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An independent mind

**GLOBAL LAW FIRMS:
A STRATEGY LOOKING FOR A MARKET?**

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1. Introduction

The expression 'globalisation' is used in much the same way as 'strategy', 'competitive advantage' and 'business model' – that is, indiscriminately and on the assumption that everyone understands it to mean the same thing. In truth, for all of them, there are different and sometimes competing notions. To encourage debate and clarity about the dynamics and implications of globalisation for legal practice, this paper¹ sets out to provide some terminology and a basis for that debate.

In the space of a generation, global ascendancy has shifted from superiority of weapons to dominance through economic power – the global arms race has essentially been superseded by a global finance and skills race. In legal practice, the emergence of 'global' law firms through wider geographical presence and the assimilation of multi-jurisdictional skills has been encouraged by (among other things) European integration, corporate consolidations through merger and acquisitions, and the convergence of international capital markets.

The largest law firms in the world have accumulated multinational skills and offices; but there seems to be a distinct difference in the strategic approaches of the leading (mainly London) law firms following a global path and other leading (mainly New York) firms adopting a more limited or cautious approach. Is the concept of the 'global law firm', properly understood, fundamentally an English response to an opportunity not seen on the other side of the Atlantic; or is it ahead of its time, needing to encourage the emergence of one or more markets to buy its mix of services – a strategy looking for a market?

¹ The paper was prepared for the Georgetown University symposium on 'The Future of the Global Law Firm' in Washington DC, 17-18 April 2008. It takes as its foundations ideas already published in Mayson (2007) *Law Firm Strategy: Competitive Advantage and Valuation* (Oxford, Oxford University Press), pages 106-113.

2. The meaning and nature of 'globalisation'

There are many approaches to defining and describing globalisation. In essence, it seems to result from the co-emergence of, on the one hand, the centrifugal forces of internationalisation encouraging organisations to operate beyond their 'home' and, on the other, the centripetal forces of integration requiring standardisation and consistency. Globalisation is not therefore a single, seamless, uncontentious process: rather, it is a series of processes that sometimes give rise to inherent tension between a need for harmonisation and a need to recognise local requirements and expectations.

The processes of globalisation manifest themselves in many different arenas, including:

- *economics and finance*: for example, cross-border finance, the emergence of consolidated banks (such as HSBC), and the convergence of stock markets;
- *politics*: for example, free trade areas (such as the original Common Market, NAFTA, ASEAN) and defence alliances (such as NATO);
- *commerce*: for example, products and services marketed and sold beyond original 'home' borders (such as Coca-Cola and Ford cars);
- *technology*: for example, information technology and telecommunications and their convergence (with dominance achieved by, say, Microsoft), and outsourcing;
- *culture*: for example, fashion (such as Burberry, Nike and Gucci), literary and artistic works (such as the 'Harry Potter' books and films, and Michael Jackson's album *Thriller*), and even organisational structures and managerial practice.

It also seems possible to describe different forms of globalisation and thus distinguish the following:

- (a) *extension*: this results in homogenisation of a brand or product, with a single identity promoted and few differences or concessions to local influences (such as McDonald's, Coca-Cola and films);
- (b) *absorption*: a strong brand or organisation consolidates or integrates complementing (or even competing) activities, so that local differences are accommodated and identities subsumed (such as the European Union, and Ford's original acquisitions of Volvo and Jaguar); and
- (c) *interconnectedness*: this encourages the convergence of parallel organisations or systems, with independent identities preserved and local differences respected and maintained (such as NATO, and the 'Star Alliance' network of airlines).

We should expect that these different forms of globalisation – all of which nevertheless result in some recognised single global 'brand' – should require diverse approaches to structure and transactions. In this way, globalisation drives increased complexity of business for clients. Their organisational structures and business ventures are more complex, and so are their needs for supporting legal services. They assume greater

risks because of their cross-border sales and operations, and should therefore be expected to engage in more sophisticated deal-making and dispute resolution.

These complexities will also lead to different assessments of jurisdictional risk – particularly in countries where clients have no in-house legal presence. They might be less cautious in jurisdictions where they have a presence and in-house lawyers, or where the legal systems are more established and familiar. They might be more cautious in unfamiliar or emerging jurisdictions (particularly, perhaps, where countries have little experience of ‘capitalist’ approaches, such as those from the former communist bloc). The speed and cost of the legal process in creating agreements or resolving disputes locally might well induce clients to undertake ‘forum shopping’ as they look for more sympathetic jurisdictions to provide the governing law of their transactions or for the resolution of any disputes.

3. Factors in developing a foreign presence

Most businesses globalise for either offensive or defensive reasons. Historically, offensive drivers for law firms have included exporting expertise (supply-driven, in the belief that opening an office abroad to offer, say, a home law² capability locally will be successful), or responding to established client relationships, either at home or abroad (demand-driven). Today, however, a third reason might well be to seek global scale or to build a global brand. To be a global player in any industry or market segment seems to imply a need to be established around the world. The costs of doing so mean that the option is only open to a handful of existing major players who can afford the investment (or are sufficiently compatible and attractive for a choice merger to make sense). Even then, firms without an established reputation in their home market for the client base, work or services they want to tackle abroad will find it difficult without that ‘brand’ reputation to be accepted in a foreign market. This is another reason why long-established top-flight large firms like Linklaters, Clifford Chance, Freshfields Bruckhaus Deringer, Allen & Overy, Cleary Gottlieb, Shearman & Sterling, and White & Case, are better able to enter new markets.

Defensive reasons for globalising include flat domestic fee income or a saturated domestic market. Many of the larger law firms were cushioned from the effects of the recession in the early 1990s by the contributions of their international practices; however, the convergence of international capital markets has meant that such international diversification might not now offer the same degree of protection. Another defensive reason is as a competitive response to other firms. However, if this is simply a mimetic gesture rather than a properly thought-out, strategically supported move, it is likely to be an expensive failure (and we have seen many of those in recent years).

Deciding whether, and when, to establish abroad is obviously a complex process. However, the complexity can arguably be reduced to four fundamental issues (without going into any of the considerable detail that admittedly lies within any one of them):

² Given that law firms typically begin their foreign strategies from an established base, ‘home law’ is taken to mean the law of that base, without intending to imply any supremacy or imperialism.

- (a) ***The nature of the firm's competitive advantage:*** this might be country-specific (the specialisation of English law, for example, which is the approach of Slaughter and May), or firm-specific (the value of a 'brand name', such as Linklaters, Clifford Chance, or Baker & McKenzie).
- (b) ***The need to overcome barriers:*** in the context of professional practice, these typically include complying with rights of establishment to practise locally (which, even if allowed, may be restricted to home law), but also extend to difficulties caused by different time zones, and by distance and travel.
- (c) ***The realities of practising and marketing in an unfamiliar marketplace:*** these include not only local market and economic conditions, and the regulatory and tax policies of the government, but extend to the availability of local resources and capabilities (the skills base and ease of recruitment, culture, infrastructure, transport and telecommunications). The effects of exchange rates and the ability to invest locally and to remit profits should not be underestimated, either. These issues, and the not insignificant challenge of persuading partners and others to move abroad to establish an office, often lead firms to form local relationships or alliances rather than open their own offices.
- (d) ***The ability to manage and support a foreign venture:*** at an obvious level, this includes the ability to finance and staff it, and to provide technological and other support. At the less obvious level (except to those who have already been down this road), it refers to managerial expertise – both at home and abroad – and continuing commitment from the partnership. There is great truth in the saying, 'Out of sight, out of mind'. If the work of a foreign office or affiliate does not affect on a daily basis the practices of partners in the home office, they are likely to forget that it exists. They will also assess its performance and contribution as though it had the same history, longevity, client base, work and level of support as the home office, as well as complain about the cost! The support required is therefore financial, material, managerial, and attitudinal.

4. A fundamental distinction

There is a distinction that I believe is critical to understanding the globalisation of legal practice, and to being successful in implementation. It is a distinction that is not easy to label but, for the sake of exposition, I will call it the difference between 'global finance' and 'cross-border trade'.

4.1 Global finance

Broadly speaking, global finance includes finance, banking, capital markets, privatisation and project finance work. The nature of the work then suggests that certain locations are particularly important. The mature banking and capital markets

are driven largely by investment banks, and are centred in London, New York, Frankfurt, and South East Asia (it is still not clear where this part of the financial world will coalesce, but Hong Kong and Shanghai must be strong contenders). The major players in these mature markets therefore tend to be Anglo-Saxon in origin, and the competition between law firms at this global level is between a very few London firms and a very few New York firms. This is one reason why London firms opening in New York, and New York firms opening in London (and poaching each others' lawyers in the process), and the possibility of transatlantic mergers, are such fascinating and sensitive issues. The dominant role of the investment banks in international capital markets suggests that those law firms which have close relationships with them might therefore have a competitive edge.

In the emerging rather than mature global finance markets, the competition is more widely spread among more (but still relatively few) large law firms originating mainly in Great Britain, North America, continental Western Europe, and Australia.

Law firms which are focusing their global ambitions on these areas (whether mature, emerging, or both) should clearly therefore be following a global finance strategy. Unfortunately, some firms (by merely copying others rather than understanding this fundamental distinction and thinking strategically) have established in some of these locations without having a sufficiently credible global finance practice to justify being there.

Many global finance transactions follow a pattern and structure that is independent of the law in which they happen to be written. In this sense, the client has a choice about which governing law to apply to the transaction (usually English law or New York law): the transaction will be fundamentally the same, the choice of law being essentially between two or more commodities that will deliver the same business result. In this sense, finance work underpinned by English or New York law is truly transnational, and might reasonably be described as 'global law'.

It would be misleading to suggest that global finance provides the only source of 'transnational law' that is not (or is at least less significantly) jurisdictionally differentiated. There are other areas of practice where increasingly that is also true: examples might include anti-trust, international commercial arbitration, and human rights. However, the point in the present context is that global finance practice driven principally by English or New York law will (or should) predominate in the selection of an appropriate foreign strategy in ways in which those other types of transnational law will not. This homogenisation of the governing law in global finance transactions represents globalisation by extension (cf. paragraph 2 above).

4.2 Cross-border trade

Cross-border trade incorporates a larger portfolio of work (some of which might be described as corporate finance), and includes mergers and acquisitions, joint ventures, competition/anti-trust, transport, shipping and insurance, intellectual property, telecommunications, information technology, entertainment, energy and environment, and international commercial arbitration. Because trade opportunities are many and varied, there are generally no real 'markets' for business in these areas that suggest that

firms should establish in particular locations. Shipping is an exception (some of the first firms to establish offices away from the home base were shipping specialists opening in Hong Kong, Piraeus, and Singapore, for example). Competition work centred on the European Commission might be another. But generally speaking, firms following a cross-border trade strategy will establish wherever they see a sufficient client need or market opportunity to justify the investment – a ‘dots on the map’ approach. Baker & McKenzie has been very successful in creating a cross-border trade practice. Having started this process before the advent of international capital markets and therefore of global finance law, they have secured an advantage that it is difficult for many firms to replicate.

There is one further distinction between global finance and cross-border trade work. Unlike global finance, cross-border trade work is nationally differentiated in legal terms because it tends to be more closely tied to clients and transactions that originate in distinct jurisdictions. The ability to practise in those national laws is still often protected by local legal professions. These restrictions often lead law firms to internationalise their practices through the forms of absorption and interconnectedness described in paragraph 2.

The choice of governing law is therefore a fundamental choice, and the exercise of that choice will lead to different legal results and consequences. Global finance work, as a global legal product, is not so nationally differentiated in legal terms and is subject to less or no national protection (in fact, the work could equally be handled by other professions in jurisdictions where no rights are reserved to lawyers).

Of course, some firms will simultaneously be following both global finance and cross-border trade strategies. So, for example, although Linklaters and Clifford Chance are two of the leading global finance firms in the world, they are also established for cross-border trade practice as well.

Thus, although the increasing removal of protection for local legal professions in principle creates fewer barriers to entry for foreign competitors, there is in fact increasing concentration of legal services at the global level because of the expertise, credibility and investment required.

5. Evolution and structure of global practice

A strategy founded on foreign geography will not be open to many firms. Even for those for which globalisation presents opportunities, there is not a single strategic choice to be made. Experience in global legal practice now makes it possible to offer some conclusions about its evolution and structure.

The lack of a common or accepted meaning attaching to words like ‘global’, ‘international’, or ‘multinational’ makes analysis more difficult. Nevertheless, I propose to use each of these terms in a certain way to suggest three different strategies in the evolution of global legal practice. I do not offer these categories as absolutes, but merely as my own descriptions of different phases. Others, using the same terminology, might therefore have very different things in mind when they do so.

5.1 International law firm

An international law firm practises only home law. So, for example, if an English firm pursuing an international law firm option has foreign offices, those offices will practise only English law. Where an international law firm has relationships with foreign lawyers, they tend to be a 'best friends' approach (as exemplified by Slaughter and May's approach to international practice), allowing each to call on the other where client need requires it. Indeed, these best friend relationships might be elevated into a cooperative affiliation, allowing the provision of home law through the firm's own local office and of local law through the affiliated firm. In many cases, the degree of investment in, and cooperation resulting from, these best friends relationships is every bit as (if not more!) integrated as the 'own office' structures of some firms. Alternatively, a firm might belong to a network of law firms (such as Lex Mundi).

This strategy reflects an approach to globalisation based on interconnectedness (cf. paragraph 2).

5.2 Multinational law firm

A multinational firm practises both home and local law. The experience of firms that have established (usually small) overseas offices practising only home law shows that it is very difficult to develop a continuity of client relationships when, as normally happens, resident partners and other staff are rotated from the home office. It is also very difficult to run these offices profitably. Where home law can be combined with local law, however, the credibility and economics of the office can usually be improved.

There will, of course, be establishment issues surrounding the right to practise local law and to recruit local lawyers, and there might be some problems with other local law firms that resent the 'foreign' competition in their own jurisdiction. Again, for this reason, some multinational firms might also establish affiliations with local firms in those jurisdictions where the competitive issues are acute, or the costs or risks of establishment are otherwise too high. However, experience of affiliations suggests that relationships need to be very close and sustained for them to be successful. Many have withered on the vine for lack of a strategic rationale or – more usually – lack of commitment from partners in the constituent firms. Few participants realised that successful affiliations require almost as much support and investment of money, time and effort as successful mergers. Some of them have developed into strategic alliances, which have been much closer and more integrated relationships than affiliations. For these reasons, the multinational law firm strategy is predominantly founded on globalisation by absorption (cf. paragraph 2).

Because any firm's resources will be limited, having its own offices in the major jurisdictions where it wishes to compete locally can be strategically complemented by affiliations in other jurisdictions where access for the firm is more important than its physical presence. That said, the likelihood is that, for firms that wish to compete in the global finance markets, their own offices in London, New York, Frankfurt and South East Asia are certainly essential for credibility with banks and investors. Own offices might well also be highly desirable in the emerging markets (in such places as Warsaw, Moscow, and Prague). Affiliations for this type of work are thus less likely, other than as

a short-term entry into a market. Even so, the distinction between the global finance and cross-border trade practices remains very important. Arguably, for global finance work, credibility is more important than critical mass, whereas for cross-border trade work capability demonstrated by critical mass will be crucial. If so, a local merger with an established firm might be the most effective route to critical mass (hence the necessary interest of the larger London firms in merger with the best New York firms). For global finance work (even in New York), cherry-picking established teams might be a valid route to credibility with the US investment banks without the need for a full merger.

Many firms following a multinational strategy end up with what might best be described as a 'multi-local' network of offices. Each office is expected to generate its own work (much of which is necessarily local), might receive few referrals of work from the firm's main or home office, and is treated as a separate profit centre. The benefits of greater integration, work and client referral, and the development of truly cross-border projects involving a number of the firm's offices, are not fully developed or exploited and opportunities are lost. This result can be avoided by having very clear strategic (cross-border) reasons for opening a new office, and being sure that all partners and the firm's management take great pains to keep every office integrated within the overall fabric of the firm.

Often multinational firms are still bound to their origins, and therefore impose 'home' management on their foreign offices and alliance partners. For all the globalisation that has taken place, law is still seen by many to be tied to a jurisdictional and cultural context. So although multinational law firms can often be distinguished from international firms by their admission of foreign lawyers to partnership, some still have a mindset that is primarily linked to jurisdictional and cultural supremacy (or 'imperialism') that in my view distinguishes them from truly global firms.

5.3 Global law firm

In some ways, the practice of a global law firm might differ little in substance from that of a multinational firm. The difference lies in the approach. A global law firm simply thinks and acts globally. It does not have 'home', 'foreign', or 'overseas' offices, or 'headquarters'. It does not think 'national', or 'English' (or 'American', etc). It practises in offices around the world, recognising that, in any one of them, that office is home and somewhere else is foreign. With no 'home' office, there is no home law: all law is either local law or global law. Partners come from many different jurisdictions and so inevitably the firm is a multinational partnership.

I believe that a truly global law firm will practise in the mature global finance markets – that is, in those financial markets centred on London and New York where legal services are no longer nationally differentiated. Of course, global firms will probably also practise in emerging global finance markets, and in cross-border commercial law as well – indeed, the ability to coordinate cross-border legal advice might be a further service provided by these firms independently of substantive advice provided by others.

Most important of all, however, the global legal practice will have global management. There must be no imperialism. I do not pretend that national differences will no longer

exist; nor do I simply wish them away. Indeed, it is the resilience of these national differences, combined with the need for local offices to respond quickly and effectively to local circumstances, which suggest a need for decentralised management. This should reduce the temptation to imperialism and stifling standardisation. The flexible coordination of global services and activities suggests that global management will set a context or framework, rather than exercising direct management and control. This means setting clear business objectives, and developing appropriate and sensitive managerial skills. Avoiding standardisation does not mean not setting global standards for client commitment and service quality.

A global legal practice will also work hard to establish common or shared values. This will take time and effort, and will be achieved principally through socialisation and integration of practice areas. Developing and sharing knowledge together will be vital, and can be achieved through common training and development, meetings, technology and know-how systems, and moving people around practice areas and offices. Without these things, a global brand and reputation cannot emerge, despite common approaches to marketing and office décor.

On the view expressed here, the principal differences between the multinational and global strategies are that the latter has a very strong presence and standing in global finance, and has also achieved integration without any residual national domination. The global law firm strategy is globalisation by extension (cf. paragraph 2).

I believe that very few firms can be truly global. The expectations attaching to global legal practice, and the strength of the reputation and credibility required to meet them, are considerable. The depth of pockets needed to fund them, and the range of managerial talent necessary to run them effectively, are scarce resources – and an even rarer combination. Indeed, I would go so far as to say that we do not yet have any firms that fully qualify under my definition of global legal practice: at best we have *globalising* firms. Further, the requirement to provide global finance advice in the mature markets will imply a significant capability and market position in English or New York law, and thus suggests that the truly global firms will have their origins in London or New York.

On this analysis, the global firms will also have to manage the strategic and operational distinctions in their practices and offices. Finance and cross-border trade work have underlying differences that mean that they will not (and should not) operate identically; cross-border and local work will have different client expectations and economics attached to them that also mean that they will not (and should not) operate identically or contribute equally to the business. These differences need to be carefully and sensitively managed. There is a potential for serious tensions driven by legitimate and inevitable variation in culture, operations, or contribution to profit. These ‘normative’ issues may make or break successful implementation.

On my analysis, a globalising law firm will intend to meet a particular set of legal needs for a discerning and powerful group of buyers (investment banks), usually combined with a potentially complex mix of transnational, home and local services for multinational and local companies, other institutions and governments. In general, large US law firms currently seem less convinced than the largest English firms about the need for and structure of the ‘global law firm’ to meet these needs. Are the perceptions of ‘globalisation’ and ‘globalization’ different? Have the (principally)

English globalising law firms created a solution for which the intended global client base does not yet recognise a sufficient need? Have those firms created a competitive advantage; or have their US rivals perceptively contained their geographic footprint and cost base in the expectation that global ambitions can be realised in other ways?

6. Future global dynamics

The drivers for the future development of global legal practice will continue to be many and varied. They will include:

- the nature of globalisation in the relevant client markets – that is, extension, absorption or interconnectedness – and the corresponding effect on clients' needs for legal services;
- the influence of investment banks, multinational corporations and governments;
- the scale and geographic reach that the largest law firms are able to achieve and maintain;
- clients' elective or enforced choice of law (global, home or local);
- costs and returns.

Success will depend on the ability of law firms to create value for their clients in a global marketplace. A client's conception of value is inevitably subjective, but the following would seem to represent significant opportunities to law firms:

- (a) help in establishing, extending and protecting the client's global brand and corporate values;
- (b) help in managing the reputation and relationships that the client has with customers, suppliers, staff, regulators, the local community, etc, as well as the costs of doing business locally;
- (c) more formal and informed risk assessment and project management for the client in the context of geography and market sector, including anticipating commercial and legal challenges of which the client might not be aware; and
- (d) help in managing communication and in reducing the uncertainty inherent in the client's operations and activities in other countries.

Of course, delivering value to the client will not result in sustainable competitive advantage or an effective business model if benefit does not also accrue to the law firm³. The key dynamics for the firm would therefore appear to lie in understanding the balance and interplay between:

- (a) finance-driven and other transactional work;

³ I have explored competitive advantage in Mayson (2007) *Law Firm Strategy: Competitive Advantage and Valuation* (Oxford, Oxford University Press), pages 119-136; the nature of business models is considered in Mayson (2010) 'Business Models in Legal Services: the meaning of 'business model'' .

- (b) non-contentious and contentious work (including the shift from litigation to dispute avoidance and alternative forms of resolution);
- (c) global, home and local work (including the differences of common law and civil code approaches to deal-making and dispute resolution);
- (d) established and emerging jurisdictions (including the speed and costs of legal services, and the predictability and reliability of outcomes); and
- (e) the degree of harmonisation and transparency of local markets and legal systems (either creating or reducing opportunities for clients' forum shopping or the selection of 'favourable' or 'sympathetic' jurisdictions); this also includes the tendency of jurisdictions to 'import' solutions from elsewhere (such as US-style chapter 11 approaches to insolvency, or class actions; or the English and Australian liberalisation allowing external ownership and investment into law firms).

Ultimately, as for any business operating in a global environment, a law firm's success will depend on its ability both to play to its global reach and to realise its local strengths. It will need to create and maintain global processes (for instance, in relation to risk, quality and project management); harness its capacity for the coordination and consistency of its lawyers and services across jurisdictions, practice areas, market sectors and offices; and demonstrate its ability to use its accumulated and distributed experience to pre-empt or avoid local problems for the client. At the local level, it must be able to mobilise its local qualifications, knowledge, experience and contacts to reflect custom, practice, and preferences.

As these dynamics of globalisation and competition play out, there are potentially significant challenges for law firms in maintaining strategic, cultural and professional integrity. Effective, informed and sophisticated management will be required.

7. Conclusion

There is not a single global market for legal services, and we should not expect to see a single approach to the globalisation of legal practice. Following perceived competitors around the world, or imitating their actions, might be a fatal misjudgement. Firms are constrained in what they can achieve in the globalising marketplace – just as they are constrained in their domestic marketplace. They have to recognise the limits placed on them by their practice, their size, their stage of evolution, their resources, their partners' attitudes and commitment, and by their ability to manage the organisations they create. The global marketplace is undoubtedly sizeable, but only a very few firms can be successful in establishing a truly global legal practice.

The global skills race in legal practice has reached a fascinating testing point as economies stall around the world. Have the globalising law firms over-reached themselves; or will their geographic diversification cushion them from the worst effects of global recessionary pressures? Alternatively, will the relative under-diversification globally of some of their major competitors reveal the local dependence that exposes

those firms to the full blast of the economically chilling winds; or will their narrower concentration prove to be their salvation? For both approaches, the stakes are high.