

Keeping Independent Firms Relevant in an Era of Globalization

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It is tempting to assume that cross-border matters are the preserve of the major global law firms or at best of the leading national firms with high international reputations and a strong network of similar best friends. In an era of continued globalisation, this is an unnecessarily restrictive and potentially defeatist view for an independent law firm to take.

Since the 2008 financial crisis the world has changed in many ways. The major economies of Europe and the US have encountered recession, low growth and strained government finances. Many developing countries have continued to grow, with some achieving GDP growth rates in excess of 5 percent despite the market turbulence. Developing economies now account for about 30 percent of global outbound foreign direct investment, and for the first time, inbound foreign direct investment into the developing world exceeds investment into the developed world. In 2008, 67 percent of the Global Fortune 500 companies were based in the US or EU, but in 2013 that figure had shrunk to 52 percent. In addition, trade routes for investment are now far more complex, with investments from Asia to Africa, the Middle East to Asia and so on. No longer does every major investment have to be routed through the once-dominant centers of London and New York.

This change provides a magnificent opportunity for independent law firms, especially in developing countries. Many of their domestic clients are getting larger; their clients are looking to invest internationally; and foreign companies are looking to invest in their country. But, to grasp this opportunity for not only more work but potentially more interesting and more profitable work, firms need to position themselves in order to demonstrate their capability and relevance to their clients and potential clients.

The traditional approach to globalisation of the larger firms has been quite simply to “follow the money” and to either open offices or merge with local law firms in countries experiencing significant inbound or outbound work. This has resulted in about 30 law firms with revenues over \$1 billion of which about 10 have revenues near or in excess of \$2 billion. Indeed, as globalisation continues it is quite likely that we will see law firms with \$5 billion or more in revenue before too long.

The opening of many international offices is not a credible option for most independent firms, as it is quite simply too expensive, too time-consuming and too difficult to compete in new markets against the size and deep pockets of the larger firms. Many firms also will not wish to contemplate mergers as they value their independence, autonomy and culture too highly to allow themselves to be subsumed into a global firm.

But, other options are available, and firms need to consider these and make the right choices if they are to compete in a globalised world.

The first issue is to understand what is happening in your market and why. Are domestic companies looking to invest abroad; if so, where and in which sectors? Are foreign investors looking to invest in your country, if so where are they from and what are they looking to invest in? This is not a one-off process, as investment trends and fashions can change quite quickly as perceptions of particular countries and specific industries are impacted by political, economic and regulatory issues.

Armed with this information, a firm can identify which countries investment is going to or coming from, the likely sectors for such investment and the local and international clients that are likely to be involved in such transactions.

A firm then has a number of options to pursue. It can contact firms in the relevant countries with a view to establishing some sort of working relationship or “best friends” arrangement. It can join one or more of a number of law firm networks, some of which are general and global, and others of which are related to a specific practice area or geographic region. A best friends arrangement can be private or publicly promoted.

Although it may sound counter-intuitive, establishing a relationship with a number of major international firms, if they do not already have a presence in your country, also may bring significant benefit. These firms are likely to have clients looking to invest in your country and are likely to have the capability to assist your clients internationally. Some of the major international firms, despite having a large international footprint of their own, have developed an extensive best friends network internationally. Some also offer training and secondment opportunities that may be appealing to your lawyers. The potential disadvantage of working with them is that some will seek to dominate the matter and relegate you to a local law role or even take the client altogether. Also, if they subsequently decide to open an office in your country, they may seek to hire the lawyers who they have worked with in your firm to staff their new office. These are not reasons to avoid working with such firms; you just need to clearly understand the advantages and disadvantages of

doing so. These risks may be mitigated (but not totally excluded) by entering into a “no poaching” agreement relating to clients, partners and staff with the “best friend.”

But whatever route (or routes) are chosen, you need to appreciate that any relationship only works and develops with a level of commitment and energy on both sides. A “best friend” who you never meet, phone or email from one year to the next is in reality only a passing acquaintance. Unless you really get to know your counterparts, your chances of delivering the level of service that clients need, expect and demand are low.

Many clients working on cross-border matters are indifferent as to the legal structure their law firms operate in, whether that be a fully financially integrated international firm, a Swiss verein (which is effectively an association of law firms operating under a common brand and with a level of management and strategic co ordination, but usually without full profit-sharing between the member firms), an association, a network or a best friends arrangement. What clients are unforgiving about is any lack of co ordination, points-scoring between lawyers, turf wars as to who should be doing what and when, and the shifting of blame if things go wrong. Quite simply, many clients want one key point of contact, preferably one bill, an efficient, commercial and ethical service, no unpleasant surprises and to ensure that their lawyers help them look good to their bosses in their organization. Getting the law right is a pre-requisite, but so too is a responsive and efficient service, a problem-solving rather than problem-making approach, and a clear understanding of the client’s commercial objectives and how to achieve them.

This sort of service is not achieved by accident. Only by investing time and energy in the relationships with the other law firms can it be achieved. This does mean that the relationships have to be prioritized, with most attention given to the countries from which or to which the investment flows are going to occur. It also means that some relationships will fail or will not develop as expected, so an alternative firm may need to be found. In relation to larger economies, it may be appropriate to have a range of relationships across a number of firms to address different geographic and practice area expertise, to mitigate potential client conflict risks and to maximise the flow of referrals. This also may be appropriate in countries which have a federal structure (e.g. USA) where you may need capability in a number of separate states.

These relationships work most effectively where a number of lawyers are involved from each firm. A “gatekeeper” who keeps such relationships to himself is unlikely to benefit the firm as a whole. Many firms pool information as to their international contacts so that they are readily available to all in the firm. Such lists are most useful if they include details of work referred each way, comments on the firm’s performance and even client comments. This feedback also enables you to review how the relationship is working. For example, are you referring work to them but never getting anything back? How responsive and client friendly are they? Did they keep to the agreed-upon fee arrangement?

It is also particularly helpful if you can demonstrate your capability to clients and potential clients. Joint visits can be useful (but only if you prepare properly beforehand), as too can briefings or seminars on issues and opportunities in relation to another country which involve lawyers from that country. This helps to demonstrate to your client or potential client that you are investing in your relationship to provide them the service they need.

As a way of developing and deepening the relationship, some firms arrange for lawyers in a particular practice area or sector to meet regularly (in person or by conference call) to discuss current trends, legal developments and business opportunities. This can result in the sharing of experience and the development of best practice. Other firms arrange secondments or training programs between the firms. It can also be worth preparing information as to each firm’s relevant expertise and experience, as client presentations often need to be prepared at short notice.

Much of this may appear quite daunting to a relatively small law firm. However, if efforts are properly focused and prioritized they can achieve significant results. Instant gratification may be unreasonable to expect, but our clients who have adopted this approach have been able to demonstrate their relevance to both inbound and outbound investors, and to build long-term and profitable client relationships that have significantly improved both their financial performance and their perception in their local market. This is not to suggest that developing international relationships is easy or trouble-free, but real opportunities are available to firms that apply a long-term, systematic and rigorous approach to developing their international relationships and effectively demonstrating their capabilities to their current and target clients.

In an era of continuing globalisation, firms face a stark choice. Engage with cross-border activity in the ways mentioned above or risk becoming an irrelevance to existing clients as they develop internationally or miss out on international clients entering your market. In these circumstances, standing still can be the most dangerous plan.