank him enough for coming to Geneva today to speak to us. He has spoken in the past both in the U.S. and Europe on various cross-border risks for lawyers. We are lucky to have him here today. Pierre Ollivier I must thank him publicly for helping me so much with the brainstorming for the planning of this conference during a lovely lunch this summer. He really helped me in defining today's conference. Thank you. And Peter Kurer, who I have only recently met, thank you, too, for being here today. While I was planning this conference and trying to think of a Swiss speaker who would have some first-hand experience and also a broad perspective on cross-border risks for lawyers Peter Kurer came to mind as the perfect speaker. Fortunately for me, through my network I was able to reach out to him and he kindly accepted our invitation to speak. So we are able to have real international lawyer diversity here: A New York lawyer, a French lawyer, and a Swiss lawyer, and I really look forward to listening to their presentations. I now pass you to our moderator Simone Nadelhofer.

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