A Propos Partnership

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MERGERS

MARRY IN HASTE, REPENT AT LEISURE....

2010 has seen an unprecedented level of international mergers either announced or consummated. Given that for every announced deal there are probably at least three serious initial discussions it is likely that most of the Top 30 UK law firms have considered, albeit often superficially, an international merger in the last 18 months.

This trend looks like continuing into 2011 and 2012 as the rush to develop a strong and credible international footprint continues.

But before getting carried away with the excitement of merger discussions there is a need to stand back and consider why you are contemplating a merger and what you hope to achieve from it. Just because another firm wants to talk to you does not mean that a merger is the right option or that they are the right firm to talk to.

Before embarking on any major discussions a firm must consider its clients. Who does the firm currently act for and who does it want to act for in the future? How will these clients' needs in terms of industry focus, practice depth and geographic coverage change over the next five years? In relation to target clients, what will you need to demonstrate to them to seduce them away from their current, and often relatively entrenched, providers? What will these clients demand in terms of service delivery and pricing and what impact will this have on your firm's model and a sustainable level of profitability? What investment in IT, know how, new offices, deeper practice expertise and practice management systems will be necessary and is this likely to be affordable? Only when these questions have been answered with rigour is the firm able to identify how it needs to develop over the next few years and to formulate a realistic and properly prioritised strategy which may or may not include a merger as a means of achieving that strategy. It also shares future investment cost among a larger number of partners making it more affordable.

One of the biggest current drivers for consolidation is the changing needs of clients. Many larger corporates see future growth in revenue and profits arising internationally especially from the newer markets in Asia, the Middle East and Latin America. Increasingly the dominance of London and New York as the world's

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leading financial and business centres will be challenged by major centres in Asia and elsewhere although at least in the medium term they will retain a key role in the global economy. Ultimately, business moves to where the money is and this will spawn a range of strong and credible business and financial centres. This is a great growth opportunity for firms but, it is tinged by the fear that if firms do not follow, and indeed pre-empt, their clients others may service them in these new locations and then seek to repatriate the relationship to the client's home base.

Furthermore, many clients are trying to reduce the number of their key relationship firms globally. For example, Shell recently reduced its global panel of 60 firms to a preferred core of eight. Firms without the practice and geographic breadth and depth to serve these clients' needs risk missing the cut on a panel review and being excluded from that client's future work.

In a period of, at best, subdued revenue and profit growth, firms are concerned that they do not have the money or indeed the time to grow organically the range of services and geographic coverage demanded by certain clients. In these circumstances a merger with a strong firm with complementary practices potentially provides a quicker and cheaper way of achieving the necessary coverage.

Based on a firm's clients' and target clients' current and future needs a firm can start to consider the attributes they are looking for in a merger partner. These will include practice mix, client mix (and the absence of show stopper conflicts), geographic coverage, culture (a crucial issue often only superficially considered), financial compatibility and partnership and management ethos. No potential merger candidate will tick all the boxes so the attributes need to be prioritised and weighted. Armed with these criteria a thorough market review can be prepared so that all likely merger candidates can be considered and prioritised. Inevitably, there will be a balance between the desirability of a merger partner and the achievability of a merger with them. If this process is conducted rigorously there will rarely be more than a handful of potential merger candidates.

Once potential merger candidates have been identified it is necessary to consider not just why you want to merge with them but why they should want to merge with you. This has to be articulated clearly and in compelling terms if you are to have any hope of engaging in constructive discussions. With many, often inconclusive, discussions being carried on, you need to capture the attention of the most attractive targets. They will have plenty of suitors. "How about it love?" is hardly compelling in any circumstances.

In the initial excitement of courtship it is easy to forget issues of internal and external communication; who should be told, what should they be told and when. Given the intrusiveness of the legal press, internal and external announcements need to be ready in advance for all eventualities. Unfortunately some leaks may occur. These are rarely an accident. One party may be trying to force the other's hand, an individual partner opposed to the deal may think that an early leak will kill it or following aborted discussions a leak may be used to try to destabilise a firm so that laterals or teams can be acquired. Cynical perhaps but a reality. Once discussions become public it is rarely possible to maintain sufficient positive momentum for more than four to six months. If a deal is not approved within that time frame it rarely happens.

Inevitably, this article ignores the negotiations and issues that arise and how a deal could be structured. There are no off the shelf answers to these issues, they need to be tailored to the key concerns and opportunities identified in the initial discussions. At various stages the firm needs to stand back and think "should we continue". Despite the effort put in, it is often far better to walk away from a deal than to do the wrong deal.

Many of these points are just as applicable to domestic mergers. We have seen relatively little domestic merger activity of any size over the past two years. In part this has been because firms have been focusing on managing the effects of the downturn. As the economy continues its tentative recovery, firms will look for domestic mergers for a variety of reasons, some good, some bad.

Inevitably some mergers will work and others will not. If you don't go into discussions knowing what you want to achieve your chances of achieving anything are low. But even if one closes a merger transaction and is tempted to relax it is important to remember that by the time of closing only about 25% of the work required to make the merger a success will have been completed.