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THE EVOLUTION OF INTERNATIONAL LAW FIRMS AND THE ROLE OF BAR ASSOCIATIONS IN TRANSBORDER LEGAL PRACTICE

*James R. Silkenat**

Transborder legal practice, and the shape of international law firms, is changing at an accelerating pace. This was brought home to me again a year or so ago in the preparation of the second edition of the *ABA Guide to Foreign Law Firms* ("the *Guide*"), where I was able to observe, in some detail, the changes in structure, organization, management, and location of such firms that were taking place around the world.

In 1988, when I published the first edition of the *Guide*, it filled a particular void in the area of reliable information on quality legal services in countries outside the United States. The political and economic world in which the first edition was written (and the world of law firms that served it) has changed radically since that time, and the second edition reflected the evolution in legal practice that has accompanied it.

As noted in the first edition of the *Guide*, the complexity and diversity of legal problems frequently brings many U.S. lawyers into contact with the laws of foreign jurisdictions. In addition to U.S. clients wanting to invest in, or export to, other countries, there are numerous occasions during counselling and/or litigation when questions of foreign law arise. Because of the traditional U.S. focus on domestic federal, state, and local law, there typically has been little familiarity either with the substantive content of foreign laws and regulations or with the identity and qualifications of foreign lawyers able to give advice on such laws and regulations.

The *Guide*, and similar books that have followed, was designed to assist lawyers worldwide in identifying qualified legal counsel in the many jurisdictions with which such lawyers were likely to come into contact, particularly those in countries emerging as significant factors in international commercial

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transactions. The number of such countries has expanded rapidly since the *Guide* was first published and now includes countries as diverse as Qatar, Zimbabwe, Vanuatu, and Mauritius, as well as the more prosaic Brazil, India, and Korea.

A number of difficult choices were made in preparing the *Guide*. Perhaps the most fundamental choice was what foreign countries to include. Essentially, the decision was to cover all of the major trading countries, plus other countries with which U.S. lawyers have had a reasonable amount of experience. The country that posed the most serious questions in this regard was Canada. Although the legal system in Canada is now largely comprehensible to most U.S. lawyers, there is still some need for most U.S. lawyers to identify appropriate counsel in the respective Canadian provinces. Canadian firms are now working to make this situation even more complex by forming multi-tiered partnerships across provincial boundaries in Canada and operating in some cases under a single, new firm name, although the original firms still exist.

Another difficult question, one that illustrates the current complexity of law firm structures, was whether to list the overseas offices of international firms in places other than their home country. Because most of these firms historically have had only a limited knowledge of local law, and indeed are prohibited in many cases from advising on local law questions, it was decided to omit such information from the *Guide* in the vast majority of cases. Thus the general theory of the book was to list only indigenous law firms for each foreign jurisdiction.

With the advent of truly international law firms, however, and the changes that are taking place in the regulation of foreign lawyers, this will soon no doubt be an outmoded way of looking at the world. Even now it seems a bit naive. No longer will it be possible to say with any degree of certainty whether a particular law firm is a U.S. firm, a Swiss firm, a Swedish firm, or a Japanese firm, because the firm of the future may have partners trained, qualified, and located in each of those jurisdictions. For the time being, however, this revolution has not yet arrived with full force and I thought it still prudent, in almost all cases, to try to draw distinctions based on nationality and largely ignore the minor but growing exceptions that are developing.

In preparing the *Guide* and in comparing the law firms of

the future with those that currently exist, there were five caveats to keep in mind. First, law firms were listed only under what was deemed to be their "home" city. Although the other offices of firms were also listed, the addresses and other information typically only related to the "home" city (even where some firms now maintain that they no longer have a "headquarters" city). Another unfortunate result of this approach is that the best law firm in a particular country may not be listed under the heading for that country, because the "home office" of that firm is based elsewhere. Indeed, in at least a few cases, the "best" law firm in a particular country may not even be allowed to practice local law because it employs no local lawyers.

Second, law firm "affiliations" or "associations" were largely ignored for purposes of preparing the *Guide*. Such affiliations have taken many forms in recent years and are the subject, in some cases, of incomplete information. As a result, any attempt to recite or describe these complex and convoluted relationships was doomed to failure. One would imagine that by the time the next edition of the *Guide* is prepared, there will be greater stability in this area of legal practice allowing the inclusion of more information about "affiliations" the next time around.

Third, the nature of what constitutes a law firm is also changing. In the Netherlands, for example, tax has always been considered a discrete discipline. Now tax practice is being merged, in a meaningful way, into traditional law firm practice. The same is also true in certain other EU countries where prohibitions against multi-professional partnerships are being challenged.

Fourth, in the few cases where there has been a truly cross-border merger of law firms, it has been decided that if both of the prior firms are of sufficient strength, then the newly combined firm would be listed for both locations.

Finally, U.S. firms to some extent were disadvantaged in the *Guide* because many of their international offices, which are not listed, are quite strong. Despite good arguments to the contrary on this issue, it was considered prudent to retain this rather simplistic approach to the world. Since the second edition of the *Guide* was published, this issue has been further complicated by a number of U.S. firms hiring established local lawyers as resident partners for their offices outside the United States.

Besides the changes that have taken place in law firms and how they are managed and regulated, there have been concomitant changes in bar associations and the role they play in the professional lives of lawyers. In an international context, perhaps the most important change has been the decline in the importance of geography as the dominant organizational factor in the establishment and governance of such bodies. No longer is the state bar or the law society of a particular jurisdiction the only, or even the most relevant, way to look at bar associations. Now, the most important focus of bar associations may be a particular area of practice, such as tax, litigation, or administrative law, or lawyer organizations that cross geographic boundaries, such as the ABA's Section of International Law and Practice, the International Bar Association, or the Union Internationale des Avocats.

This change in organizational characteristics may mean that tax lawyers, for example, in Berlin may be closer, and better known, to tax lawyers in Boston than are criminal defense lawyers down the street in Boston. There may be more in common among lawyers within a specific area of practice, no matter where they are located in the world, than among lawyers in widely divergent areas of practice in the same city.

This change in legal relationships at the bar association level is still little understood and far from complete, but it is starting to have a discernible impact, not only on whom lawyers work and socialize with on a continuing basis, but on the substantive content of the law itself. There is a growing harmonization of legal practice content and procedure throughout the commercial world in ways that were unthinkable even ten years ago.

While the changes in legal-oriented organizations, both law firms and bar associations, seem dramatic at the moment, my guess is that current structures will face even greater transformation in the next decade, once the remaining geography-based hurdle, regulation and admission of lawyers, undergoes the same kind of evolution that has had such a profound impact on other aspects of the profession.