

Memorandum for Dutch lawyers who work or maintain an office abroad, or provide services from the Netherlands to clients abroad

1. Purpose of the Memorandum

Recent developments in the United States have prompted the general council of the Netherlands Bar to clarify the laws and regulations that apply to lawyers registered in the Netherlands who work abroad or from abroad, maintain an office abroad, or provide services from the Netherlands to clients located abroad. This guidance is intended to support lawyers in continuing to function as independent providers of access to justice, even in times of political and societal pressure.

2. The lawyer's role in the rule of law as a provider of access to justice

An independent legal profession that guarantees access to justice is essential to the rule of law. Lawyers must be able to determine for themselves—without interference from the government or third parties and in accordance with applicable laws and regulations—how they practise their profession and manage their office. In their work, lawyers are independent from, for example, their (prospective) clients, the case at hand, the government, the police, the judiciary, media and civil society organisations. This means that a lawyer must never be identified with the client and the case being handled on behalf of the client. It also means that the lawyer is not accountable to third parties, including the government, for how they perform their work, whom they represent, or whom they employ.

3. Ensuring compliance with the Act on Advocates, and the regulations and Policy Rules for Maintaining an Office Abroad, established pursuant to this Act

To safeguard the lawyer's role in upholding the rule of law, lawyers registered on the bar registration are bound by the Act on Advocates, the Legal Profession Bye-Law, the Policy Rules for Maintaining an Office Abroad, and the Code of Conduct for the legal profession.

Lawyers who are registered with the Netherlands Bar but, with an exemption from the general council, work or maintain an office abroad, remain bound by the Act on Advocates, the Legal Profession Bye-Law, the Policy Rules for Maintaining an Office Abroad, and the Code of Conduct for the legal profession.

4. Ensuring compliance with core values

An essential component of the applicable laws and regulations is that every lawyer practises their profession in accordance with the core values of the legal profession, namely: independence, loyalty to the client, competence, integrity, and confidentiality. These are enshrined in Article 10a, paragraph 1, of the Act on Advocates. These core values are further elaborated in the Code of Conduct for the legal profession and form the foundation of professional and ethical conduct within the profession, ensuring that clients, colleagues, and society can trust the lawyer. The lawyer is obligated to comply with these core values in both daily practice and the organisation of their office, and to be guided by them. This means that lawyers may not engage in actions that conflict with these values. It is therefore not permitted to make promises, issue statements, or enter into agreements that compromise or threaten to compromise independence. This applies regardless of whether such statements relate to the clients or (the type of) cases a lawyer does or does not handle, the structure of the law firm, or the manner in which cases are managed (including, for example, statements related to *Diversity, Equity & Inclusion*). Moreover, a lawyer must always act in a manner befitting a proper lawyer

(Article 46 of the Act on Advocates). The duty of propriety also implies that a lawyer must always maintain their independence.

5. Ensuring confidentiality

Confidentiality is essential for the practice of the profession of lawyer. According to Article 11a, paragraph 1, of the Act on Advocates, a lawyer is obligated to maintain confidentiality regarding all information obtained in the course of their professional duties. This rule is further elaborated in Code of Conduct Rule 3.

In addition, the lawyer is responsible for handling confidential information with care. This means: consciously choosing secure communication tools, data storage, and processing—and ensuring that these data are properly secured. This implies that the lawyer must ensure and take steps to guarantee that the confidentiality of this information is also safeguarded abroad.

6. Exemption for Dutch lawyers abroad

Dutch lawyers who work abroad or from abroad have been granted an exemption by the general council based on Article 12, paragraph 3, of the Act on Advocates. This exemption may (also for the protection of the lawyer) be revoked if the lawyer does not adhere to the core values of the legal profession mentioned above, or if the conditions set out in the *Policy Rules for Maintaining an Office Abroad* are not met.

7. Further information

Lawyers or law firms that have questions regarding the above or encounter a dilemma related to the above may contact the Information point of the Netherlands Bar for further information or inquiries: informatiepunt@advocatenorde.nl. There is also the possibility to seek advice from the local bar president on this matter.