

Chapter 3

International Law Firm Network

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§ 3:1 Introduction¹

We live in interesting times,² fueled in large part by the ever-expanding “global economy.”³ Indeed, one would be hard pressed to open a daily newspaper without concluding that much of the world’s economy is integrated. In the real estate section, for example, you read about the tremendous rise in foreign investments. Or, flipping to the business section, you learn about the planned merger between multinational companies. Or you are still digesting the front section, which is reporting on the release of the latest and greatest smart phone and its proliferation throughout the world. In that last example, the news reports that the devices are designed by a company located in Country A, using a factory and workers located in Country B, with parts supplied by a company located in Country C, with many other vendors and companies throughout the world in the business supply chain! Regardless of the rise and fall and rise again of the economy, we believe that globalization is here to stay.

Perhaps unsurprisingly, in light of the global economy, among other things, there is an ever-increasing need for international legal services,⁴ especially if delivered efficiently and cost-effectively without

1. This chapter contains citations to materials located on the Internet, identified by web addresses. To the extent that any materials cited herein are no longer available through the listed web addresses, please note that many older materials on the Internet are being archived at www.archive.org, an otherwise very useful resource for lawyers.
2. The phrase “May you live in interesting times” is believed to stem from a Chinese proverb and curse. See http://en.wikipedia.org/wiki/May_you_live_in_interesting_times.
3. “World-wide economic activity between various countries that are considered intertwined and thus can affect other countries negatively or positively.” www.businessdictionary.com/definition/global-economy.html.
4. For example, cybersecurity/privacy issues affect every single multinational corporation. The European Union, the United States, and China all have dramatically different attitudes regarding cybersecurity and privacy. Every multinational corporation needs counsel knowledgeable about cybersecurity/privacy issues, and other compliance issues, in every region in which the corporation operates. See, e.g., *EU Cybersecurity Rules Increase Liability for Multinationals*, LAW360, www.law360.com/articles/735622/eu-cybersecurity-rules-increase-liability-for-multinationals. The increased enforcement of the Foreign Corrupt Practices Act (FCPA) in the United States is another prime example. If Company A is based in the United States but has factories in five other countries, it can be liable in the United States for violations that occurred in any of those countries. See generally U.S. Department of Justice, *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* (Apr. 5, 2016).

See also Randall S. Thomas, et al., *Megafirms*, 80 N.C. L. REV. 115, 116 (Dec. 2001) (arguing that “megafirms arise at least partially in response to the increased client demand for bigger projects”); Paul D. Paton, *Legal*

sacrificing quality. For example, among the myriad of legal issues triggered by international mergers and acquisitions is the significant need to conform, to the extent possible and desirable, the merging entities' employment, benefits, executive mobility, and corporate compliance policies throughout their worldwide offices. Large international litigations and arbitrations often similarly require international legal assistance, such as the pre- or post-judgment attachment of assets in various countries.

Consequently, the question arises: How should a client go about assembling the optimal legal team to address such multinational legal issues?

This chapter seeks to answer that question by identifying several types of organizational structures to which a client, or lawyer on behalf of the client, could turn when requiring international legal services. Those structures are:

- (1) multinational law firms,
- (2) affiliations (that is, preestablished associations of law firms), and
- (3) specially created international law firm networks (the "special teams" structure).

In selecting one of these organizational structures to address a specific multinational issue (or set of issues), clients should carefully consider the following factors: substantive practice depth, geographic presence, appreciation for local culture and practice, consistency, quality, and efficiency.⁵

Services and the GATS: Norms As Barriers to Trade, 9 NEW ENG. J. INT'L & COMP. L. 361, 377-78 (2003) (discussing the globalization of the legal profession and trade in legal services and stating that "trade in legal services has grown even faster than the overall economic performance of the services sector generally"); Larry E. Ribstein, *Lawyers As Lawmakers: A Theory of Lawyer Licensing*, 69 MO. L. REV. 299, 322-24 (Spring 2004) (discussing the increasing nationalization and internationalization of law practice, and the growth of multi-state law firms resulting from the increasing size and reach of the firm's clients and the "increasing recognition of the governance advantages of large law firms"). Indeed, the largest law firms generally have continued to grow by size and by revenue. Compare, e.g., *The AmLaw 100*, AM. LAW., July 2002 (listing the highest-grossing law firms in the United States in 2002), with *The AmLaw 100*, AM. LAW., Apr. 2016 (listing the highest-grossing law firms in the United States in 2016).

5. Not surprisingly, these factors are consistent with the concept that law firms often merge in order to maintain a competitive advantage. See Zeughauser Group, *Why Firms Merge*, ZGUIDE TO LEADING LAW FIRMS, ZEUGHAUSER GROUP'S 2005 POCKET GUIDE TO THE AMERICAN LAWYER RANKINGS.

§ 3:2 Law Firms As Providers of International Legal Services

Numerous law firms, including smaller firms with a boutique practice, may have the ability to handle at least some type of international work. Law firms may be thought of as standing on a continuum, with large, global firms located on one end, and small, local firms on the other.⁶ Here, our focus is on firms that have the size, depth, breadth, experience, and resources required to handle complex international problems involving the laws and legal systems of multiple jurisdictions.⁷

6. While the issues mentioned above—as well as a number of other global legal issues, including international bankruptcy, global price-fixing, and international tax—cannot be handled *alone* by a solo practitioner, or small or mid-sized law firms, such practitioners and firms can play a role in participating in such matters (by, for example, serving as counsel within a special teams structure, as discussed below). However, these international issues often require resources—human and financial—that are simply not available in smaller structures.

7. The April 2016 issue of the *American Lawyer*, which lists the highest-grossing law firms in the United States (the “Am Law 100”), identifies five U.S. firms as “vercins”: Baker & McKenzie, then with 4,363 lawyers worldwide; DLA Piper, then with 3,756 lawyers worldwide; Norton Rose Fulbright, then with 3,372 lawyers worldwide; Hogan Lovells, then with 2,516 lawyers worldwide; and Squire Patton Boggs, then with 1,426 lawyers worldwide. Dentons, also a verein, but which does not report statistics to *American Lawyer*, has approximately 7,300 lawyers and professionals worldwide. *Report Touts Record-Breaking Year for Law Firm Mergers*, AM. LAW., Jan. 6, 2016, www.americanlawyer.com/id=12027464_29351/Report-Touts-Record-Breaking-Year-for-Law-Firm-Merger.

In addition, the 2015 Global 100—the *American Lawyer*’s list of the highest-grossing law firms in the world—lists firms not only by revenue and size, but also by the number of countries in which the firm has offices and the percent of lawyers outside of the home country: for example, Baker & McKenzie (then 4,363 lawyers in forty-six countries, 85% outside of the home country), DLA Piper (then 3,702 lawyers in thirty-one countries, 67% outside the home country), Latham & Watkins (then 2,100 lawyers in fourteen countries, 31% outside the home country), Skadden, Arps, Slate, Meagher & Flom (1,654 lawyers in thirteen countries, 19% outside the home country), Kirkland & Ellis (1,576 lawyers in four countries, 14% outside the home country), Linklaters (2,252 lawyers in twenty countries, 62% outside the home country), Allen & Overy (2,172 lawyers in thirty-two countries, 68% outside the home country), Freshfields Bruckhaus Deringer (2,035 lawyers in sixteen countries, 58% outside the home country) and Norton Rose Fulbright (3,461 lawyers in twenty-seven countries, 80% outside the home country). Dentons, in contrast, views itself as a “polycentric” global firm with no “home country.” *Id.*

Five U.K. firms (Clifford Chance, Allen & Overy, Linklaters, Freshfields, and Slaughter and May) are known as the “magic circle” firms. For a discussion of the market forces affecting the growth of the magic circle

One structure that is, for the most part, unique to large multinational law firms is the Swiss *verein*, pioneered by Baker & McKenzie in 2004, in which multiple national or regional partnerships form an association in which they share branding, administrative functions, and various operating costs, but maintain separate revenue pools and often separate partner compensation structures. Other multinational law firms operate as single worldwide partnerships, such as British or American limited liability partnerships, in which partners also participate in local operating entities in various countries as required by local regulations. The five U.S. firms currently identified by the *American Lawyer* as *vereins* are Baker & McKenzie, DLA Piper, Hogan Lovells, Norton Rose Fulbright, and Squire Patton Boggs.⁸ Baker & McKenzie identifies itself as having “defined the global law firm in the 20th century” with 4,200 locally admitted lawyers in seventy-seven offices worldwide.⁹ DLA Piper, then with 3,756 lawyers in thirty-one countries around the globe, notes that its workforce positions it to “help companies with their legal needs anywhere in the world.”¹⁰ Hogan Lovells calls itself “a global legal

firms. See Partha Bosc, *Is the Magic Circle Becoming the Tragic Circle*, AM. LAW., Nov. 2005. For a discussion of some of the general financial and cultural differences between U.S. and U.K. law firms, see Mark Greene & Gavin Ingham Brooke, *Self Identity*, LEGAL WEEK, Apr.–May 2004, www.legalweek.com/Articles/119508/Self+identity.html. As discussed therein, U.K. firms tend to compensate based on a lockstep system, and U.S. firms tend to use merit-based systems with an additional emphasis on origination of clients. *Id.* However, in the past few years, some U.K. firms have reviewed their rigid lockstep structure and considered alternative compensation models that would better reward high-performing junior partners. For example, at the end of 2014, Allen & Overy introduced a new discretionary bonus-points pool that can be used to reward star partners already at the firm as well as lateral hires coming in. See Justin Cash, *As magic circle firms review their remuneration models, is the future of lockstep in question*, LEGAL WEEK, 3 June 2015, www.legalweek.com/legal-week/analysis/2411376/as-magic-circle-firms-review-their-remuneration-models-is-the-future-of-lockstep-in-danger. Moreover, the U.K. firms tend to have higher hourly rates, while the U.S. firms bill more hours. See *id.* Cultural differences include the willingness of U.S. firms, and reluctance of U.K. firms, to explore alternative billing arrangements. Greene & Brooke, *supra*; see also Douglas McCollam, *The Future of Time; Almost Everyone Agrees That the Billable Hour is the Scourge of the Legal Profession. So Why Is It Still Around?*, AM. LAW., Nov. 28, 2005. Another difference involves the very history of globalization. For example, U.K. firms generally entered the Pacific Rim market, including Hong Kong, Singapore, and Japan, long before U.S. firms. Telephone Discussion with Elizabeth Wall, Counsel, The European Lawyer (Feb. 2, 2006). And large Australian firms, such as Minter Ellison, have generally gone further into the Pacific Rim than U.K. and U.S. firms. *Id.*

8. See AM. LAW. 100, May 2015.

9. See www.bakermckenzie.com/about/.

10. See www.dlapiper.com/us/.

practice that helps corporations, financial institutions, and governmental entities across the spectrum of their critical business and legal issues globally and locally," citing its more than 2,500 lawyers.¹¹ Squire Patton Boggs calls itself a "full service global firm" and claims its "multidisciplinary team of over 1,500 lawyers in forty-four offices across twenty-one countries provides unrivalled access to expertise and invaluable connections on the ground."¹²

On the other hand, Dentons, which is now the largest law firm in the world by headcount, boasts "approximately 7,300 lawyers and professionals in more than 125 locations spanning fifty plus countries," notes that its polycentric model with no single headquarters or dominant culture "affords flexibility in responding to the clients' needs wherever in the world they arise and enables them to guide their clients to adapt to the shifting dynamics of the global marketplace."¹³

The four U.S. firms currently identified by *The American Lawyer* as "international" law firms are White & Case LLP, Cleary Gottlieb Steen & Hamilton, Mayer Brown, and Shearman & Sterling.¹⁴ White & Case describes itself as "a pioneering international law firm," whose "cross-border experience and diverse team of local, US, and English-qualified lawyers consistently deliver results" for clients.¹⁵ White & Case has

11. See www.hoganlovells.com/aboutus/overview/.

12. See www.squirepattonboggs.com/.

13. See www.dentons.com/en/whats-different-about-dentons/introducing-dentons.aspx; www.dentons.com/en/whats-different-about-dentons/polycentric-leveraging-our-diversity-for-your-competitive-advantage.aspx. In November 2015, Dentons finalized a combination with 大成 (Dacheng), a leading law firm in China, thus giving the firm the world's largest number of lawyers. See www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/news/2015/november/formalize-combination. Then, in July 2015, Dentons finalized a merger with McKenna Long & Aldridge LLP further increasing its U.S. presence. See www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/news/2015/april/dentons-us-and-mckenna-long-to-combine. Dentons subsequently announced combinations with Singapore firm Rodyk, Australian firm Gadens, Colombian firm Cardenas & Cardenas and Mexican firm Lopez Velarde, Hefrye y Soira (LVHS). See www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/news/2015/november/dentons-enters-latin-america. As a result of these mergers, Dentons serves clients from more than 125 locations across fifty-plus countries with over 7,300 lawyers and professionals worldwide. Dentons is not only a global law firm. In May 2016, the firm launched the NextLaw Global Referral Network. This is a global network of law firms that offers clients "the highest quality legal service available—in any geography, in any practice, in any sector—anywhere in the world." See www.nextlawnetwork.com/.

14. As noted above, "international" firms are defined by *The American Lawyer* as firms where 40% or more of the firm's lawyers are located outside of the United States. See AM. LAW., May 2013.

15. See www.whitecase.com/about/.

approximately 1,895 lawyers in twenty-seven countries, 70% of whom practice outside the home country.¹⁶ As is true for many other mega firms, the headquarters of White & Case is located in New York City.¹⁷ Shearman & Sterling, which more recently joined *The American Lawyer's* list as one of the "international" law firms, touts its "global team of lawyers, business professionals, project managers and technology professionals [that] collaborates to develop new, proactive initiatives to increase value" for clients.¹⁸ Cleary Gottlieb Steen & Hamilton describes itself as an "integrated global partnership (rather than a U.S. firm with a network of overseas offices)" and has more than 1,200 lawyers in fifteen countries.¹⁹ Mayer Brown, which combined with Johnson Stokes & Master in 2008, and which formed an association with Tauil & Chequer Advogados of Brazil in December 2009, describes itself as a "global legal services provider advising clients across the Americas, Asia and Europe."

In considering particular law firms to handle global legal issues, it is important to consider the extent to which their various practice groups, function as coordinated teams across offices and countries. Centralized management generally results in greater consistency in the quality of the work across multiple offices and practice groups (such that the work product has the same look and feel), as well as efficiencies in the delivery of services to the client (by, for example, eliminating duplicative or otherwise unnecessary work).²⁰ Thus, firms with centralized management of practice groups generally provide a very strong platform for the delivery of global legal services.²¹

16. See AM. LAW, Apr. 2016, *supra* note 7.

17. See www.whitecase.com/newyork/. See also Paton, *supra* note 4, at 378–79 (discussing New York as "a center and a standard for international business transactions").

18. See www.shearman.com/about/overview/.

19. See www.clearygottlieb.com/about-us/who-we-are.

20. Firms utilizing the *verein* structure have been criticized for the lack of central management, common culture, and consistent work quality across regions. Dentons has addressed this concern through the appointment of global practice leaders, the creation of a Global Board, and the existence of the positions of Global Chairman and Global Chief Executive Officer. In this way, each regional *verein* member is "supervised" by the Global Board and each substantive practice group is coordinated by global leadership. See www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/news/2015/january/historic-combination-creates-leading-largest-law-firm-in-the-world. This allows each region to operate semi-autonomously, limiting bureaucracy, but also allowing the firm to deliver "consistently high quality work and value to [their] clients." See www.dentons.com/en/whats-different-about-dentons/polycentric-leveraging-our-diversity-for-your-competitive-advantage.aspx.

21. However, a potential weakness of a firm with a structure centralized in the United States (or any one place) can be a lack of understanding of the foreign

On the other hand, firms with loosely managed practice groups may not be optimized for addressing complex global matters. Such loose management can lead to inconsistent work product and inefficiencies across offices. Undoubtedly, firms with this structure can and do deliver high-quality legal services. However, lawyers in these firms—and their clients—should be alert to the potential problems that may arise when global matters involving multiple jurisdictions are being managed out of separate offices without proper coordination.

§ 3:3 Affiliations As Providers of International Legal Services

"Affiliations" are existing organizations consisting of multiple law firms that have associated with each other in order to compete against larger national, regional, or multinational law firms. The association of these firms has the effect of increasing their size, geographic presence, and breadth of practice areas.

There are several such affiliations. To name a few: Lex Mundi,²² the Employment Law Alliance,²³ the Law Firm

local rules and customs, where the firm has simply sent its own lawyers to establish foreign outposts. Such firms have been labeled "imperialist" when they have opened offices abroad. Although its headquarters is located in New York, White & Case has earned a different reputation. *See, e.g., Allison Frankel, Who's Going Global, AM. LAW., Nov. 2000* ("[W]ith history to inform it, White & Case has improved on the imperialist example: Instead of merely sending its lawyers to plant the White & Case flag around the world, the firm has gone native. Management makes a habit of hiring local practitioners and practicing local law in the many jurisdictions in which it has offices."). Baker & McKenzie is also known for hiring local practitioners. *Id.*

22. *See* www.lexmundi.com. Lex Mundi identifies itself as "the world's leading network of independent law firms." According to its website, Lex Mundi has more than 21,000 lawyers in more than 160 member firms, with approximately 600 offices in more than 100 countries. It also has the following practice groups: agribusiness; antitrust, competition, and trade; bank finance and regulation; business crimes and compliance capital markets; construction and infrastructure; corporate organization and securities; cross-border transactions; e-commerce, technology, outsourcing, and privacy; employee benefits and pensions; energy and natural resources; environmental; government affairs; healthcare industries; immigration; insolvency, bankruptcy, and restructuring; insurance and reinsurance; intellectual property; labor and employment; life sciences; litigation, arbitration, and dispute resolution; media, entertainment, and sports; mergers and acquisitions; private equity; product liability and product safety; project finance; real estate; tax; and telecommunications.

23. *See* www.employmentlawalliance.com/en/about_US. The Employment Law Alliance defines itself as "the world's largest network of labor and

Alliance,²⁴ International Lawyers Network,²⁵ the Interlex Group,²⁶ and the Pacific Rim Advisory Council (PRAC).²⁷

Affiliations routinely promote their size and geographic presence, and can function as pre-established law firm networks. However, one must be careful in assessing whether the affiliations serve merely as a referral service incapable of providing a global team of lawyers, or

employment lawyers. With leading employment, labor and immigration attorneys in more than 135 countries, all 50 U.S. states and each Canadian province, the ELA provides multi-state and multi-national companies seamless and cost-effective services worldwide. International businesses benefit from the ELA's reach and deep familiarity with both the local laws and the local courts. Clients also appreciate a single point of contact, consolidated invoicing and regional billing rates."

24. See www.lawfirmalliance.org/about.html. The Law Firm Alliance promotes itself as "a strategic alliance of mid-sized law firms that was established to provide legal clients greater access to high quality and cost-effective legal services. The strength of the Law Firm Alliance's international network of member firms lies in the combined experience of more than 50 firms and 2,500 attorneys throughout North America, Europe and Asia, all with a deep commitment to client service."
25. See www.ilntoday.com. As stated on its website, "The International Lawyers Network is an association of 91 high-quality, full-service law firms with over 5,000 lawyers worldwide. The Network provides clients with easily accessible legal services in 67 countries on six continents." ILN states that its member firms offer "expertise in a broad range of practice areas, including: corporate and commercial law; securities law; taxation; commercial litigation; employment and expatriate law; government contracting; intellectual property law; estate planning and administration; and alternative dispute resolution."
26. See www.interlexgroup.com/aboutus.aspx. As stated on its website, "[t]he Interlex Group® is an association of leading law firms around the world that cooperate to provide a complete range of international legal and business services to clients. . . . Interlex firms are entirely independent of one another. Interlex is not a partnership or joint venture, and each member firm is, and will continue to be, solely responsible for its own work product and staff. . . . Since its founding in 1973, Interlex has grown and prospered. Interlex members take great pride in the quality and promptness of the services they provide, and attribute such high standards to the strict criteria employed in the selection of member firms. Interlex currently consists of 47 firms, across 155 cities in 60 countries."
27. See www.prac.org/about.php. PRAC defines itself as "a unique strategic alliance within the global legal community, with unparalleled expertise on the legal and business issues facing not only Asia but the broader Pacific Rim region. PRAC consists of 30 top-tier, independent law firms, each of which provides legal services to major international companies conducting substantial business across the Pacific Rim region. Each PRAC firm maintains its independence and sole responsibility for services to its clients while responding to the needs of clients referred by other PRAC members. Since PRAC members are premier firms within their domestic jurisdictions, client referrals are made to them with the confidence that prompt attention and quality expertise will be provided."

whether they can serve properly as a source for providing coordinated legal solutions to international projects.²⁸ In this regard, one should also consider whether the affiliations have sufficient experience in serving as a source for centrally managed, integrated global teams. Up until recently, these types of affiliations have required its member firms to pay a fee to participate and in turn have a limited number of firms in each jurisdiction.

In contrast, the NextLaw Global Referral Network, launched by Dentons in May 2016, takes a different approach in describing itself as a referral network, without many of the downsides of the formal affiliations described above. This referral network will be completely free for member firms to join and participate in and seeks to “reinvent the old-fashioned pay-to-play, territorial legal referral networks.”²⁹

§ 3:4 Creating an International Law Firm Network to Provide International Legal Services

This section focuses on the creation of an international law firm network as a solution to the problem of obtaining international legal services. These networks have what we call a “special teams” structure.

In the special teams structure, the client retains lead counsel, who then retains top practitioners in various practice areas and geographic regions for specific, complex international projects. The structure is created by using established business and personal networks.

This structure has several advantages. It is a flexible, hybrid structure that enables a client and its lawyer to cherry-pick specialist

28. Certain affiliations state that they function as a referral system. *See, e.g.*, www.lawfirmalliance.com.

29. Launched in May 2016 by the global law firm Dentons, the NextLaw Global Referral Network describes itself as “a first-of-its-kind global referral network, completely free of charge” and open to quality law firms “regardless of size or location.” *See* www.nextlawnetwork.com. This referral network is unique for a number of reasons, including: (1) it was started by Dentons, thereby offering “the advantages of a global firm and a global referral network”; (2) unlike other networks, NextLaw Global Referral Network is not “pay-to-play” which “allows firms to connect their clients with the right lawyers to fit their need, without exception”; (3) it can provide a client many options of firms in any given location, while other referral networks/affiliations may only provide one firm per location; and (4) this network will be data-driven, as member firms within the same region/substantive practice area will be prioritized based on a qualitative and quantitative ranking system that is client-driven. *See* Joe Andrew, *Debunking the Myths of Pay-to-Play Networks*, THE LAW, 30 May 2016, www.thelawyer.com/issues/30-may-2016/debunking-the-myths-of-pay-to-play-networks/.

lawyers (or teams of lawyers) in whatever jurisdictions their services are required. The structure allows for the size, geographic presence, consistency, quality, and efficiency to tackle even the most complex legal matters.

To be sure, creating this structure can be time-consuming and burdensome. It requires identifying and engaging each practitioner or law firm in each of the multiple jurisdictions.³⁰ Such engagements may be particularly difficult or time-consuming to arrange if, for example, the client agrees to pay lead counsel a total or partial contingency fee or a flat fee for services that in turn needs to be divided among additional counsel.

Despite the burdens of entering into multiple engagements, creating the special teams structure is quite simple in theory.³¹ The client first selects lead counsel through whom all strategy will emanate, all work will be reviewed and approved, and all efforts coordinated. *The selection of lead counsel is the most important step in creating the special teams structure.* Lead counsel should obviously possess, among other things, the skills necessary to handle the lead role: intelligence, diligence, motivation, and excellent organizational and management skills. Moreover, lead counsel should, in the words of the journalist Malcolm Gladwell, be a "connector," a person who knows people and who enjoys working with all different types of people.³² That last trait is particularly useful, because lead counsel will be charged with the task of assembling the special team.

After being appointed, lead counsel must then identify lawyers in other jurisdictions whom that lawyer trusts based on prior experience.³³ These lawyers should obviously be present in the jurisdictions in which the global issues have arisen or are expected to arise, and should have the specialized skills and experience required for the projects at hand. It also goes without saying that if the lead counsel can utilize top practitioners within his or her own law firm, lead counsel should do so.

30. Using a single form retainer agreement for all such counsel will reduce some of the burden.

31. A checklist for creating a special teams structure is provided in Appendix 3A.

32. See MALCOLM GLADWELL, *THE TIPPING POINT* (2000). In many ways, the skills required of developing business—listening, being attentive to the needs of clients, maintaining relationships—are equally useful in establishing (and maintaining) the special teams structure.

33. We mean "trust" not simply in terms of ethics and integrity, but also in terms of intelligence, attitude, reliability, efficiency, and strategic decision making.

In the event that lead counsel has exhausted his or her own law firm for assembling the special team, he or she should then identify lawyers in other jurisdictions outside of his or her own firm, first by contacting lawyers with whom lead counsel has worked before (and trusts), then by asking for referrals from

- (1) other lawyers in his or her own firm,
- (2) clients of the firm (including, but not limited to, the client for whom the legal services are being provided), and
- (3) counsel already added to the special team, each of whom will likely be able to identify additional counsel.

Following this process, if there are still gaps in the special team, lead counsel should consider utilizing one or more of the additional resources discussed in the next section, that is, consultants, accountants, bar associations, and foreign legal consultants.³⁴

34. The process of creating an international law firm network can certainly be likened to the creation of a national team of lawyers, where national counsel sets and implements strategy and coordinates the efforts of local counsel in various states. The client can also select counsel in various jurisdictions by issuing requests for proposals (RFPs) (which generally seek information regarding law firms' experience through detailed questionnaires and oral presentations), or establishing the often less formal "beauty contest" (which similarly consists of oral presentations regarding legal experience and expertise, costs, and proposed strategies). For example, in 2005, Wal-Mart finished assembling, through the issuance of RFPs, its "Capital Cities Network," a network of "go-to firms" in each U.S. state that "will handle regulatory work and other major legal matters." See Tamara Loomis, *Wal-Mart's Law Firm "Network,"* NAT'L L.J., Oct. 17, 2005. Wal-Mart took a slightly different approach from that taken by E.I. DuPont de Nemours & Co. with its "DuPont Legal Model," the "best-known of the so called convergence programs that aim to reduce the number and fees of outside firms." *Id.* DuPont "successfully cut costs by reducing the number of law firms it retained; authorized firms were reduced from more than 300 to fewer than 50. In consideration for the privilege of 'making the cut,' selected firms agreed to reduce hourly rates or to perform specified services for fixed charges. In consideration for reduced fees, the Wilmington, Delaware, conglomerate agreed to funnel all outside counsel work exclusively to the selected firms. The DuPont model has been proven to reduce costs." See Carl Lee Sutherland, *Going Online Makes Firms Toe the Line,* NAT'L L.J., Mar. 9, 1998. For a discussion of an intensive "beauty contest," see Eriq Gardner, *Pfizer Litigators Endure Beast of a Beauty Contest,* CORP. COUNS., Oct. 31, 2005. For a discussion of these and other selection methods utilized by clients and in-house counsel, see *Report on Selection of Outside Counsel by Corporations*, by the Greater New York Chapter of the American Corporate Counsel Association, July 15, 1997, www.acca.com/vl/outside/report/report.html.

§ 3:5 Other Resources for Creating an International Law Firm Network³⁵

§ 3:5.1 Consultants

Consultants are organizations or individuals that advise law firms on a broad range of issues, including the legal and business marketplace and how to capitalize on global economies. Examples are HBR Consulting,³⁶ Altman Weil, Inc.,³⁷ and Zeughauser.³⁸ Given their extensive experience with, among other things, law firm mergers, consultants can aid counsel not only in identifying counsel who would fit properly with a special team, but also in advising on the steps needed to develop and maintain a law network so that the various firms and individuals are integrated properly.

§ 3:5.2 Accountants

The big four accounting firms—Deloitte,³⁹ KPMG,⁴⁰ PricewaterhouseCoopers (PWC),⁴¹ and Ernst & Young⁴²—have created huge international accounting networks, multidisciplinary practices

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35. These resources may also be useful in assisting clients and lawyers who choose an existing structure, such as a law firm or affiliation, to address their international legal issues.
 36. See www.hbrconsulting.com/services.html. Among other things, HBR Consulting offers the following services for law firms: expense management solutions, information and technology services, business assessment and transformation, and law department services.
 37. See www.altmanweil.com. Altman Weil offers the following consulting services: strategy, mergers and acquisitions, practice group management, management and governance, compensation, law firm finance, alternative fee arrangements, legal project management, marketing and business development, client surveys, law firm succession planning, leadership development and performance management, retreats, training programs, law department structure and performance, law department cost control, outside counsel management, law department client service and satisfaction, career management and professional development in law departments, managing the global law department, key person coaching, business development training and coaching, government legal offices, paralegals and paralegal programs, executive search services, market research, custom surveys and benchmarking, legal vendor advisory services, and Altman Weil speakers bureau.
 38. See www.zeughausergroup.com/the-challenge-of-market-leadership/. Zeughauser similarly offers a range of services to law firms, for example: mergers and acquisitions, strategic planning, marketing and business-development planning, branding, client service interviews, client service teams, and marketing organization assessment and design.
 39. See www.deloitte.com.
 40. See www.kpmg.com.
 41. See www.pwc.com.
 42. See www.ey.com.

(MDPs), and litigation management practices.⁴³ At a minimum, their experience in that regard can be used as a model as to how to create and sustain global alliances.⁴⁴ Moreover, they, too, can be used as a source of referrals, particularly if the accountants are known personally to lead counsel, members of his or her law firm, the client, other clients of lead counsel, or other members of the special team.

§ 3:5.3 Bar Associations

Bar associations, including the American Bar Association (ABA),⁴⁵ the International Bar Association (IBA),⁴⁶ the Union Internationale

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43. The MDPs have had marketplace success primarily outside of the United States. See, e.g., Nathan Koppel, *Paper Tigers: Accounting Firms' Legal Arms Have Hardly Turned Out to Be Fearsome Competitors Poised to Devour Any Law Firm That Can't MDP Its Way Around the Globe. But Don't Give All the Credit to U.S. Regulators*, AM. LAW., Nov. 1, 2002; Stephen Gillers, *Fighting the Future*, AM. LAW., July 2000 (discussing MDPs and the big accounting firms' flirtation with domestic law practices).
44. While the MDP and litigation management practices within accounting firms could be helpful in preparing a coordinated approach to legal issues, it is important that (1) the legal issues, as opposed to the financial issues, drive the process, (2) the general counsel and/or in-house counsel take the lead in connection with the legal issues (and not let that role be filled by the accounting firms)—particularly when dealing with the client's chief financial officer (CFO), (3) the general counsel and/or in-house counsel discuss the role of the accounting firm with lead counsel prior to or in coordination with discussing strategy with the CFO and other executives of the client, and (4) lead counsel retain the accounting firms in connection with legal matters in a way that enables them to maintain the attorney-client privilege. For a discussion of the attorney-client privilege in the international context, see chapter 2.
45. See www.abanet.org/utility/about_the_aba.html. From its website: "The American Bar Association is one of the world's largest voluntary professional organizations, with nearly 400,000 members and more than 3,500 entities. It is committed to doing what only a national association of attorneys can do: serving our members, improving the legal profession, eliminating bias and enhancing diversity, and advancing the rule of law throughout the United States and around the world. Founded in 1878, the ABA is committed to supporting the legal profession with practical resources for legal professionals while improving the administration of justice, accrediting law schools, establishing model ethical codes, and more."
46. See www.ibanet.org. "The International Bar Association (IBA), established in 1947, is the world's leading organization of international legal practitioners, bar associations and law securities. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 individual lawyers and more than 190 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community."

des Avocats (UIA),⁴⁷ Association of Corporate Counsel (ACC),⁴⁸ and state and local bar associations,⁴⁹ may also be invaluable resources for establishing an international law firm network.⁵⁰ They provide established organizations through which one can network directly with lawyers who practice international law in the United States or abroad, or who know specialists who do.⁵¹ Bar associations routinely conduct networking events and continuing legal education; they also generally have libraries and lists of lawyers that can serve as useful resources in aid of the global projects requested by a client.⁵²

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47. See www.uianet.org/en/content/who-we-are: "The International Association of Lawyers (UIA—Union Internationale des Avocats) brings together around two million lawyers from more than 120 countries. The UIA is a multilingual and multicultural organisation, and is the only major international lawyers' organisation to have adopted French, English and Spanish as its working languages. The UIA's membership has extensive expertise in legal matters, which means the UIA can initiate high-level legal debates within its technical commissions and working groups, as well as adopts [sic] resolutions on current problems faced by the legal profession throughout the world . . . The UIA is committed to defending the cause of lawyers who may be pressured or threatened anywhere in the world, through its lobbying and advocacy activities."
 48. See www.acc.com/aboutacc/index.cfm. From its website: "The Association of Corporate Counsel (ACC) serves the professional needs of in-house counsel and is the premier source for information, networking opportunities and education for the in-house legal practitioner. ACC's membership includes a diverse mix of more than 35,000 in-house lawyers who represent more than 10,000 companies in 85 countries worldwide."
 49. For example, the New York State Bar Association (www.nysba.org), which has an International Section, and the Association of the Bar of the City of New York (www.nycbar.org), which has several committees concerning international law, including the International Legal Practice Special Committee, "[f]ocuse[d] on issues involving practice by U.S. lawyers in foreign jurisdictions and practice by foreign lawyers in New York, as well as developing contacts with foreign bar organizations."
 50. A useful website through which bar and other legal associations can be accessed is the Hieros Gamos Worldwide Legal Directories, at www.hg.org/bar.html.
 51. For example, the American Bar Association has the Foreign Legal Consultant Committee. See www.abanet.org/dch/committee.cfm?com=IC634500.
 52. Another potentially useful resource is the Legal Marketing Association (LMA) (www.legalmarketing.org), a not-for-profit organization founded in 1985 and "dedicated to serving the needs and maintaining the professional standards of the men and women involved in marketing within the legal profession." According to its website, the LMA has 3,000 members—consisting of marketing professionals, consultants, and vendors who support legal services marketing—from forty-eight U.S. states, Canada and fifteen countries, and 93% of the largest 250 U.S. law firms employ an LMA member.

§ 3:5.4 Foreign Legal Consultants

Foreign legal consultants are non-U.S. lawyers, many of whom work outside of the United States in non-U.S. law firms, who have obtained a special license enabling them to practice law in the United States for a specific period of time.⁵³ The requirements and regulations to be licensed as a foreign legal consultant vary from state to state,⁵⁴ and such lawyers may be identified by inquiring with the state bar associations. Foreign legal consultants also can be a valuable resource for international networking because they are established foreign lawyers who have come to the United States to, among other things, make business and legal connections and broaden their own firm's legal market.⁵⁵

§ 3:6 Conclusion

The client or lawyer in need of international legal assistance has several options. First, there are a number of law firms that have the size, geographic presence, and resources to appropriately handle international legal work requiring a global solution. A particular top-notch law firm, however, may not have the human and financial resources and geographic presence to single-handedly address all the specific legal issues presented in all required jurisdictions. Further, even assuming that it does, that firm may be conflicted, requiring the client to turn elsewhere.⁵⁶

Moreover, although the affiliations promote their size and geographic presence, without centralized coordination and cross-border consistency, they largely amount to loose referral networks rather than a source for global, integrated teams of lawyers able to provide the level of service demanded by international legal issues. If they function

53. For example, the largest Spanish law firm, Cuatrecasas, which has over 800 lawyers in offices throughout Spain and Portugal, as well as offices in Casablanca, Brussels, London, Luanda, Maputo, Shanghai, Paris, Sao Paulo, and New York, has maintained foreign legal consultants in New York. See www.cuatrecasas.com.

54. See, e.g., Rules of the Court of Appeals for the Licensing of Legal Consultants, N.Y. R. OF CT., Part 521. For a comparison of the rules of each U.S. state and of the American Bar Association, see Carole Silver, *Regulating International Lawyers: The Legal Consultant Rules*, HOUSTON J. INT'L L. (2005), www.repository.law.indiana.edu.

55. See chapter 4, Foreign Legal Consultants.

56. Some lawyers, unfortunately, do try to represent everyone. See Paul Davies, *Can a Lawyer Sue an Ex-Client for Former Foe?*, WALL ST. J., Jan. 3, 2006, at A15 (discussing a "striking" example of a lawyer who, without apology, has represented both a boxer and his promoter, Don King, against the other in two boxing disputes arising out of a single contract).

primarily as referral systems, then due care should be exercised in vetting each appointment of counsel. Chances are that a team staffed solely through an affiliation is less likely to consist of members who have worked together on similar issues in the past. Nevertheless, referral networks, when properly utilized, can be invaluable when seeking specialized expertise in a substantive area of law or region with which the client or lead lawyer is not familiar.

When existing law firms and affiliations are inadequate or unavailable to address legal issues in a particular jurisdiction, the special teams approach should be considered.

As we have noted, establishing a special teams law firm network can impose some burdens. In most instances, lead counsel will need to spend significant time in establishing the network. Whereas some time may be saved if the lead counsel works for a law firm with numerous lawyers in multiple offices, one should still expect to spend a good deal of time identifying counsel for the team in all necessary jurisdictions. Further, after additional lawyers are identified, lead counsel will need to engage each of them and/or their law firms and agree to an appropriate fee.

However, the time and effort spent by lead counsel in putting together the special teams network can certainly prove to be worthwhile. The size, geographic presence, and resources of the special teams structure are potentially limitless.⁵⁷ Further, the structure generally provides for consistency, quality, and efficiency, which flow primarily from its centralized management and its use of known, top-quality practitioners. Given its flexibility and potentially unlimited resources, this structure should be considered for handling any number of multijurisdictional legal issues, including, for example, (1) the creation of a set of Key Employment Policies applicable to employees in different countries; (2) the creation and implementation of a global corporate compliance program; (3) analyzing the feasibility of utilizing commercial contract terms and provisions in different countries; and (4) the attachment of assets in multiple jurisdictions. Once in place, the special teams structure may be used not only for the specific matters for which it was created, but also as an ongoing network of top-quality legal professionals for similar issues that arise in the future.

57. "Leaner and meaner" should not necessarily be the driving force in complex international matters, which often require the enlistment of lawyers in multiple jurisdictions with knowledge of local law and various practice areas. However, the special teams structure does *not* promote overstaffing. In fact, quite the opposite is true: it enables the creation of a custom-fit legal team.



Appendix 3A

CHECKLIST FOR CREATING AN INTERNATIONAL LAW FIRM NETWORK (THE "SPECIAL TEAMS" STRUCTURE)

Client

- ☐ Identify legal issues for which assistance is needed
- ☐ Identify jurisdictions in which assistance is needed
- ☐ Identify lead counsel (consider size, depth, breadth, experience, and resources of lead counsel's law firm; consider using known counsel and/or well-connected counsel)
 - ☐ Ensure that conflict check is run
- ☐ Negotiate retainer agreement with lead counsel
 - ☐ Ensure that scope of representation (*i.e.*, type of matter, role of lead counsel) is well-defined
 - ☐ Ensure that rates of lead counsel and his/her team are set forth clearly

Lead Counsel

- ☐ Identify lawyers and/or teams of lawyers in each jurisdiction where legal services are sought
 - ☐ Identify lawyers within lead counsel's firm (no new conflict check necessary)
 - ☐ Identify lawyers in other jurisdictions known and trusted by lead counsel
 - ☐ Ensure that they have the size, depth, breadth, experience, and resources for their portion of the matter
 - ☐ Ensure that conflict check is run
 - ☐ Identify lawyers in other jurisdictions known and trusted by other lawyers in lead counsel's law firm
 - ☐ Ensure that they have the size, depth, breadth, experience, and resources for their portion of the matter
 - ☐ Ensure that conflict check is run

- ☐ Identify lawyers in other jurisdictions known and trusted by client
 - ☐ Ensure that they have the size, depth, breadth, experience, and resources for their portion of the matter
 - ☐ Ensure that conflict check is run
- ☐ Identify lawyers in other jurisdictions known and trusted by lawyers already added to the special team
 - ☐ Ensure that they have the size, depth, breadth, experience, and resources for their portion of the matter
 - ☐ Ensure that conflict check is run
- ☐ Identify additional lawyers, as necessary, by using the following resources:
 - ☐ Consultants
 - ☐ Accounting firms
 - ☐ Bar associations
 - ☐ Foreign consultants
- ☐ Negotiate retainer agreements with lawyers added to the special team
- ☐ Establish secure access web-based (a) calendar, (b) status reports, (c) legal pleadings, (d) correspondence, and (e) discovery, for client and special team counsel
- ☐ Distribute monthly status report to client
- ☐ Conduct weekly or biweekly conference calls with special team members

Appendix 3B

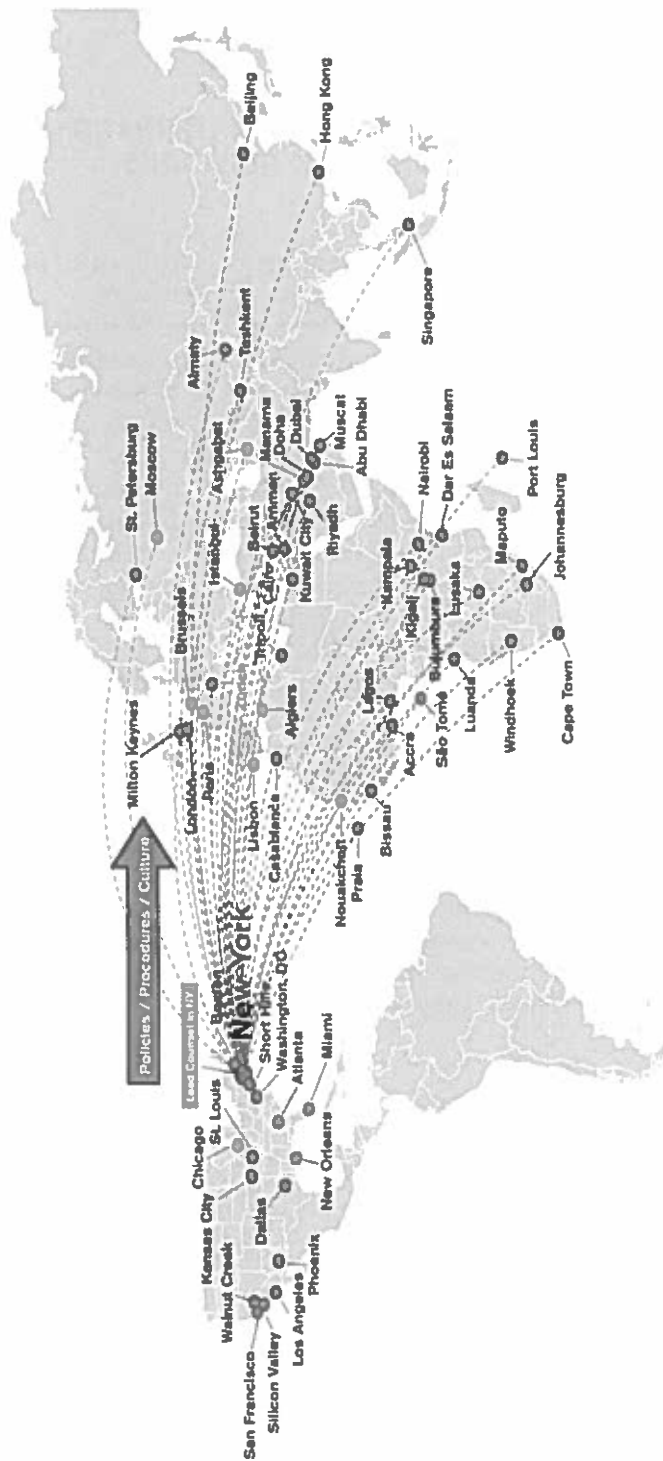
MAPS ILLUSTRATING INTERNATIONAL LAW FIRM NETWORKS

The maps found on the following pages reflect two possible uses of a specially created international law firm network.

The first map, "Model Global Law Firm Network for U.S.-Based Business Expanding into Strategic Markets Outside the U.S. Through Lead Counsel in New York," reflects a U.S.-based client's retention of lead counsel in New York for its legal issues. As shown in this map, lead counsel in New York identifies, retains, and utilizes known and trusted counsel in various jurisdictions outside the U.S. to help address the U.S.-based client's legal needs. In the course of this representation, lead counsel is responsible for ensuring (1) consistency, quality, and efficiency of the provision of legal services by counsel in the various European jurisdictions, and (2) that the policies, procedures, and culture of the client are protected and applied consistently throughout the various non-U.S. jurisdictions, subject to the laws in those jurisdictions.

The second map, "Model Global Law Firm Network for London-Based Business Expanding into Strategic U.S. Markets Through Lead Counsel in N.Y.," reflects the client's use of lead counsel in New York to help expand its business throughout the United States. As in the first example, lead counsel is responsible for ensuring (1) consistency, quality, and efficiency of the provision of legal services by counsel in the various U.S. markets, and (2) that the policies, procedures, and culture of the client are protected and applied consistently throughout the United States, subject to the laws in those jurisdictions.

App. 3B-2



Model Global Law Firm Network for London - Based Business Expanding into Strategic US Markets Through Lead Counsel in NY



