

ALTERNATIVES FOR NON-U.S. ATTORNEYS IN THE UNITED STATES

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I. INTRODUCTION

With globalization there has been a visible growth in the international trade of legal services. An increasing number of attorneys from around the world come to the United States for various reasons. Most foreign' ("non-US") trained attorneys come to the United States for a short-term course and return to their home countries after developing a basic understanding of the American legal system. This article considers the options for those foreign attorneys who wish to be licensed in the United States. Foreign attorneys in the United States have two basic options; they can either choose a limited license through the Foreign Legal Consultant ("FLC") route, or they can become fully licensed by appearing for, and passing, a bar examination.² This article will first look at the scope for FLCs and then examine the available choices with respect to bar examinations. Because each state³ in the United States has its own rules

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1. In some literature on the topic, "foreign" refers to attorneys from outside a particular state. In this paper, "foreign" is used interchangeably with "non-US" to refer to attorneys not from the United States.

2. This paper does not deal with immigration and other issues, which might complicate the choices for foreign attorneys.

3. The terms "state" and "jurisdiction" are used interchangeably in the paper. Not every state has enacted provisions for FLCs.

with respect to FLCs and bar admissions, this paper will also look at the provisions in each individual state. It is important to note that these rules are amended frequently and non-US attorneys should contact individual jurisdictions for current information.

II. FOREIGN LEGAL CONSULTANTS

Non-US attorneys can apply for an FLC license in twenty-four United States jurisdictions. An FLC typically advises clients only on laws of the home country in which he or she is admitted. Since the FLC does not appear for a bar examination he or she is not qualified to render advice on any other laws. In no state is an FLC permitted to give advice on the state's local laws. Some states allow FLCs to give advice on international law⁴ and some allow them to pass along advice from other licensed attorneys. Since the scope of an FLCs practice is limited and the procedure lengthy, it has not been a popular option. With the exception of New York, most states have had only a handful of FLC applicants.⁵ In New York, because there is a one-time registration process, it is unclear how many FLCs practice actively.⁶

Non-US attorneys must refer to the rules of each individual state to determine their eligibility and other unique requirements for each state. Non-U.S. attorneys should also check reciprocity requirements, as some states do not grant FLC status if the home country does not allow similar opportunities to United States lawyers.

The following table divides the restrictions on FLC practice areas into three broad categories. The table also highlights the prior experience required before an application for FLC status can be made, and includes the number of individuals licensed as FLCs from 1996 to 2000.

Though the following table classifies the scope of FLC practice into three categories, it must be noted that the language of the relevant rules do not. The classification reflects the interpretation given to the relevant

4. It can be argued that provisions restricting the scope of FLCs to advice, "only on the law of the foreign country" would include international law. The following table does not distinguish jurisdictions on the basis of this argument. The following table is a simplification of intricate provisions. Foreign attorneys must note that details in the provisions could yield outcomes opposite to those indicated in the table.

5. See Pamela Stiebs Hollenhorst, *Options For Foreign-Trained Attorneys*, 7 THE B. EXAMINER (NCBE), Aug. 1999, available at <http://www.ncbex.org/pub.htm>. One factor, which must be noted, is that NY being the commercial capital attracts a larger number of foreign attorneys. This reason alone, and not the drafting of the FLC provision could explain the large numbers in New York.

6. The problem is better exemplified by the fact that in twenty-three years only two FLCs have formally resigned in NY. See Carol A. Needham, *The Licensing of Foreign Legal Consultants in the United States*, 21 FORDHAM INT'L L.J. 1126 (1998).

provisions in literature on the topic.⁷ In general, the provisions dealing with FLCs can be divided into two categories. Most states restrict the scope of practice for FLCs by stipulating that an FLC can render services “only on the law of the foreign country.” A few states have adopted the American Bar Association’s model rule, which allows for a broader scope of practice for FLCs by stipulating what the FLC cannot practice.

7. See Needham, *supra* note 6.

State ⁸	Scope of Permitted Legal Work			Experience Required		Number ⁹ Individuals licensed as FLCs from 1996- 2000
	Can advise on Int'l. law and third- country law ¹⁰	Can advise on U.S. federal law and law of state granting FLC license	Can pass along advice regarding any state law	Years of active practice immediately preceeding application	Location of experience	
Alaska	No	Yes	No	5 of 7	HJ ¹¹	0
Arizona	Yes	Yes	No	5 of 7	HJ	1
California	No	No	No	4 of 6	HJ	32
Connecticut	No	No	No	5 of 7	HJ	0
District of Columbia	Yes	Yes	Yes	5 of 7	HJ	16
Florida	No	No	No	5 of 7	HJ	43
Georgia	No	No	No	5 of 7	HJ	5
Hawaii	No	Yes	No	5 of 7	HJ	9
Illinois	No	No	No	5 of 7	HJ	5
Indiana	No	Yes	No	5 of 7	Any	1
Louisiana	No	No	No	5	HJ	0
Massachu- setts	No	No	No	5	Any	3
Michigan	No	No	No	3 of 5	HJ	3
Minnesota	No	No	No	5 of 7	HJ	2
Missouri	No	No	No	5 of 10	HJ	0
New Jersey	No	Yes	No	5 of 7	HJ	5
New Mexico	No	Yes	No	5 of 7	HJ	0
New York	Yes	Yes	No	3 of 5	Any	84
North Carolina	No	Yes	No	5 of 7	HJ	0
Ohio	Yes	Yes	No	4 of 6	HJ	2
Oregon	No	Yes	No	5 of 7	HJ	0

8. Only jurisdictions with current provisions for FLC licensing are listed in this table.

9. *2000 Statistics*, 1 The B. Examiner (NCBE), May 2001, available at <http://www.ncbex.org/stats.htm>.

10. It must be noted that "law of the home country" could include international treaties, (as they apply to that country) which are considered law "of that country." To illustrate, a Mexican attorney licensed as an FLC in Illinois can advise on NAFTA, (as it applies to Mexico) but an Argentinean attorney licensed as an FLC cannot.

11. Home Jurisdiction ("HJ") implies applicant must have been in active practice in country where licensed.

State ¹²	Scope of Permitted Legal Work			Experience Required		Number ¹³
	Can advise on Int'l. law and third-country law ¹⁴	Can advise on U.S. federal law and law of state granting FLC license	Can pass along advice regarding any state law	Years of active practice immediately preceding application	Location of experience	
Texas	No	No	No	5 of 7	HJ	14
Utah				discretionary ¹⁵		1
Washington	Yes	No	No	5 of 7	Any non-U.S. location	1

III. BAR EXAMINATION

Clearly the more popular option¹⁶ for foreign attorneys wishing to be licensed in the United States is to sit for a state bar examination. By passing the bar examination and satisfying other standards, non-U.S. attorneys can practice in all areas of law just like U.S.-trained attorneys. In thirty United States jurisdictions, foreign attorneys may appear for the bar examination without further education if they fulfill certain requirements. It is important to note that requirements in these states are quite stringent and most require a determination of educational equivalency. Most non-U.S. attorneys cure their deficiency in eligibility requirements by pursuing a graduate law degree (such as an LL.M.) from an American Bar Association approved school.¹⁷ In thirteen United States

12. Only jurisdictions with current provisions for FLC licensing are listed in this table.

13. 2000 *Statistics*, 1 THE B. EXAMINER (NCBE), May 2001, available at <http://www.ncbex.org/stats.htm>.

14. It must be noted that "law of the home country" could include international treaties, (as they apply to that country) which are considered law "of that country." To illustrate, a Mexican attorney licensed as an FLC in Illinois can advise on NAFTA, (as it applies to Mexico) but an Argentinean attorney licensed as an FLC cannot.

15. Utah does not stipulate a minimum length for experience, but the Utah Supreme Court may consider this factor in deciding whether to grant a license. One additional mandatory requirement in Utah is the Multistate Professional Responsibility Examination (MPRE).

16. See Hollenhorst, *supra* note 5. From 1975 to 1998, New York had a total of 277 FLCs, whereas in 1998 alone, 2047 foreign attorneys appeared for the New York bar examination.

17. It is also important to note that satisfactory completion of graduate programs does not guarantee that a graduate will pass the bar examination. Most LL.M. programs are not intended to prepare candidates for bar examinations.

jurisdictions, foreign attorneys may cure their deficiencies in eligibility by pursuing a graduate law degree. It must be emphasized that a graduate program does not guarantee eligibility for bar examination.¹⁸ Besides education qualifications, close attention should also be placed on residency and other requirements for each jurisdiction.¹⁹ The following table highlights some important requirements for foreign graduates considering bar examinations in the United States and the bar passing percent for non-U.S. attorneys.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ²⁰		
				T ²¹	P ²²	% ²³
Alabama	Yes	No	Proof of educational equivalency required	1	1	100
Alaska	Yes	No	Must be graduates from a law school where principles of English law are taught. Must complete one academic year at an ABA approved law school and one course in federal civil procedure and US constitutional law.	1	0	0
Arizona	Yes	Yes	With a LL.M. or M.C.L. from an ABA approved school applicant can be eligible for the bar examination.	-	-	²⁴

18. Non-US attorneys must check whether the program meets the eligibility requirements for the jurisdiction in which they wish to be licensed.

19. See *Comprehensive Guide to Bar Admissions Requirements, 2000* (ABA), available at <http://www.abanet.org/legaled/publications/compguide2000/cg2000.html>.

20. *2000 Statistics*, *supra* note 9.

21. Taking ("T")

22. Passing ("P")

23. Passing percent (" % ")

24. Arizona does not compile statistics based on law degree received.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ²⁵		
				T ²⁶	P ²⁷	% ²⁸
Arkansas	No	No		0	0	0
California	Yes	Yes	Eligibility is determined on a case-by-case basis, applicant must request determination of legal education equivalency.	56	20	36 ²⁹
Colorado	Yes	No	Law degree must be from a law school located in a common law, English speaking nation, and applicant must be admitted to the bar of the nation from which a first professional law degree was received, and applicant must have "actively and substantially" engaged in the practice of law for at least five of the seven years preceding application.	4	1	25
Connecticut	Yes	Yes	Must obtain an LL.M. degree for post-graduate work acceptable to the committee at a law school approved by the committee, having already obtained a bachelor of laws or equivalent degree at a law school for work acceptable to the committee.	9	4	44

25. 2000 Statistics, *supra* note 9.

26. Taking ("T")

27. Passing ("P")

28. Passing percent (" % ")

29. California totals for applicants graduating from law schools outside the United States are approximate.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		T ³¹	P ³²	% ³³
Delaware	No	No		0	0	0
District of Columbia	Yes	No	An applicant who graduated from a law school not approved by the American Bar Association will be permitted to take the bar examination only after successfully completing at least twenty-six semester hours of study in the subjects tested in the bar examination in a law school that at the time of such study was approved by the ABA.	-	-	34
Florida	No	No		0	0	0
Georgia	No	No		0	0	0
Guam	Yes	No	Those applicants who did not graduate from an ABA accredited law school may apply for a special exemption, however, such exemptions are granted in exceptional circumstances only	0	0	0

30. 2000 Statistics, *supra* note 9.

31. Taking ("T")

32. Passing ("P")

33. Passing percent (" %")

34. Independent data for graduates from non-U.S. law schools is not available as it is merged with statistics of graduates from Non-ABA approved law schools.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., SJ.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ³⁵		
				T ³⁶	P ³⁷	% ³⁸
Hawaii	Yes	No	Must be admitted to practice before the highest court of a foreign country, where English common law substantially forms the basis of that country's jurisprudence, and where English is the language of instruction and practice in the courts. Must have actively practiced law in such jurisdiction for five of the six years immediately preceding his or her application.	0	0	0
Idaho	No	No		0	0	0
Illinois	No	No		0	0	0
Indiana	No	No		0	0	0
Iowa	No	No		0	0	0
Kansas	No	No		0	0	0
Kentucky	Yes	Yes	The foreign attorney's legal education must be substantially equivalent to the legal education provided by approved law schools located in Kentucky. An additional graduate degree has bearing on boards decision.	0	0	0

35. 2000 Statistics, *supra* note 9.

36. Taking ("T")

37. Passing ("P")

38. Passing percent (" % ")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ³⁹		
				T ⁴⁰	P ⁴¹	% ⁴²
Louisiana	Yes	No	If an applicant is a graduate of a law school that is not located in the United States or its territories, the applicant must submit an application for an equivalency determination.	38	12	31
Maine	Yes	No	Determination of educational equivalency required.	5	2	40
Maryland	Yes	No	May require taking and passing bar examination in another US jurisdiction.	24	13	54
Massachusetts	Yes	Yes	Any applicant who received his/her legal education at a law school located outside a US jurisdiction must have pre-legal education equivalent, in the Board's opinion, to that provided in law schools approved by the ABA. (continued)	0	0	0

39. 2000 Statistics, *supra* note 9.

40. Taking ("T")

41. Passing ("P")

42. Passing percent (" % ")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., SJ.D) from ABA-approved school?		T ⁴⁴	P ⁴⁵	% ⁴⁶
Massachusetts (cont.)			Before permitting such an applicant to take the law examination, the Board in its discretion may, as a condition to such permission, require the applicant to take such further legal studies as the Board may designate at a law school approved by the ABA			
Michigan	No	Yes	If the applicant has obtained an LL.M. degree from an approved law school, the applicant's J.D. or LL.B. need not be from an approved law school.	-	-	⁴⁷
Minnesota	No	No		0	0	0
Mississippi	No	No		0	0	0
Missouri	No	No		5	2	40
Montana	Yes	No		1	1	100
Nebraska	Yes	No	Applicant must attain educational qualifications at least equal to those required at the time of application for admission by examination to the bar of Nebraska.	1	1	100

43. 2000 Statistics, *supra* note 9.

44. Taking ("T")

45. Passing ("P")

46. Passing percent (" %")

47. Michigan does not compile data based on law degree received.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		T ⁴⁹	P ⁵⁰	% ⁵¹
Nevada	Yes	No	A prospective applicant who has received a degree of bachelor of laws or an equivalent law degree from a law school that has not been approved by the ABA must first obtain certification that the prospective applicant has met the qualifications set forth in S.C.R 51.5 ("certification").	6	3	50
New Hampshire	Yes	No		14	0 ⁵²	0
New Jersey	No	No		0	0	0
New Mexico	Yes	No	A non-US foreign graduate must be engaged in the practice of law in another state or states for at least four of the six years immediately preceding the person's application for admission.	0	0	0

48. 2000 Statistics, *supra* note 9.

49. Taking ("T")

50. Passing ("P")

51. Passing percent (" % ")

52. Information on seven students in 1998 is not available, seven in 1999 and 2000 did not pass.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ⁵³	T ⁵⁴	P ⁵⁵
New York	Yes	Yes	The applicant will be eligible to cure the deficiency and qualify to take the bar examination upon successful completion of a twenty credit program in professional law subjects, including two basic courses in American law, in an approved law school in the United States. An LL.M. or master's degree from a foreign law school cannot be substituted for the study at an approved U.S. law school.	6983	2882	41
North Carolina	No	No		0	0	0
North Dakota	No	No		0	0	0
Ohio	Yes	No	Determination of educational equivalency is required for all non-US graduates	17	5	29
Oklahoma	No	No		0	0	0
Oregon	Yes	No	The applicant must be admitted to practice before the highest tribunal of a foreign country where the common law of England exists as a basis of its jurisprudence. (continued)	7	3	42

53. 2000 Statistics, *supra* note 9.

54. Taking ("T")

55. Passing ("P")

56. Passing percent (" % ")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ⁵⁷	T ⁵⁸	P ⁵⁹
Oregon (cont.)			The applicant must also prove that he/she is a graduate of a law school equivalent to a law school approved by the ABA.			
Pennsylvania	Yes	Yes	Non-US attorneys who have for a period of five years of the last eight years immediately preceding the date of filing of the application for admission to the bar engaged in the practice of law in a foreign country may apply to sit for the bar examination. In addition they must successfully complete thirty credit hours in an accredited US law school in certain specified subjects.	4	0	0
Puerto Rico	Yes	No		27	7	25
Rhode Island	Yes	Yes	Additional education at an ABA approved law school may be required and the applicant must meet all other requirements for admission.			
South Carolina	Yes	Yes	Applicant should have received a J.D., LL.B., LL.M. or S.J.D degree from a law school approved by the ABA.	0	0	0

57. 2000 Statistics, *supra* note 9.

58. Taking ("T")

59. Passing ("P")

60. Passing percent (" %")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., SJ.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ⁶¹		
				T ⁶²	P ⁶³	% ⁶⁴
Sout Dakota	No	No		0	0	0
Tennessee	Yes	Yes	Any applicant who received his or her legal education in a foreign country shall satisfy the Board that his or her undergraduate and law school education was substantially equivalent to the requirements of US candidates.	53	13	24
Texas	Yes	Yes	An Attorney holding a valid law license issued by a foreign nation is eligible for admission after passing the bar examination if the attorney has been in active and substantial practice of law in that foreign nation for at least five of the last seven years immediately preceding the filing of the application, holds the equivalent of a J.D. degree, and (continued)	21 ⁶⁵	10	47

61. 2000 Statistics, *supra* note 9.

62. Taking ("T")

63. Passing ("P")

64. Passing percent (" %")

65. 1999 data for Texas is unavailable; the totals here are for 1998 and 2000.

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		T ⁶⁷	P ⁶⁸	% ⁶⁹
Texas (cont.)			demonstrates to the Board that the law of the foreign nation is sufficiently comparable to the law of Texas or holds an L.L.M. from an approved law school. If the foreign attorney has less than five but more than three years of experience the LL.M. is mandatory.			
Utah	Yes	No	Applicants who have graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence must complete within twenty-four consecutive months, not less than twenty-four semester hours, at an ABA-approved law school, including some specified basic courses.	0	0	0
Vermont	Yes	No	A foreign attorney who has been admitted to the practice of law before the highest court of a foreign nation which is a common law jurisdiction, (continued)	2	2	100

66. 2000 Statistics, *supra* note 9.

67. Taking ("T")

68. Passing ("P")

69. Passing percent (" % ")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., SJ.D) from ABA-approved school?		Number non-U.S. law school graduates taking and passing bar examinations from 1998-2000 ⁷⁰		
				T ⁷¹	P ⁷²	% ⁷³
Vermont (cont.)			the Board, with the approval of the Court, may allow the applicant credit for such study and admission as it deems proper.			
Virginia	Yes	Yes	The applicant shall furnish a certificate from the dean, assistant dean or acting dean of an ABA approved law school in Virginia that his or her foreign legal education, together with his or her approved law school degree, is the equivalent of an LL.B. or a J.D. Degree in the dean's law school.	68	11	16
Washington	Yes	No	To qualify to sit for the bar examination, a non-US attorney must complete three years of the law clerk program.	0	0	0
West Virginia	Yes	No	Non-US attorney must graduate from a law school of a foreign country where the common law of England exists as the basis of its jurisprudence (continued)	0	0	0

70. 2000 Statistics, *supra* note 9.

71. Taking ("T")

72. Passing ("P")

73. Passing percent (" %")

State	Bar Examination Eligibility		Comments	Number		
	Non-U.S. attorney eligible for bar exam without a United States J.D. or LL.B.?	Non-U.S. attorney eligible for bar exam with graduate law degree (LL.M., S.J.D) from ABA-approved school?		T ⁷⁵	P ⁷⁶	% ⁷⁷
West Virginia (cont.)			and the applicant must successfully complete study at an ABA-accredited law school, with a minimum of thirty credit hours of basic courses.			
Wisconsin	No	No		0	0	0
Wyoming	No	No		0	0	0

IV. CONCLUSION

Non-U.S. trained attorneys facilitate international transactions and are instrumental in expanding international trade in goods and services. The growing need for international legal services may prompt many states to reexamine their policies towards non-U.S. attorneys. New York has followed the ABA model rule⁷⁸ for FLCs and attracted twice as many FLCs than any other state. New York's liberal policies have also attracted over 95% of all non-U.S. graduates appearing for bar examinations in the United States, and it clearly dominates the globalization of law. FLC licensing has not been a popular option among non-U.S. attorneys. Most non-U.S. attorneys now choose programs that would help them meet the eligibility requirements for specific bar examinations.

74. 2000 Statistics, *supra* note 9.

75. Taking ("T")

76. Passing ("P")

77. Passing percent (" %")

78. See *Crossing the Bar*, Interview with Peter D. Ehrenhaft, at <http://www.crossingthebar.com/Ehrenhaft.htm>.