

## **FBE Congress 23 September 2010 Madrid**

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**Training – STAGE**

**The specialization of lawyers – the Swiss model**

**The need for specialization**

1 What is typically the first question almost any person asks someone, after he or she has learned that the other person is a lawyer? The question is: “In what area are you specialized?”

2 What do you learn from this? All our clients, actual or potential clients, expect us as lawyers to be specialized, to have a profound knowledge and expertise in the very specific area that concerns them at the time. Clients demand specialists - we lawyers know that of course and it is my profound believe that if we do not react to this demand in a very clear and convincing manner, it will be to the detriment of our clients, to the detriment of the lawyers and our profession in general. We all know, we need the confidence of our clients as well as they need our integrity and competence. If our clients demands specialists, and if we are not really specialists, we put them at risk and we put ourselves at risk.

3 So we have to find criteria to define specialists. If everyone can call him- or herself a specialist without any quality control, we, the bars and law societies not only miss a chance to set quality standards, maybe even to raise the competence of the specialized lawyers and especially those that want to be specialized lawyers, we also disappoint the clients – and last not least – we, the bars and law societies, miss a chance to provide an important service to the clients and our members. It has always been a primary task of any professional organization, even of the medieval guilds, to set quality standards. The Bars do this in the area of deontology – it is high time to do this also in the area of specialization. We can not afford to mislead the public by allowing that lawyers call themselves specialists if indeed they are not specialists.

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But what makes a specialist? This question has to be answered by the bars. Just as they have to define which professional standards have to be respected in the area of deontology, the bars have to define the criteria in the area of specialization.

- 4 I come back to the question of the potential client who ask a lawyer: "In what area are you specialized"? If the lawyer answers: "What exactly is your problem"? – only to add then – that this is exactly the area where he or she is specialized – you will certainly agree, that this is neither very convincing, nor good, neither for the client, nor, in the long turn for the lawyer or our profession. So we have to do something about this.

### **The Swiss solution: Certified specialists SBA**

- 5 Seven years ago, the Swiss Bar Association decided to introduce a programme for specialized lawyers which would require the lawyers not only to prove and improve their expertise, but which would at the same time assure that the specialists to be certified by the Swiss Bar Association would have to make a very considerably effort to improve their expertise even more. Since the year 2007, we now have in the Swiss Bar Association 300 certified specialists SBA or in German "Fachanwälte SAV" (SAV - Schweizerischer Anwaltsverband) or "Avocat Spécialiste FSA" (FSA - Fédération Suisse des Avocats) or "Avvocati Specializzati FSA" (FSA - Federazione Svizzera degli Avvocati).<sup>2</sup> So far, members of the Swiss Bar Federation have the possibility to obtain such a qualification in the following areas of practice:

- labour law
- inheritance law
- liability and insurance law
- family law
- construction and real estate law

- 6 We are planning to introduce also a title for specialists in criminal law and criminal procedure.

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<sup>2</sup> [www.swisslawyers.com](http://www.swisslawyers.com); [www.fachanwaltsav.ch](http://www.fachanwaltsav.ch)

## How to become a certified specialist SBA

7 The cornerstones of the programme are the following ones:

- Practice of at least 5 years as a lawyer.
- Evidence of above average knowledge in the area of specialization through submission of 10 cases of the candidate (in anonymous form) in the area of specialization to a commission of the Swiss Bar Association.
- Evaluation of these 10 cases by the commission. The commission may ask for additional documents (judgements, legal briefs, claims, contracts, legal opinions etc.). These cases and documents and description of the cases serve as an admission test to the specialization courses. The commissions of the Swiss Bar Association admit a candidate to the specialization courses only if the commission is convinced that the candidate has an above the average knowledge of the specialization area, can therefore follow and participate in the specialization courses and has a fair chance to pass the examination at the end.
- A specialization course of 120 hours within one year.
- A written examination of 3-5 hours.
- An oral exam of 30-60 minutes.
- Proof of continuing training for two days per year in the area of specialization.

8 These requirements resemble the requirements of the German specialization programme for lawyers, the German 'Fachanwalt' which is a highly successful concept in Germany. However there are in our review some important differences. What makes the specialization programme of the Swiss Bar Association special is not so much the formal requirements but the way the whole structure is set up and the way the candidates have to go through to the whole specialization programme. Please let me explain this in a few words.

### 120 hours specialization courses

9 When we asked ourselves how we could motivate Swiss lawyers who are already more or less specialized in a certain area to make considerable in-

vestments in further legal training, how we could motivate them to pass a test at the end of such a course, how we could motivate them to invest money and even more important a lot of working hours into their specialization, we considered among others the following:

- 10 At the end of the specialization programme, the Swiss Bar Association should have a high assurance, that lawyers with the title "certified specialist SBA" are indeed qualified specialists and that their title is not just a marketing tool that will not fulfil the expectations put in to it by the public. Therefore it was very clear from the very beginning on that at the end of the programme, there must be exams. There is a German saying: "Was nicht geprüft wird, wird nicht gelehrt" or in other words: "What will not be examined, will not be learned". But how do you motivate lawyers who all have already passed many exams, to yet pass another exam? And how do you motivate lawyers to share their own expertise, their own experiences with other lawyers so that they can learn from each others?
- 11 We thought that all lawyers participating in such a specialization course, especially because they have to pass an admission test, have already considerable and some times unique experiences and expertise and it would be a missed chance if we would not find a solution so that the lawyers exchange their expertise among each other. As we wanted the courses to be of high practical relevance to the participants on one hand and on the other hand to be also on a high academic level, we said, we have to combine the best professors of the Swiss Universities and those persons that have the highest possible degree of experience.
- 12 The Swiss Bar Association recruited among its own members so called specialization committees (5 to 6 highly respected and experienced lawyers) and worked out with them a detailed programme as to what should be treated and thought in the 120 hours specialization course. And this in the five areas of specialization. As the programme is intended for the French speaking lawyers and the German speaking lawyers, there are 50 – 60 members of the Swiss Bar Association needed for the totally 10 commissions . Plus a few more in the steering committee and the executive board of the Swiss Bar Association.

13 Next, the Swiss Bar Association negotiated with different Swiss Universities whether they would be willing to provide the infrastructure and their specialized professors and be responsible for the organisation of the courses and the final written exam at the end. The Swiss Bar Association however made it a condition, that two thirds of the 120 hours would be instructed not by legal scholars but by practitioners such as lawyers, judges, notaries or even architects (in the area of construction law) etc. And that each participant of the specialization course would present at least one or maybe two cases of his own under the supervision of the professors who manage and organise the courses. By that, and I think it is a very important key element of the success of these programmes, we achieved that the participants not only had to open their own treasures of expertise but that all participants exchanged their experiences and views. And this proved to be highly interesting and rewarding for as well the legal scholars involved, as well as the candidates of the specialisation courses. Enhanced was this by the fact, that the courses were divided into blocs of typically two days, and held preferably at a remote location, so that the participants had to stay overnight and had time to discuss their cases and solutions, actual and old ones, far more than just within the time frame of the 120 hours. Quite often, many participants continued their discussions not only during dinner, but until late at night or even into the morning hours.

14 As the courses are restricted to 25 participants, all participants are actively involved in all discussions and also get to know each other quite well. It will not be a surprise to you that out of these courses not only very valuable networks have formed but even new law firms were founded.

15 At the end of the specialization course, it is the University and not the Swiss Bar Association, that decides whether the candidate has passed the written test or not. This gives the title of certified specialist an increased credibility, a certain independence from the Swiss Bar Association.

16 The object of the oral exam is different from the written exam. Whereas with the written examination, the knowledge of the law is tested, the oral exam aims more to the practical aspects of the specialist lawyer. The oral examinations are based on the cases that the candidate has submitted at the very beginning to be admitted to the course. The two experts of the committee of the Swiss Bar Association ask typically the candidate why he has chosen this

way and not another way to solve the legal problem described in one of his cases. But be aware: Also here, if a candidate shows important weaknesses, he can fail. And this is not restricted to the knowledge in the specialization area, it can also involve ethical questions. In one case, where a candidate did not realise serious problems of conflict of interest that arose out of his function as executor of an estate and his representation of some heirs, the commission decided not to let the candidate pass.

17 Last but not least, it should be mentioned, that each certified specialist SBA has to prove to the Swiss Bar Association each year that he followed two days of continuing legal training in the specialisation area.

18 The certificate is valid only for 10 years, after that, the candidate will have to fulfil certain conditions, which so far have not yet been defined. We want first to gain some experience and luckily have some more time before we decide what criteria have to be fulfilled after 10 years to renew or prolong the certificate.

### **Statistics**

19 As per today, we have now in Switzerland 300 certified specialists SBA: All together, they have invested on average approx. 300 hours per person to become a certified specialist: 120 hours specialization course, approx. 120 hours preparation for the different modules of the specialization course, 60 hours preparation for the admission and the examinations. All together, it may be said that in the last 4 years, the 300 specialist lawyers have invested approx. 90'000 hours (300 x 300) in their specialization and therefore, it maybe said, that this programme has not just increased the specialization level of these lawyers, but it may indeed may be called a jump in quality (Qualitätssprung).

20 So far, more than 10 candidates have not been admitted to the specialization courses and another 10 have either not passed the written exam (6) or the oral exam (4).

## Rewards

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It is the goal of the specialization programme and of the title "certified specialist SBA" that through this title, specialized lawyers acquire more and more clients in their field of specialization. This enables them to deepen their specialization even more, to bring it to an even higher level. At the beginning, many lawyers were rather sceptical about this programme, particularly also sole practitioners or lawyers from small firms and from areas outside of the big cities. Many thought this is just a concept for the lawyers of the big law firms. The opposite is true: Just recently, I heard from a lawyer from a smaller Swiss town that because of her specialization title, she has received referrals from other lawyers from many other parts of Switzerland that before she would never have received. Many lawyers, even quite experienced and well established lawyers that participated in the specialization courses clearly stated that these courses were for them not only highly interesting but especially motivating and rewarding. One lawyer wrote that if these courses had not already been invented, they indeed should be invented.

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As a conclusion, I may say that the programme of the Swiss Bar Association is very demanding and therefore also in my views very valuable and successful. If a qualification process does not set high standards, it is not worth anything. It is my conviction that the Bars have an important task in this area and as president of the European Bars Federation, I can only wish that all European Bars implement similar specialization programmes.

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