

International Law Practice Management

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I. Introduction

This article reviews law practice management developments during 2014, from North and South America (Canada, the United States, Brazil and several other Latin American countries) to China, Southeast Asia, Africa, and the United Kingdom. The overarching theme is one of challenge to traditional concepts of law firm management, whether it involves the prospect of non-lawyer ownership (already in effect in the United Kingdom and possibly beginning in Canada); the impact on the law business of regional trade negotiations and of new trading communities (U.S. and Southeast Asia); the tidal wave of globalization affecting emerging regions of the world (China, Latin America, Southeast Asia, and Africa); or the work-in-progress of bringing traditional law practices into the modern age of commercial enterprises (Latin America). The consensus seems to be that the transformation of law practices around the world is accelerating into perhaps, as Shakespeare would have it, “a sea-change, into something rich and strange.”¹

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1. William Shakespeare, *The Tempest*, Act 1, Scene 2.

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II. The United States

International trade agreements have the potential to affect law firm structures and practice and thus law practice management issues.² During 2014, the Office of the U.S. Trade Representative (USTR) was handling four different sets of trade negotiations that included legal services within their ambit. These were: (1) the ongoing World Trade Organization negotiations about the General Agreement on Trade in Services (GATS); (2) the Trade in Services Agreement (TISA) negotiations, which involve a subset of WTO Members interested in making faster progress with respect to services; (3) the Trans-Pacific Partnership (TPP) negotiations among twelve countries that are located on or near the Pacific Ocean; and (4) the Transatlantic Trade and Investment Partnership (T-TIP) negotiations between the U.S. and the European Union.³

A number of U.S. lawyers and bar associations have been paying close attention to the T-TIP negotiations. If successful, these will create the largest bilateral trade agreement in the world. The USTR has stated that T-TIP “aims to bolster that already strong relationship in a way that will help boost economic growth and add to the more than 13 million American and EU jobs already supported by transatlantic trade and investment.”⁴ It has also stated that T-TIP will increase the \$458 billion in goods and private services the United States exported in 2012 to the EU, our largest export market.⁵ At the time of writing, there had been seven rounds of T-TIP negotiations.⁶

One of the reasons U.S. legal profession representatives have been paying particularly close attention to the T-TIP negotiations is the well-established relationship between the ABA and the Council of Bars and Law Societies of Europe (CCBE). The ABA and the CCBE met in August 2013 and in August 2014 to discuss the T-TIP negotiations. During this latter meeting, the CCBE transmitted to the ABA its T-TIP “requests.”⁷ These include that a lawyer with a title from any EU member state should be able to undertake certain specified activities in all U.S. states, without running the risk of the illegal practice

2. See generally Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875 (2010); Council for Trade in Services, *Note by the Secretariat: Legal Services, S/C/W/318* (June 14, 2010).

3. See Office of the U.S. Trade Representative, Free Trade Agreements, <http://www.ustr.gov/trade-agreements/free-trade-agreements> (linking to T-TIP and TPP); Office of the U.S. Trade Representative, WTO & Multilateral Affairs, <http://www.ustr.gov/trade-agreements/wto-multilateral-affairs>.

4. See Office of the U.S. Trade Representative, Transatlantic Trade and Investment Partnership (T-TIP), <http://www.ustr.gov/ttip>.

5. See Office of the U.S. Trade Representative, White House Fact Sheet: Transatlantic Trade and Investment Partnership (T-TIP), <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/june/wh-ttip>.

6. See Office of the U.S. Trade Representative, Opening Remarks by U.S. and EU Chief Negotiators for T-TIP Round Seven Press Conference (Oct. 3, 2014), <http://www.ustr.gov/about-us/press-office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference>.

7. In the context of trade negotiations, a country’s “offer” indicates the changes that it is prepared to make, and its “requests” state the changes that a country would like its trading partner to implement. Although governments are the only entities that have the official power to issue requests or offers, the CCBE developed a set of requests in order to stimulate discussion among the U.S. and EU legal professions and their regulators.

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of law.⁸ The specified activities include both temporary transactional practice, sometimes referred to as FIFO (fly in-fly out), and practicing as a foreign legal consultant (FLC), both of which would include the right to provide services in home [foreign] law, EU law, international law, and third country law. The requests also include serving in international arbitration or mediation as counsel or as a neutral, as well as “association rights,” which includes the right of a European lawyer to partner with, employ, or be employed by a U.S. lawyer.⁹

ABA policy is consistent with all of the CCBE’s requests, with the exception of lawyers serving as neutrals.¹⁰ (The ABA does not have any policy on this latter point since, in the U.S., non-lawyers may serve as neutrals in arbitration and mediation). Many U.S. states, however, do not have rules that are consistent with these ABA policies or the CCBE’s requests.¹¹ These state rules are likely to receive increased attention not only as a result of the CCBE’s requests and actions, but because of the recently-issued IBA Global Regulation report, which contains information about all U.S. states with respect to the practice rights of foreign lawyers and law firms. The IBA Report has been circulated to the trade negotiators for a number of governments¹² and has been the subject of discussions among state regulators.¹³ Because the T-TIP trade negotiations create pressure to change the U.S. lawyer regulation rules, they are relevant to those interested in law practice management.

III. Canada

Growth in the Canadian legal market has flattened out, as more companies insource legal work or direct it to lower-cost providers. As consumer clients start reducing or putting off legal expenditures in a tighter economy, work previously being directed to law firms is no longer being directed there at the same rate. These are clear signs that the conventional assumptions about law practice in Canada are fading away. Here are three of the most significant developments in the Canadian legal market in 2014.

8. Council of Bars and Law Societies of Europe’s, CCBE request to the United States in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations, http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/European_Legal_Profe1_1415787235.pdf.

9. *Id.* This sentence paraphrases the CCBE’s requests. For a fuller discussion of these requests, see Laurel S. Terry, *Admitting Foreign-Trained Lawyers in States Other than New York: Why It Matters*, 83(4) THE BAR EXAMINER 38 (December 2014) [hereinafter *Admitting Foreign Lawyers*].

10. See Terry, *supra* note 9; see also ABA Task Force on International Trade in Legal Services, *available at* http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/internationaltradetf/policy.html.

11. For information on the state adoption of the ABA’s policies on foreign lawyer practice rights, see Laurel S. Terry, *Summary of State Foreign Lawyer Practice Rules*, *available at*: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_8_9_status_chart.authcheckdam.pdf and the underlying data which this chart and the map summarize.

12. See International Bar Association, IBA Global Regulation and Trade in Legal Services Report 2014, *available at*: <http://www.ibanet.org/Document/Default.aspx?DocumentUId=1D3D3E81-472A-40E5-9D9D-68EB5F71A702>; Terry and Silver, *supra* note 7, at 2 (discussing circulation of this report).

13. See Terry, *supra* note 9.

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A. THE FALL OF HEENAN BLAIKIE

The Canadian legal profession was badly rattled when one of the country's biggest and most highly respected firms unraveled and collapsed early in 2014 in what seemed like a matter of weeks, setting off alarms in law firms across the country.¹⁴ From its origins in Montreal in 1973 as a premier labor, employment and litigation firm, Heenan Blaikie had grown into a nearly 2,000-person behemoth (600 lawyers, 1,300 staff) in ten offices, including a Paris location and a representative presence in Singapore.¹⁵

Post-mortems on the firm in the business and legal press identified several factors contributing to Heenan Blaikie's downfall, none of which would have done the job alone but all of which, in combination, proved fatal. Canadian Lawyer magazine published the definitive treatment of the collapse in its July 2014 issue,¹⁶ identifying no fewer than nine elements that damaged the firm in one way or another:

- unbridled growth;
- poor financial controls;
- compensation jealousies;
- succession issues;
- firm infighting and rivalries;
- weak partnership governance structure;
- lack of leadership and oversight;
- opportunistic competitors; and
- a poor economy.¹⁷

That list helps explain much of the subsequent concern throughout the Canadian profession, because many partners recognized at least some of those elements as being present within their own firms. In contrast to high-profile law firm flameouts south of the border such as Dewey & LeBoeuf, the culprits in Heenan's demise were unsettlingly mundane. Many firms struggle with compensation and leadership, or with governance and competitiveness; this forced partners in other firms to ask—could they be next in line for a fall?

The short answer is no. At the time of this writing, no large or midsize Canadian law firm showed any signs of structural weakness or potential collapse. The speed and relative ease with which many ex-Heenan partners were absorbed into other large firms suggests both that the industry remains healthy and that the overall market remains robust.¹⁸ But Heenan's fall served as a wake-up call to many Canadian lawyers that law firms are more fragile than they often appear, and that undiagnosed or untreated problems, even mundane ones, can metastasize quickly. That might help explain the speed with which other potential changes to the Canadian legal profession advanced in 2014.

14. Middlemiss, Jim, 2014. *Frankenstorm brings down Heenan Blaikie*. CANADIAN LAWYER, July 7, 2014 available at <http://www.canadianlawyermag.com/5194/Frankenstorm-brings-down-Heenan-Blaikie.html>.

15. *Id.*

16. Middlemiss, Jim, 2014. *Frankenstorm brings down Heenan Blaikie*. CANADIAN LAWYER, July 7, 2014 available at: <http://www.canadianlawyermag.com/5194/Frankenstorm-brings-down-Heenan-Blaikie.html>.

17. *Id.*

18. *Canada: Legal Market Overview*, THE LEGAL 500, <http://www.canadianlawyermag.com/5194/Frankenstorm-brings-down-Heenan-Blaikie.html> (last visited Mar. 25, 2015).

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B. THE CBA'S FUTURES REPORT

During its annual meeting in August 2014, the Canadian Bar Association dropped another bombshell on the country's legal profession. The Report of its Legal Futures Initiative¹⁹ contained twenty-two recommendations, many of them relatively uncontroversial (e.g., new approaches to law school admission and curriculum, new compliance and reporting standards for diversity). But the first recommendation garnered almost all the attention that "lawyers should be allowed to practice in business structures that permit fee-sharing, multidisciplinary practice, and ownership, management, and investment by persons other than lawyers or other regulated legal professionals."²⁰

This recommendation, along with a related recommendation that referral fees and fee-sharing with non-lawyers be permitted, raised the possibility of a fundamental reordering of how lawyers could conduct their business in Canada. Drawing heavily on the provisions of the Legal Services Act 2007 in England and Wales, the CBA's Report constituted the first time that any lawyers' professional body in any country had suggested authorizing non-lawyer ownership of law firms (previous reforms in Australia and England and Wales had occurred at the instigation of government, and at the cost of lawyers' independent self-regulation).²¹ The Report also suggested a detailed ethical framework by which "Alternative Business Structures" (even the name was borrowed from England & Wales) should be regulated, similar to the British model.²²

The Report's release has already generated extensive commentary and debate within the Canadian legal profession. Proponents hail its recommendations as forward leaps for both innovation and access to justice, while skeptics question the benefits when balanced against the potential cost to lawyer independence and professionalism. It seems certain that the recent experiments with non-lawyer involvement in legal service delivery in Australia and England and Wales will be cited by both sides in the months leading up to the Report's consideration by the CBA's governing Council.

If Council approves the Report, or at least its most controversial recommendations, that approval still would have no binding effect on any lawyer regulatory body in the country. But it likely would have at least a persuasive effect because the Canadian Bar Association is the largest legal organization in Canada and its policies do influence the content and tone of the conversation on current issues.

C. POTENTIAL REGULATORY CHANGE

While the Canadian Bar Association was preparing and writing its Futures Report, a number of Canadian law societies (statutorily created but independently operated self-regulators of the legal profession) were pursuing remarkably similar paths.

In Ontario, Canada's largest province and home to a plurality of its lawyers and most large-firm headquarters, the Law Society of Upper Canada is awaiting the final report of its ABS Working Group, which is grappling with questions very similar to those that

19. *CBA Legal Futures Initiative*, CBA (Aug., 2014), available at <http://www.cbafutures.org/cba/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf>.

20. *Id.* at 35.

21. *Id.* at 33.

22. *Id.* at 41-42.

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occupied the CBA. In its interim report,²³ the Working Group floated the prospect of allowing full-scale non-lawyer ownership of law firms and non-lawyer participation in the legal market. A final report is expected sometime in 2015, which might fully endorse such structures and would presumably then go before the law society's benchers (elected governors, most of them lawyers) for approval. Given Ontario's size and influence within the Canadian legal profession, either its approval or rejection of Alternative Business Structures would resonate throughout the country, even more so than the CBA's Futures Report.

Elsewhere in Canada, other regulatory changes are under consideration. For example, the Barristers' Society of Nova Scotia has been making steady progress towards a regulatory overhaul that would replace the traditional system of reactive, rules-based, lawyer-focused regulation with the proactive, principles-based, entity-focused approach that has already been adopted in Australia and England & Wales.²⁴ Meanwhile, the three "Prairie provinces" of Alberta, Saskatchewan and Manitoba have been collaborating on a common approach to both these issues.

The regulation of Canadian legal services takes place at the provincial rather than the national level.²⁵ Given that the various provinces have different economic environments and different political interests, formal coordination of reform efforts is not feasible. Informally, however, each of the provincial law societies and the national CBA are taking note of what the other entities are doing, which seems likely to affect the actions and deliberations of each. While it is impossible to predict where change will first occur, when, and by what means, the odds are increasing daily that regulation of legal services in Canada will undergo change, and soon.

This year's developments have now set the stage for 2015 to be a year of decisive action in the Canadian legal market.

IV. South East Asia

The end of 2015 will see the formation of the Asian Economic Community, perhaps the most significant milestone in the close working relationship between ASEAN member states, and the most significant macroeconomic development in the region for a long time.²⁶ The creation of the AEC—effectively a single economic community which moves towards the free flow of investment, goods and labor between member states—hopefully presages a period of unprecedented cooperation and integration between countries in a

23. *Professional Regulation Committee*, THE LAW SOCIETY OF UPPER CANADA (Feb. 27, 2014) available at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_PRC%281%29.pdf.

24. See generally *Transforming Regulation and Governance in the Public Interest*, BARRISTER'S SOCIETY OF NOVA SCOTIA (Oct. 15, 2013), available at <http://nsbs.org/sites/default/files/cms/news/2013-10-30transformingregulation.pdf>.

25. See Laurel S. Terry, *Trends in Global and Canadian Lawyer Regulation*, 76 SASKATCHEWAN L. REV. 146, 157 (2013), available at http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2014/05/40th-aba-national-conference-on-professional-responsibility/session1_23_terry_canada_trends_lawyer_regulation.authcheckdam.pdf.

26. *ASEAN Economic Community 2015: A real opportunity that should not be over-hyped*, SPIRE, <http://www.spiresearch.com/spire-journal/yr2013/q4/asean-economic-community-2015-a-real-opportunity-that-should-not-be-over-hyped/> (last visited March 27, 2015).

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region experiencing exceptionally high levels of economic development, albeit from widely different bases.²⁷

The creation of the AEC provides unique opportunities for companies doing business in the ASEAN region. Although this is true of multinational companies investing in this dynamic region, it is even more the case with major regional investors who are busily preparing themselves to explore new opportunities in the member states—Thailand, Singapore, Indonesia, Philippines, Malaysia, Myanmar, Lao PDR, Cambodia, Vietnam, and Brunei.²⁸

Law firms providing advice and support to these companies are similarly bracing themselves for the opportunities provided by—and the impact of—the formation of AEC. A key challenge for Southeast Asia’s law firms is ensuring they have the capacity and geographic spread to properly service the ASEAN region effectively. With one or two notable exceptions, most leading regional firms have historically focused on and located only in Singapore or Kuala Lumpur; only in recent years have those firms sought a presence in the more challenging markets, first in Thailand and possibly Vietnam, and in the last year or two, in rapidly developing markets like Cambodia, Lao PDR, and, especially, Myanmar.²⁹

Acquiring that geographical coverage is a significant challenge. New offices are expensive, and planning such expansions takes time and significant management resources. This has led to many regional firms taking the easier approach of forming loose-knit alliances with domestic firms in those markets to get geographical coverage. This approach brings about all kinds of concomitant management challenges including ensuring that clients experience the same level of client relationship management from a local partner firm as it does from the “head office.” If an “affiliated” office in a less developed market fails to deliver, it can affect the entire client-firm relationship.

Another challenge with this approach is that despite the best will in the world, a loose collection of affiliate offices is just that—an affiliation. It is not a single firm, and as such there will be numerous integration issues to manage. A single integrated firm is in a better position to provide a consistently high level of service.

Southeast Asia is sometimes erroneously seen as a cohesive geographical and economic entity. It is an incredibly diverse region with numerous cultures, races, languages, political systems, levels of development, and approaches to doing business. The economic hub of Southeast Asia is, of course, the city-state of Singapore, a world financial center that regularly tops surveys relating to transparency and ease of doing business.³⁰ At the other end of the spectrum, it has countries like Myanmar and Cambodia where the challenges of doing business are greater, socialist states like Lao PDR and Vietnam, and challenging markets like the Philippines and Thailand, both beset by varying degrees of opacity and political turmoil. It also features the world’s largest Islamic democracy in Indonesia. Southeast Asia has great wealth and great poverty; democracies, single-party countries and

27. See generally *id.*

28. See generally *id.*

29. See *Law Firms Seeking ASEAN Opportunities*, LAW FUEL (Jan. 12, 2015) <http://www.lawfuel.com/law-firms-seeking-asean-opportunities>.

30. See generally *Here’s what makes Singapore the top financial hub in Southeast Asia*, SINGAPORE BUSINESS (Jul. 30, 2013), <http://sbr.com.sg/financial-services/news/heres-what-makes-singapore-top-financial-hub-in-southeast-asia#sthash.56QAFkKi.dpuf>.

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military juntas; regions that are technologically advanced and economies with minimal infrastructure.³¹

Understanding the significant differences across the region is critically important, and law firm managers must make “adaptability” one of their central themes. While a regional firm may have a clear strategy around talent management, for example—including recruiting, retaining and rewarding the best lawyers and support people the region has to offer—management must understand that a one size fits all approach will fail in Southeast Asia.³² Instead, each local office will need to adapt its approach to implementing the regional strategy. A recruitment strategy developed in a sophisticated market like Singapore cannot be replicated exactly in Cambodia or Laos. Similarly, the varying quality of professional education across the region means on-the-job development programs and training will need to be adapted to suit local circumstances.

The same considerations apply to information technology and communications. As the management team of a firm with offices in countries where power shortages and blackouts are common and where telecommunications infrastructure is rudimentary at best, the authors are keenly aware that IT support strategy needs to be flexible, innovative and adaptable.

Working with multinational clients across very different regulatory and legislative environments is also a significant challenge. A common complaint from clients—particularly those from outside the region who mistakenly see Southeast Asia as a single region—is the different levels of complexity of dealing with regulatory issues and authorities in different countries.³³ A client more accustomed to dealing with authorities in the New York, London, Sydney, or Tokyo might be pleasantly surprised that his or her experiences in Singapore are as easy—if not easier—than “back home”. It could be easy for that client to assume that experience will be replicated across the region on a cross-border transaction; managing the client’s expectations when dealing with officialdom in some of the more developing markets is an important part of client management approach. What might take hours or days to achieve in Singapore, could take weeks or even months to achieve in Indonesia, Lao PDR, or Myanmar.

The creation of the AEC and its critical role in furthering ASEAN integration is expected to boost the attractiveness of Southeast Asia as an investment destination even further, and will hopefully continue to drive economic growth for the region and lift millions out of poverty and into a new powerful middle class.³⁴ This is an exciting time for the region and it is understandable that almost every week sees the announcement of yet another international law firm opening offices in Singapore to take advantage of those new opportunities. These firms will need to learn how to do business and manage both

31. See generally *ASEAN Business Outlook Survey*, U.S. DEPT. OF COMM. (2014), available at <https://www.uschamber.com/sites/default/files/legacy/international/files/ASEAN%20Survey%202014.pdf>.

32. See generally David M. Trubek, *Developmental States and the Legal Order: Towards a New Political Economy of Development and Law* (Dec. 2008) at 9, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.law.wisc.edu%2Fglis%2Fdocuments%2Fnped_law_nov_2008_dave_trubek.doc&ei=fBQWVebEM4G_ggTmloGIBA&usg=AFQjCNHMaYsmzWZbUPlktkF8e-2SS9f3UA.

33. See generally *id.* at 8-9.

34. See generally *ASEAN Economic Community 2015: A real opportunity that should not be over-hyped*, SPIRE, <http://www.spiresearch.com/spire-journal/yr2013/q4/asean-economic-community-2015-a-real-opportunity-that-should-not-be-over-hyped/> (last visited March 27, 2015).

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their firm and their clients in this diverse region. The Southeast Asian firms already on the ground are likely better placed to prosper in this environment, but they too will only succeed if they understand how important it is to be adaptable in this part of the region, in virtually every aspect of management.

V. China

The China legal services market can be viewed through a matrix consisting of two sets of factors: the foreign law firms versus the rising domestic law firms, and the traditional inbound practice versus the emerging outbound practice. The foreign and domestic law firms are both competitors and cooperation partners in each of the inbound and outbound sectors.

Foreign law firms in China remain subject to certain regulatory limitations on their scope of services in respect of inbound practice (for example, foreign law firms are not licensed to practice Chinese law but can advise on international law and practice in the context of the Chinese legal environment).³⁵ However, in practice these restrictions are not rigidly enforced and the boundary between permitted and prohibited services has blurred, providing the foreign law firms with ample scope to flourish.

Market factors, including competition from rising Chinese firms, are in many respects a more important constraint on the prospects for the China offices of foreign law firms with respect to the traditional inbound practice. Chinese law firms present an increasingly competitive value proposition for foreign multi-national clients, with a growing number of dual-qualified bilingual Chinese lawyers, often with many years of practice experience in top foreign law firms, providing an improving quality of service at lower cost.

In addition, only local firms may interface directly with many Chinese regulatory agencies, and as a result local firms have advantages not only in terms of access but also in almost all cases in terms of depth of expertise.³⁶ In parallel, many major MNCs are setting up larger in-house legal teams in China, principally made up of local Chinese lawyers who are well connected to the local law firms.³⁷ These two trends will have the effect of further dis-intermediation, as foreign MNCs engage local counsel in China directly (or, in some cases, through representative or marketing offices some Chinese firms have opened in some of the major Western commercial and financial centers) for a wider range of domestic legal services, without the need to go through foreign law firms.³⁸

At the same time, the comparative advantages of local Chinese firms also drive opportunities for cooperation with foreign law firms, which have their own competitive advantages in cross-border projects involving substantial offshore elements. It is common for foreign and local firms to work side-by-side as co-counsel on more complex cross-border deals. As Chinese companies become more international in terms of their operations and activities, the offshore elements of China-based transactions will continue to expand, pro-

35. Mark A. Cohen, *International Law Firms in China: Market Access and International Risk*, 80 *FORDHAM L. REV.* 2569 (2012), available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4802&context=flr>.

36. *Id.* at 2570.

37. Caroline Lim, Keir Macintosh and Aya Iinuma, *Scales tip in favor of local legal talent in Asia*, *HEIDRICK & STRUGGLES* 1, 3, http://www.heidrick.com/-/media/Publications%20and%20Reports/HS_ScalesLocalLegalTalentAsia.pdf (last visited Mar. 28, 2015).

38. *See id.* at 3

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viding increasing scope for both the foreign law firms and their domestic law firm counterparts to work together.³⁹

As the market transitions from the traditional inbound practice to more outbound work for Chinese clients, the China offices of foreign law firms often find themselves in competition with the leading Chinese law firms for many of these outbound projects. For higher value outbound projects, the foreign firms have had a clear advantage, but to date there have been relatively few outbound investment projects with a value of more than US \$1 billion each year.⁴⁰

Foreign law firms will also have advantages over the domestic law firms for certain other categories of mid-cap outbound work based on preferences of the Chinese company, the nature of the transaction or industry, or the location of the project (sophisticated jurisdiction versus emerging market). Even for these projects, price competition among competing foreign firms can be intense as central level state-owned enterprises typically put all such projects out for tender to a short list of foreign firms, all of which will have more than sufficient expertise and experience. This leads many foreign firms to bid low to build up their outbound deal lists.

The competition between local firms and foreign firms for mid-cap outbound projects often comes down to relationships and client preferences. Some of the top local firms have a very high percentage of foreign clients so do not have deep trusted adviser relationships with a significant number of Chinese clients doing outbound projects, while other Chinese firms with good client resources do not have international capabilities.⁴¹ This latter group would include the top regional domestic firms. While these firms have very close ties to the leading regional companies in their home provinces, they typically are not viewed by their clients as credible when it comes to outbound projects, and so these clients will often look to the leading domestic firms or sometimes to a foreign firm.

The mid-cap outbound market for regional companies can be quite challenging. Many of these companies have substantial capital to invest abroad and have formulated some strategy to go abroad, but they typically are inexperienced with outbound projects, do not have a clear concept of how to identify targets or manage more sophisticated international deals, and can be extremely price sensitive and slow to pay professional fees. These same challenges also exist to one degree or another at the top end of the outbound market in China and apply to both foreign law firms and the domestic law firms.

Outbound work for Chinese clients now constitutes a key element of the business plan for the China offices of foreign law firms and the top Chinese law firms, even though the fees generated by the top domestic law firms from outbound work still represent only a small percentage of their total revenues. Many in the China legal market expect that the outbound market will mature in the next five to ten years, so many are playing a long game. Others will find it difficult to stay in the game without better near-term results.⁴²

39. See generally *id.* at 3

40. Xueyao Li and Sida Liu, *The Learning Process of Globalization: How Chinese Law Firms Survived the Financial Crisis*, 80 *FORDHAM L. REV.* 2847, 2854 (2012), Available at <http://ir.lawnet.fordham.edu/flr/vol80/iss6/17> ("Large Chinese law firms are also becoming increasingly ambitious in their global reach".)

41. See generally Caroline Lim, Keir Macintosh and Aya Iinuma, *Scales tip in favor of local legal talent in Asia*, *HEDRICK & STRUGGLES* 1, 3, http://www.heidrick.com/~media/Publications%20and%20Reports/HS_ScalesLocalLegalTalentAsia.pdf (last visited Mar. 28, 2015).

42. *The Learning Process of Globalization*, *supra* note 40, at 80.

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The China outbound market is understood to have been a key driver for the King & Wood Mallesons tie-up and the subsequent addition of SJ Berwin.⁴³ So far, no other top Chinese firm has followed suit, although there have been reports that some of them may be open to such a merger. Other top Chinese firms have pursued a more traditional independent law firm strategy, forging closer cooperation relationships with other leading independent law firms around the world to develop non-exclusive reciprocal referral relationships. In any event, Chinese firms can be expected to continue to find new and creative ways to enhance their presence in the international legal market.

VI. England and Wales

Besides the changes generally being wrought in most developed legal services markets by increased client cost sensitivity, technology and changes to supply and demand dynamics, the most important developments in law practice management in the United Kingdom in 2014 were probably those driven most by two very different issues:

- the ongoing impact of the Legal Services Act,⁴⁴ and responses of law firms to the recovery in the economy, and
- Increased focus of U.S. law firms on London.

Since 2012, the first full year that Alternative Business Structures (ABSs) were licensed by the Solicitors Regulation Authority (SRA), the number and diversity of businesses selling legal services to consumers has increased markedly.⁴⁵ They varied from conventional law firms wanting to make “C” level business services executives and non-legal professionals into partners, to banks and insurance companies, amongst others. In late 2014, the SRA unveiled plans to dispense with the separate business rule that prevents law firms from having links with businesses offering non-reserved legal services.⁴⁶ This, according to the SRA, will “level the playing field” between traditional law firms and ABSs or unregulated providers of legal services.⁴⁷

Strategically, perhaps the most significant development with regard to ABSs in 2014 was the announcements made by the “Big 4” global advisory firms concerning their future intent with legal services. Of the “Big 4”, Deloitte is the only firm that, for the present at least, has announced that it will not be applying for an ABS license.⁴⁸ The others are moving quite aggressively into legal services, which will likely be bundled with other related transactional and other services into integrated offerings that clients may well find

43. See Julie Friedman, *The Inside Story of Dentons' Combination with Dacheng*, THE AMERICAN LAWYER (March 2, 2015), available at <http://www.americanlawyer.com/id=1202718495607/The-Inside-Story-of-Dentons-Combination-with-Dacheng#ixzz3ViqFE31t>.

44. The Legal Services Act 2007 aims to liberalize and regulate the market for legal services in England and Wales, to encourage competition and to provide a new route for consumer complaints. Legal Services Act, 2007, 29 c. 29 (U.K.).

45. 72 ABS licenses were granted in 2012 and 169 in 2013. *Fee policy 2014/2015*, SOLICITORS REGULATION AUTHORITY (June 26, 2014), <http://www.sra.org.uk/mysra/fees/fee-policy-2014-2015.page>; *Annual report 2012: Moving forward*, SOLICITORS REGULATION AUTHORITY (2013), <http://www.sra.org.uk/sra/how-we-work/reports/moving-forward.page/>.

46. John Hyde, *SRA Earmarks 'Level Playing Field' Between [Law] Firms and ABSs*, LAW SOC'Y GAZETTE, 22 Nov. 2014.

47. *Id.*

48. See *EY granted ABS licence*, ECONOMIA (Dec. 1, 2014) <http://economia.icaew.com/news/december-2014/ey-granted-abs-licence>.

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appealing. For mid-tier business law firms, the “Big 4” advisory firms are likely to become very significant competitors in most markets in which they choose to compete. Their move into more direct competition with law firms is expected to make law firms more circumspect about sharing management information for legal services surveys produced by the “Big 4” and also threaten the advisory services that the “Big 4” provide to law firms. Scale, a more process-driven approach to practice, global reach (especially into emerging markets) and the ability to bundle legal services into a portfolio of related services are expected to be key areas of competitive advantage for the “Big 4.”

Slater & Gordon, the Australian publicly owned law firm, continued its successful penetration of UK legal markets with further law firm acquisitions in 2014, taking its number of offices across the United Kingdom to eighteen.⁴⁹ Its service offering has expanded from plaintiffs personal injury work and the firm is now well regarded in the league tables in employment law and other areas of practice.

Among conventional U.K. law firms, 2014 saw intensifying competition with the U.S.-based law firms in London and Europe. A recovering U.S. economy and strengthening dollar, together with an increasing appetite on the part of U.S. law firms for focused international expansion, saw increased recruitment of partners by premium U.S. law firms from their British counterparts.⁵⁰ Most of the high profile lateral hires in London in 2014 have been by American law firms. This, together with a desire to grow their practices in the USA, led “Magic Circle” law firm Freshfields to amend its venerated lockstep compensation system with the reputed addition of a super pointer group, adding between 10 and 30 per cent extra room to the plateau; and more recently also to Linklaters considering similar changes as part of a renewed focus on the U.S. market.⁵¹ For some U.S. law firms, London is proving a bonanza. For others, though, poor strategic thinking and haphazard hiring decisions have yielded lackluster performance in their London offices.

While 2014 did not see any further transatlantic mergers, it did see a number of British firms bulk up their presence in the USA and the partners of Eversheds voted overwhelmingly in favor of seeking a merger with an American law firm, to be pursued in 2015.⁵² For other British firms, the focus for geographic expansion in 2014 has been on mainland Europe and on Africa.

A final development worth noting is that as part of the lead-up to the Global Legal Summit to be held in London in February 2015, coinciding with the 800th anniversary of the Magna Carta, the Law Society of England and Wales has commissioned a landmark research project to explore the value that legal services add to the United Kingdom’s economy. At roughly \$43 billion p.a.⁵³ the UK legal services market is the second largest in the world, after the USA.⁵⁴ This work has also been considering the role of London’s

49. *About Us*, SLATER GORDON, <http://www.slatergordon.co.uk/about-us/> (last visited Mar. 28, 2015)

50. *See Trends and Conclusions: Mergers & Acquisitions 2014*, WWL (March 2014), <http://whoswholegal.com/news/analysis/article/31143/research-trends-conclusions-mergers-acquisitions-2014/>.

51. *See generally* Chris Jonson, *Freshfields, Linklaters Consider Lockstep Review*, AMLAW DAILY (Aug. 5, 2011), <http://amlawdaily.typepad.com/amlawdaily/2011/08/freshfieldslinklaterslockstepreview.html>.

52. Neasa MacEarlean, *Eversheds seeks US merger partner*, GLOBAL LEGAL POST (Nov. 20, 2014), <http://www.globallegalpost.com/global-view/eversheds-seeks-us-merger-partner-931840/>.

53. £26 billion in 2012 reckoned at GBP1.00=USD1.65.

54. *See* Hodgart Associates, *Key Challenges facing the UK Legal Market*, 5 available at <http://www.hodgartassociates.com/files/Key%20Challenges%20-%20UK%20Law%202014.pdf>

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global preeminence as a financial center and the United Kingdom's membership of the European and drivers of legal services in the United Kingdom.

VII. Latin American Legal Markets

Any general discussion of the legal profession in Latin America must first acknowledge the enormous differences in the structure and role of the legal profession, the qualification of lawyers, and the incorporation of law firms existing amongst the countries of the region. One must also take into account the significant impact that economies of various sizes and characteristics, combined with varying and highly complex legal and regulatory structures, have on the legal profession in Latin America.

At the same time, there are areas where the cultural similarities among many Latin American countries also make it possible to speak about trends in the region. Although the following discussion is largely centered on Brazil, some of the developments highlighted below also apply to law practices in other Latin American countries.

Law firms in Latin America are still evolving as businesses and commercial institutions. This was clear this year when several major law firms changed their old long names for easier and more commercially practical names. In Brazil, as in other countries of Latin America, until recently, law firms were only permitted to carry the names of their practicing partners, and in case of a partner's retirement or death, his or her name had to be expunged from the name of the firm. This practice prevented many law firms in the past from building a strong trademark. With the restriction eased, law firms finally were able to invest in their own brand, and today the legal market has a much greater appreciation that a strong mark, built on the basis of the provision of high-quality, timely and responsive work, is one of the most effective ways to attract and keep clients.

The restructuring of names, trademarks and logos, changes in ways of presenting and marketing law firms, in addition to refinements in internal organization, structuring and distribution of fees, career and pension planning and similar matters, were a mark of 2014 in the Latin American legal profession. These changes will continue to play a major role in practice management for some years to come.

Similarly, discussions regarding partner compensation are also a work in progress in Latin America. Variations on "eat what you kill" systems and its improvements, versus "lockstep," continue to preoccupy law firm management. Few, if any, firms have compensation systems that are well-tested. A number of Brazilian firms have lately tried to shift to a strict lockstep model without success. Thus, the structure and the institutionalization of the law firms are still issues to be discussed and resolved in the majority of firms, be they Brazilian or located in other countries of Latin America.⁵⁵

Another issue that has occupied Latin American law firms, lawyers and bar associations in 2014, was the presence and range of permissible activities for foreign international law firms in their countries. In a number of Latin American countries, the ability of foreign law firms to render legal services in the country is virtually unlimited and undisputed. In others, for example Brazil, this has been an issue. Briefly speaking, international firms can

55. See Rosie Cresswell, *Tailor Made*, *LATIN LAWYER* (December 2, 2013), available at <http://latinlawyer.com/features/article/45911/tailor-made/>.

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and do operate in Brazil as consultants in foreign law.⁵⁶ It is sufficient to note here that this issue remains controversial throughout Latin America and especially in Brazil. Several Brazilian law firms' management are conducting surveys of practices in other countries, and there is an ongoing discussion with the Bar as to regulating this issue. Interestingly, nearly all corporate law firms in the region are joining or have joined alliances that provide them a global presence (e.g., Terralex, Lex Mundi, Tag Law and others), perhaps in preparation for future cross-border capability. Regional law firm alliances have also been inaugurated, especially those located in jurisdictions that have special relations and common characteristics, as well as in smaller countries of, for instance, Central America. Some alliances involving some degree of integration between Latin American firms and bigger global firms have also come into being, for instance in Brazil, Colombia, and Chile.⁵⁷

Finally, 2014 was a year of heightened sensitivity to financial considerations for firms in countries whose economic results were worse than had been expected. Brazil, Argentina, and Venezuela, for different reasons, were good examples of such disappointed expectations.

As recently as two or three years ago Brazil was anticipating a period of brilliant growth, attractive new investments and, therefore, extraordinary volumes of work for lawyers and significant expansion for law firms. Brazilian firms thus engaged new partners, created new areas of practice and invested in recruitment, training and infrastructure. The results of recent elections and the situation of the fiscal balance however have not created great enthusiasm in the production chain or in local or foreign investment flow. Law firms will now have to adapt their newly grown structures and rationalize their budgets in accordance with these economic realities.⁵⁸

Although 2014 was in general a good year for Latin American lawyers and law firms, expectations for 2015 are not as rosy. All of us hope that those expectations are not fulfilled but it is clear in the market that law firms are adopting rationalization measures where expenses and costs are concerned, that investments will be reconsidered, and that next year will certainly continue to be a challenge for law firm managements.⁵⁹

VIII. Africa

Leaders of law firms in Africa face many of the same challenges occupying the minds of law firm leadership elsewhere on the globe, but frequently these challenges have unique features linked to Africa's emerging market status.

Assessing opportunities in Africa is often based on a misguided view that Africa is an homogeneous entity. Africa's natural resources, particularly its oil and gas resources have

56. See *Brazil: Overview*, ALLEN & OVERY, <http://www.allenoverly.com/locations/latin-america/brazil/en-gb/Pages/default.aspx> (last visited March 29, 2015).

57. See Charlotte Mullen, *Broseta Targets South American Law Firm Alliance*, GLOBAL LEGAL POST (July 18, 2013), <http://www.globallegalpost.com/big-stories/broseta-targets-south-american-law-firm-alliance-4387135/>.

58. See *Economic Performance of Brazil Not Meeting Expectations*, OLIVEIRA LAWYERS (Dec. 12, 2012), <http://www.oliveiralawyers.com/pt/news/business-law/economic-performance-of-brazil-not-meeting-expectations/>

59. See generally *Brazil Economic Outlook*, FOCUS ECONOMICS (Mar. 17, 2015), <http://www.focus-economics.com/countries/brazil>.

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captured the interest of law firms and their clients, with expectations of increased demand for infrastructure and PPP projects.⁶⁰ To this must be added the impact of the rise of the African middle class and increasing urbanisation on the demand for electricity, water, housing, transport, healthcare, education, banking, consumer goods and telecommunications.⁶¹ Like their international counterparts, African law firms are crafting their strategies carefully—a carefully considered strategy needs to segment the African market into more distinct regions, trading blocs, economic clusters or groups of countries with similar legal frameworks to have a realistic prospect of success. Within these more distinct market clusters, different opportunities must be sized, the opportunities matched with existing skills and up-skilling where required skills are in short supply. Then law firms have to consider the allocation of scarce resources to key business development initiatives: the creation of networks and alliances, or on the ground offices throughout the African continent.

Several international law firms are expanding their footprint in Africa.⁶² With some of the fastest-growing economies in the world located in Africa, it is no wonder that global law firms are looking to tap into revenue streams from the African legal market. Leading African firms are no different. They too are grappling with how to expand into Africa. One approach entails partnering with local experts in other African jurisdictions, like Webber Wentzel has chosen to do with its membership in the African Legal Network.⁶³ This approach offers flexibility in a market which often requires nimble responses to opportunities and irregular work flow. Another approach entails expansion through opening up regional offices in various African jurisdictions, like ENS and Bowman Gilfillan has done.⁶⁴ Unlike their international counterparts African firms also frequently find themselves being courted by international firms seeking an African partner; or alternatively competing with international firms who are increasingly opening offices on the continent. A key question for local firms is then also how to best position themselves vis-à-vis new global competitors. One way is to align themselves with an international firm. Some African firms have chosen alliances, as Webber Wentzel did with its alliance with Linklaters in 2013, and Cliffe Dekker Hofmeyr with DLA Piper in 2005, while others have opted for mergers, as Deneys Reitz did with its merger with Norton Rose in 2010.

Tremendous demand exists for talented African lawyers and retaining star performers in the face of the global opportunities offered by international firms is challenging. In addition to the mergers and alliances referred to earlier, several international firms have opened offices on the continent, but particularly in South Africa in recent years—more often than not by leveraging off a key team recruited from an existing firm. In the most recent development, Allan & Overly opened an office in Johannesburg, staffed with a team of banking lawyers from Bowman Gilfillan.⁶⁵

60. See, e.g., *Africa: Overview*, VINSON & ELKINS, <http://www.velaw.com/practices/Africa.aspx>.

61. Deloitte, *Deloitte on Africa: The Rise and Rise of the African Middle Class*, 1 available at <http://www2.deloitte.com/content/dam/Deloitte/au/Documents/international-specialist/deloitte-au-aas-rise-african-middle-class-12.pdf>.

62. See Vinson & Elkins, *supra* note 60.

63. *Africa Overview*, WEBBER WENTZEL, <http://www.webberwentzel.com/wwb/content/en/ww/ww-africa-overview>.

64. *Bowman Gilfillan Africa Group*, BOWMAN GILFILLAN, <http://www.bgaficagroup.com/>.

65. *South Africa: Overview*, ALLEN & OVERLY, <http://www.allenoverly.com/locations/africa/South-Africa/Pages/default.aspx>.

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African firms have not been immune to the increasing pricing pressure exerted by clients and an ever increasing extraction of cost-free value-add services. South Africa has seen an increase of legal process outsourcers (LPOs) entering the market. These LPOs are not only taking advantage of South Africa's reputation as a competitive outsource destination to deliver services to overseas clients,⁶⁶ but are increasingly finding a market for their services amongst cost conscious clients in Southern Africa. Exigent and Cognia Law are already operating in Cape Town. Integreon is likely to open offices soon and with some of South Africa's leading corporates looking to manage legal costs by the increasing use of LPOs, local firms who wish to stay ahead of the pack need to create strategies for working or competing with LPOs' offerings for commercial, corporate and litigation services as a matter of urgency.

The right entry points into the African continent by global corporates and law firms are constantly under discussion. Nigeria, Kenya and South Africa are generally considered the three obvious choices for entry. For years Johannesburg has been the obvious choice and it does not seem as if the economic growth in Nigeria and Kenya in recent years is changing this trend. Besides Allen & Overy, during 2014 Clyde & Co opened offices in Johannesburg and Cape Town, and Fasken Martineau (which merged with Bell Dewar) entered into an alliance with Simmons & Simmons. White & Case, which opened its Johannesburg office in 1995, bulked up its presence. Linklaters' alliance with Webber Wentzel, with offices in Johannesburg and Cape Town, lends further support for South Africa as the preferred entry point for international firms.

Despite the ease with which reference is often made to Africa as a single destination, each of its 54 sovereign states has its own risk profile. While labor unrest in South Africa has been making headlines, Al-Shabaab's attack on Nairobi's Westgate Mall in September, 2013 dominated Kenya's headlines and restrictive rules regulating Kenyan firms' ability to market their relationships with international partners appear to count against Kenya as an ideal entry point.⁶⁷ It remains to be seen whether legislative reviews kicked off in June, 2014 to address restrictive Kenyan rules will alleviate that challenge.⁶⁸ In Nigeria, persistent attacks from Boko Haram and increasing political tension leading up to the 2015 elections appear to be discouraging potential investors. When it comes to choosing the ideal center from which to service clients in Africa, Johannesburg still appears to be the clear leader, as it remains a key jurisdiction from where clients drive their African operations and South Africa falls in the top quartile worldwide for ease of doing business.⁶⁹

66. Awarded Best "Offshoring Destination 2012" by the UK's National Outsourcing Association and Offshoring Destination of the Year" for 2013 by the European Outsourcing Association, BPESA (Apr. 26, 2013), available at <http://www.bpesa.org.za/south-africa-wins-offshoring-destination-of-the-year-award-2013/>.

67. See generally Joanne Harris, *Africa's Legal Market: The Business Case*, IRISH RULE OF LAW INTERNATIONAL (Mar. 31 2014), <http://irishruleoflaw.ie/africas-legal-market-the-business-case/>.

68. Joanne Harris, *Liberalisation kicks off in Kenya*, THE LAWYER.COM, 24 June 2014, accessed 25 September 2014.

69. World Bank Ease of Doing Business Index (2013), available at <http://data.worldbank.org/indicator/IC.BUS.EASE.XQ>.