Chapter 3

International Law Firm Network

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§ 3:1 Introduction[1]

Much has changed in the world since we first wrote in this chapter that the global economy is on "fire." At the time, we were describing the rapid pace of expansion by businesses internationally, from the United States to other countries, from other countries to the United States, and from non-U.S. businesses into countries other than the United States. We also noted the staggering amount of goods, services, and assets being traded across borders. Without question, the economy certainly has been on "fire" in the past few years, but in a far different sense of the word: among other things, it has been scorched by a recession[2] and burned by the admitted fraud of Bernard L. Madoff.[3] Moreover, the phrase "You're fired!"—Donald Trump's notorious catchphrase on the television show *The Apprentice*—has been heard too often in recent times, as unemployment has approached historical highs.[4]

The legal market has not been immune. As is well known, a number of very large and prestigious law firms closed their doors entirely,[5] many

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1. This chapter contains citations to materials currently located on the Internet, identified by web addresses preceded by "www." 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. *See* Edmund L. Andrews, *Economists See a Limited Boost from Stimulus*, N.Y. TIMES, Aug. 7, 2009, at A1.
3. *See* Diana B. Henriques, *Liquidation of Madoff Feeder Fund Allowed*, N.Y. TIMES, July 22, 2009, at B10; Diana B. Henriques, *Claims Total Over 15,400 in Fraud by Madoff*, N.Y. TIMES, July 10, 2009, at B3. Among other things, the authors are both leaders of Seyfarth Shaw's interdisciplinary "Madoff Team," created to assist clients in understanding and addressing the various legal issues raised in connection with the misconduct of Bernard Madoff.
4. *See* Nelson D. Schwartz, *Unemployment Surges Around the World, Threatens Stability*, N.Y. TIMES, Feb. 15, 2009, at A1.
5. Among the firms that ceased operations in late 2008 and in 2009 are Heller Ehrman, Thelen Reid, Thacher Proffitt & Wood, and WolfBlock. *See* Leigh Jones, *After the Fall*, NAT'L L.J., Aug. 10, 2009; Ross Todd, *Layoffs, Closures Spawn Accidental Laterals. How Refugees from Thelen, Heller, and Several Other Firms Scramble to Find Homes in a Terrible Economy*, LEGAL TIMES, Vol. 32, No. 7, Feb. 16, 2009.

others closed unsustainable offices,[6] and numerous lawyers have found themselves out of work.[7]

Now for some good news. There are clear signs that the economy is warming up again, in the way we first described.[8] In addition, we are fortunate that we have been able to weather the firestorm and, in fact, expand our labor and employment, ERISA, and general commercial litigation practices, among others, during this economic downturn.

In any event, regardless of the pace of global economic expansion, there continues to be a strong need for international legal services,[10] especially if delivered efficiently and cost-effectively (without sacrificing quality). For example, among the myriad legal issues triggered by international mergers is the significant need to conform the merging

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6. Among the many firms that closed offices in 2008–09 are Dewey & LeBoeuf (closing its offices in Jacksonville, Florida; Austin, Texas; and Hartford, Connecticut), Weil, Gotshal & Manges (Austin, Texas), Sonnenschein Nath & Rosenthal LLP (Charlotte, North Carolina), and Clifford Chance (Budapest, Hungary). Erin Marie Daly, *Orrick to Lay Off 300, DLA Piper 54*, EMP. L. 360, Mar. 3, 2009; Brian Baxter, *Closing Time: Clifford Chance, Weil Shutter Offices*, AMLAWDAILY, July 1, 2009; Sofia Lind, *Dewey & LeBoeuf to Close Three U.S. Offices*, NAT'L L.J., Apr. 11, 2008.
7. *See* Ross Todd, *Fading Away. Am Law 200 Firms Have Laid Off Almost 3,000 Associates This Year, Who Did It Well—And Who Didn't*, AM. LAW., Vol. 31, No. 8, Aug. 2009; Erin Marie Daly, *Lawyer Layoffs Topped 1,000 in February*, EMP. L. 360, Mar. 5, 2009 (reporting that 1,045 attorneys lost their jobs in February 2009); Jocelyn Allison, *US Lost 1,300 Legal Jobs in Jan. As Firms Cut Back*, EMP. L. 360, Feb. 6, 2009 (reporting that 1,300 attorneys lost their jobs in January 2009).
8. Associated Press, *Fed Survey Notes Signs of Improving Economy*, N.Y. TIMES, Jan. 12, 2011, at B8.
9. [Reserved.]
10. *See* 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 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., May 2010 (listing the highest-grossing law firms in the United States in 2009).

entities' employment and benefits policies throughout their worldwide offices—the establishment of a global employment and benefits solution. Large international litigations and arbitrations similarly require international legal assistance, such as the pre- or post-judgment attachment of assets in various countries. There may also be a need for global legal assistance with respect to the global financial subprime mortgage crises.[11]

Consequently, the question arises: How should a client (or a lawyer working on a client's behalf, such as general counsel or an in-house lawyer) go about assembling the optimal legal team to address such international 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 faced with the need for international legal services, and in particular, the type of services identified above. Those structures are

(1) law firms,

(2) affiliations (that is, preestablished associations of law firms), and

(3) specially created international law firm networks (the "special teams" structure).

Each of these structures has its strengths and weaknesses in connection with what we consider to be the primary factors in selecting counsel to handle legal issues of a global nature. Those factors are (without regard to order of importance) size, geographic presence, consistency, quality, and efficiency.[12]

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

Numerous law firms, including smaller firms with a boutique practice, have the ability to handle competently at least some type of international work. Law firms may be thought of as standing on a

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11. While such issues often should be addressed globally, strategic, legal, and economic factors may counsel in favor of addressing them one jurisdiction at a time.

12. These factors are also some of the factors showing how the merger of law firms aids those firms in maintaining a competitive advantage. *See* Zeughauser Group, *Why Firms Merge, in* ZGUIDE TO LEADING LAW FIRMS, ZEUGHAUSER GROUP'S 2005 POCKET GUIDE TO THE AMERICAN LAWYER RANKINGS.

continuum, with large, multiple-office firms located on one end, and small, local firms on the other.[13] 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.[14]

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13. We take it as a given that with respect to the issues mentioned above—as well as a number of other global legal issues, including international bankruptcy, global price-fixing, international tax, and global issues arising out of the global financial subprime mortgage crises—that they cannot be handled *alone* by a solo practitioner, or small or mid-size law firms. That is not to say that such lawyers cannot have a central 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.

14. The May 2010 issue of *The American Lawyer*, which lists the highest grossing law firms in the United States (the "Am Law 100"), identifies five firms as "international" (defined as firms where 40% or more of the firm's lawyers are located outside of the United States): White & Case, then with 1,890 lawyers, Baker & McKenzie, then with 3,949 lawyers, Cleary Gottlieb Steen & Hamilton, then with 992 lawyers, Mayer Brown, then with 1,657 lawyers, and Shearman & Sterling, then with 815 lawyers. AM. LAW., May 2010. Thirty-three other firms are listed as "national" (defined as firms where no more than 45% of the firm's attorneys are located in any one region of the United States). National firms in the 2010 Am Law 100 include Jones Day (2,469 lawyers), Latham & Watkins (1,880 lawyers), Sidley Austin (1,588 lawyers), Morgan, Lewis & Bockius (1,315 lawyers), Holland & Knight (934 lawyers), and Greenberg Traurig (1,707 lawyers). Of course, there are a number of other "mega" firms—in size and revenue—that do not fall within the terms of "international" or "national" as defined above. For example, Weil, Gotshal & Manges, identified as a New York firm, is listed with 1,212 lawyers.

When one compares the 2010 Am Law 100 with the 2010 Global 100—*The American Lawyer*'s list of the highest grossing law firms in the *world*—the number of "international" firms rises to fourteen. Moreover, the Global 100 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. The top ten of those firms by size, some of which are "international" and some of which are "national," are Baker & McKenzie (3,774 lawyers in thirty-nine countries, 82% outside of the home country), Clifford Chance (2,586 lawyers in nineteen countries, 61% outside of the home country), Linklaters (2,167 lawyers in nineteen countries, 61% outside of the home country), Jones Day (2,530 lawyers in seventeen countries, 28% outside of the home country), DLA Piper International (2,282 lawyers in twenty-nine countries, 57% outside of the home country), Allen & Overy (1,969 lawyers in twenty-three countries, 60% outside of the home country), Freshfields Bruckhaus Deringer (2,085 lawyers in twenty countries, 86% outside of the home country), Latham & Watkins (2,005 lawyers in twelve countries, 30% outside of the home country), White & Case (1,851 lawyers in twenty-four countries, 65% outside of the home country), and Skadden,

The five U.S. firms currently identified by *The American Lawyer* as "international" law firms are White & Case LLP, Baker & McKenzie, Cleary Gottlieb Steen & Hamilton, Mayer Brown, and Shearman & Sterling.[15] White & Case describes itself as a "Global Law Firm," with "lawyers in the United States, Latin America, Europe, the Middle East, Africa and Asia," and which, as "a single partnership . . . functions as an integrated team."[16] White & Case has approximately 1,851 lawyers in twenty-four countries, 65% of whom practice outside the home country.[17] As is true for many other mega firms, the headquarters

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Arps, Slate, Meagher & Flom (1,946 lawyers in thirteen countries, 17% outside of the home country).

Five U.K. firms (Clifford Chance, Allen & Overy, Linklaters, Freshfields, and Slaughter and May) are known as the "magic circle" firms. (Relatedly, the "charm circle" firms are the top New York white shoe law firms, such as Davis Polk & Wardwell (www.dpw.com), Sullivan & Cromwell (www.sullcrom.com), and Cravath Swaine & Moore (www.cravath.com).) For a discussion of the market forces affecting the growth of the magic circle firms, see Partha Bose, *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, *available at* 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.* Moreover, the U.K. firms tend to have higher hourly rates, while the U.S. firms bill more hours. *See id.*; Telephone Discussion with Joy Martini, President of the Legal Marketing Association (Feb. 1, 2006). 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.*

15. 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 2010, *supra* note 14. This issue of *The American Lawyer* also notes that in May 2010, Hogan & Hartson merged with Lovells to form Hogan Lovells, and that in September 2010, Sonnenschein Nath & Rosenthal merged with Denton Wilde Sapte to form SNR Denton. *Id.*
16. *See* www.whitecase.com/about/overview/.
17. *See* "The Global 100," *supra* note 14.

of White & Case is located in New York City.[18] Baker & McKenzie—the largest law firm in the world—identifies itself as having "defined the global law firm in the 20th century" with "3,750 locally admitted lawyers in 68 offices worldwide."[19] Shearman & Sterling, which more recently joined *The American Lawyer*'s list as one of the "international" law firms, touts its "groundbreaking transactions in all major regions of the world."[20] 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 1,100 lawyers in fifty countries.[21] 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 "leading global law firm."

In considering particular law firms to handle global legal issues, it is important to consider the extent to which their various practice groups, and their practice groups across offices, function as integrated units. 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).

However, while firms with centralized management (of practice groups) generally provide a very strong platform for the delivery of global legal services, one theoretical weakness of such firms is that centralization can foster bureaucracy and limit independence of the satellite offices (or the practice groups in those offices), which in turn could limit flexibility and speed in response to matters requiring expedited action.[23]

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18. *See* www.whitecase.com/locations/OfficeDetail.aspx?office=18. *See also* Paton, *supra* note 10, at 378–79 (discussing New York as "a center and a standard for international business transactions").
19. *See* www.bakermckenzie.com/aboutus/.
20. *See* www.shearman.com/about/overview/.
21. 2010 lawyer and country total obtained from www.cgsh.com/about/overview.
22. [Reserved.]
23. Another potential weakness of a firm with a structure centralized in the United States can be a lack of understanding of the foreign 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

On the other hand, firms with loosely managed practice groups often are not optimized for addressing complex global matters. Such organization 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.

§ 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 law firms. The association of these firms has had the effect of increasing their size, geographic presence, and breadth of practice areas.

There are several such affiliations. To name a few: Lex Mundi,[24] the Employment Law Alliance,[25] the Law Firm Alliance,[26] International

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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.*

24. *See* www.lexmundi.com. Lex Mundi identifies itself as "the world's leading association 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; 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; real estate; tax; telecommunications; and toxic tort and products liability.

25. *See* www.employmentlawalliance.com/en/about. The Employment Law Alliance defines itself as an alliance of "3,000 labor and employment lawyers—pre-screened for quality and responsiveness—in all 50 U.S. states and 300 cities around the globe" and a "single, powerful legal resource for employers."

26. *See* www.lawfirmalliance.org. The Law Firm Alliance promotes itself as "a loose affiliation of law firms," "a vehicle for clients to obtain competent and responsive legal services by providing a network of member firms for referral of legal matters," and "an informal network of 50 mid-sized firms located around the globe, with the greatest concentration in the United States and Canada."

Lawyers Network,[27] the Interlex Group,[28] and the Pacific Rim Advisory Council (PRAC).[29]

Affiliations routinely promote their size and geographic presence, and, indeed, can be viewed 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 whether they can serve properly as a source for providing coordinated legal solutions to international projects.[30] It is also true that these affiliations are relatively recent creations,[31] and thus—at

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27. *See* www.iln.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 66 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."

28. *See* www.interlexgroup.com/aboutus.asp. 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. . . . Interlex firms pay no referral fees to one another, and if a member firm does not specialize in a particular area of expertise, it will recommend another local firm that does. . . . In addition to highly selective membership criteria, the strength of Interlex® is derived from the personal relationships fostered between lawyers in different countries. These relationships are formed and cultivated by annual meetings of the group as a whole, through periodic meetings of specialists with one another, and, of course, by regularly working together for clients. Interlex members believe that close personal relationships enable them to call upon one another with confidence, thus setting Interlex apart from many law firm associations which are mere collections of names in directories."

29. *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 31 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."

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

31. For example, Lex Mundi, the largest of the affiliations, was established in 1989.

least in comparison to most of the large international and national law firms—have not been tested over time in terms of responding as a source for centrally managed, integrated global teams.

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

This chapter 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 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 then making deals with, each practitioner or law firm in each of the multiple jurisdictions.[32] Such deals may be particularly difficult to arrange if, for example, the client agrees to pay lead counsel a total or partial contingency fee that in turn needs to be divided among additional counsel.

Despite the burdens of such deal making, creating the special teams structure is quite simple in theory.[33] 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.[34] That last

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32. Using a single form retainer agreement for all such counsel will reduce some of the burden. Please contact Messrs. Cousin and Goldberg if you would like to discuss the form of such an agreement.
33. A checklist for creating a special teams structure is provided in Appendix 3A.
34. *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 is establishing (and maintaining) the special teams structure.

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.[35] 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 other lawyers within his or her own law firm, lead counsel should do so.

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

(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 utilize one or more of the additional resources discussed in the next section, that is, consultants, accountants, bar associations, and foreign legal consultants.[36]

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

36. 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

§ 3:5 Other Resources for Creating an International Law Firm Network[37]

§ 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 Hildebrandt,[38]

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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, Del., 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. According to DuPont's legal department, the DuPont Legal Model "[1] is business focused and client driven—using disciplined work processes, risk sharing, strategic partnering and convergence; [2] is founded on strategic partnering—Strategic partnering is the cornerstone of the Model, which emphasizes long-term relationships, sharing risks and rewards, working collaboratively and contributing to each other's financial success; [3] requires ongoing re-engineering of work processes—and provides a framework for inside and outside counsel to create disciplined systems and processes, improve the quality of legal services and contain costs; [4] maximizes the use of cutting-edge technology—to increase efficiency and improve results. Collectively, DuPont Legal, its PLFs [Primary Law Firms] and Service Providers have invested in electronic mail, electronic invoicing, integrated matter management, electronic discovery and document imaging; [5] emphasizes efficiency and cost control. The Model is results-oriented, and all parties have adopted a culture of efficiency in the way they practice law, which has led to improved and more cost-effective legal services for DuPont; and [6] values and encourages a diverse balance of race, ethnicity and gender throughout DuPont, its PLFs [Primary Law Firms] and its suppliers." *See Overview of the Dupont Legal Model, available at* www.dupontlegalmodel.com. For a recent 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, *available at* www.acca.com/vl/outside/report/report.html.

37. 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.

38. *See* www.hildebrandt.com. Among other things, Hildebrandt offers the following services for law firms: strategy and vision counseling, organizational infrastructure and governance, mergers and acquisitions, client relationship management, practice management, partnership issues, crisis management/restructuring/dissolutions, professional development,

Altman Weil, Inc.,[39] and Zeughauser.[40] 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,[41] KPMG,[42] PricewaterhouseCoopers (PWC),[43] and Ernst & Young[44]—have created huge international accounting networks, multidisciplinary practices (MDPs), and litigation management practices.[45] At a minimum, their experience in that regard can be used as a model as to how to create

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marketing, executive recruiting, research and information services, litigation support, technology infrastructure, knowledge management, risk management, peer benchmarking, and educational programs through the Hildebrandt Institute.

39. *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.
40. *See* www.zeughausergroup.com/consulting/consultingservices.asp. Zeughauser similarly offers a range of services to law firms, for example: mergers and acquisitions, strategic growth planning, marketing and business-development planning, positioning and branding, client service interviews, client service teams, and marketing organization assessment and design.
41. *See* www.deloitte.com.
42. *See* www.kpmg.com.
43. *See* www.pwc.com.
44. *See* www.ey.com.
45. 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).

and sustain global alliances.[46] 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),[47] the International Bar Association (IBA),[48] the Union Internationale des Avocats (UIA),[49] Association of Corporate Counsel (ACC),[50] and

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46. 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 so as to maintain the attorney-client privilege. For a discussion of the attorney-client privilege in the international context, see chapter 2.
47. *See* www.abanet.org/about/. From its website: "[T]he American Bar Association [is] the largest voluntary professional association in the world. With nearly 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public." The mission of the ABA is to "serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession."
48. *See* www.ibanet.org. From its website: "The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. . . . It has a membership of more than 30,000 individual lawyers and more than 197 bar associations and law societies spanning all continents."
49. *See* www.uianet.org/jsp/qquia/qquia.jsp?locale=en. From its website: "The Union Internationale des Avocats (UIA) was created in 1927 by a group of French speaking European lawyers convinced of the need for lawyers to establish international contacts. Today, the UIA is an association open to all lawyers of the world, made up of both general and specialist practitioners, counting more than 200 bar associations, organisations or federations (representing nearly two million lawyers) as well as several thousand individual members from over 110 countries. Its official languages are English, French, Spanish, German, Italian, Arabic and Portuguese. Its working languages are English, French and Spanish." *Id.*
50. *See* www.acc.com/aboutacc/index.cfm. From its website: "The Association of Corporate Counsel (ACC) is the world's largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector

state and local bar associations,[51] may also be invaluable resources for establishing an international law firm network.[52] 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.[53] 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 the client.[54]

§ 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.[55] The requirements and regulations to be licensed as a foreign legal consultant vary from state to state,[56]

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organizations around the globe. . . . With more than 26,000 members employed by over 10,000 organizations in more than 75 countries, ACC connects its members to each other, and to the people and resources necessary for their personal and professional growth."

51. 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 jurisdiction and practice by foreign lawyers in New York as well as developing contacts with foreign bar organizations."
52. 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.
53. For example, the American Bar Association has the Foreign Legal Consultant Committee. *See* www.abanet.org/dch/committee.cfm?com=IC634500.
54. 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 3,100 members as of 2007—consisting of marketing professionals, consultants, and vendors who support legal services marketing—from forty-three U.S. states and eleven countries, and 80% of the largest 250 U.S. law firms employ an LMA member.
55. 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, Paris, Sao Paulo, and New York, has maintained foreign legal consultants in New York. *See* www.cuatrecasas.com.
56. *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 Siler, *Regulating International Lawyers: The Legal Consultant Rules*, HOUSTON J. INT'L L. (2005), *available at* www.abanet.org/cpr/jclr/silver_flc_chart.pdf.

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.[57]

§ 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 handle appropriately international legal work requiring a global solution. For example, the client could consider a firm such as Baker & McKenzie, which has approximately 3,750 lawyers, spread throughout sixty-eight offices in forty countries.[58] Affiliations, too, have immense size, geographic presence, and resources. For example, Lex Mundi is an affiliation consisting of approximately 21,000 lawyers spread throughout 160 "premier member firms."[59]

A particular top-notch law firm, however, may not have the human and financial resources and geographic presence to single-handedly address the specific legal issues presented. Further, even assuming that it does, that firm may be conflicted, requiring the client to turn elsewhere.[60]

Moreover, although the affiliations promote their size and geographic presence, they may constitute 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 primarily as referral systems, then due care should be exercised in vetting each appointment of counsel. Affiliations also may be an unknown quantity. First, as *structures* separate and apart from their member firms, they have not been battle-tested over time. Second, unlike the special teams structure, made up of contacts known and proven to the lead counsel and client, chances are that a team staffed through an affiliation is less likely to consist of members who have worked together.

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57. *See* chapter 4, Foreign Legal Consultants.
58. *See* www.bakermckenzie.com.
59. *See* www.lexmundi.com/lexmundi/About_Lex_Mundi.asp?snID=569367082.
60. 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).

When existing law firms and affiliations are inadequate or unavailable to address international legal issues—and even when they are not—the client should consider creating its own international law firm network.

As we have noted, establishing an international law firm network can impose some burdens. In most instances lead counsel will need to spend significant (and potentially nonreimbursable) 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. And after additional lawyers are identified, lead counsel will need to negotiate and obtain separate retainer agreements with each of them (and/or their law firms).

That said, this effort may be well spent. The size, geographic presence, and resources of the special teams structure are potentially limitless.[61] Further, the structure generally provides for consistency, quality, and efficiency, which flow primarily from its centralized management and its use of known (and top-notch) practitioners. Given its flexibility, and potentially unlimited resources, this structure should be considered for handling the creation of a global employment and benefits solution and the attachment of assets in multiple jurisdictions, as well as a number of other international legal issues, such as international bankruptcy, antitrust (including global price-fixing), international tax, and global legal issues arising out of the subprime mortgage crisis. And 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 professionals to whom the client in need can turn.

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61. "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

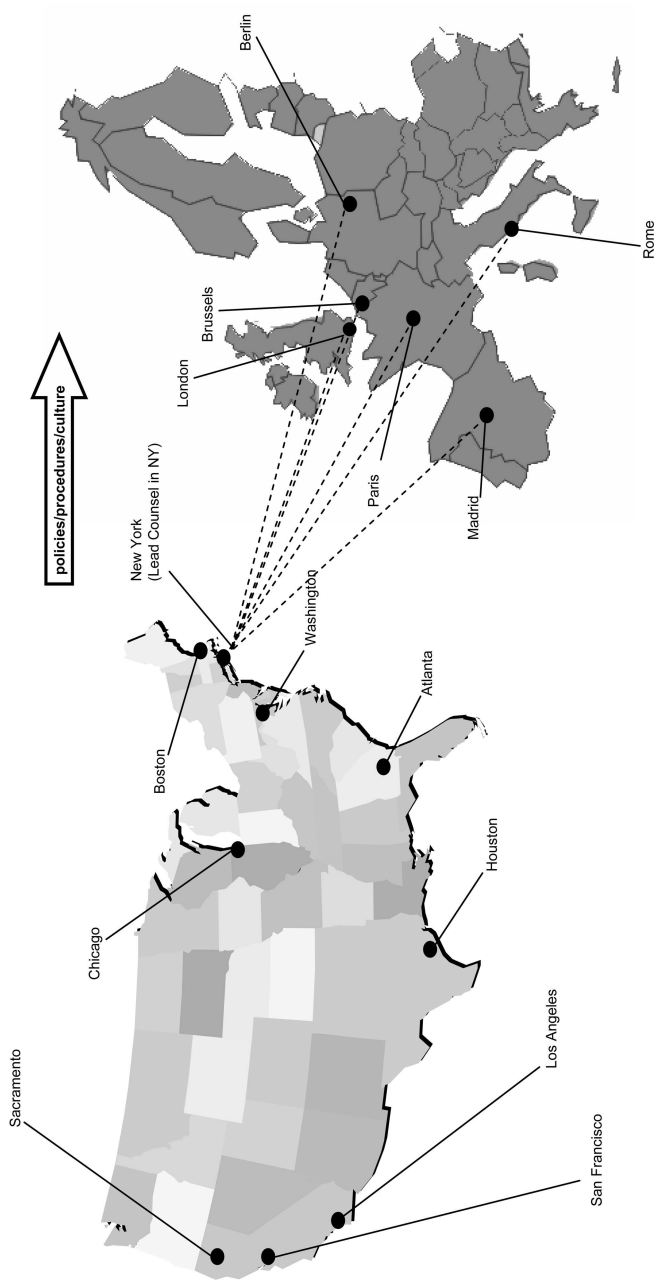
MAPS ILLUSTRATING INTERNATIONAL LAW FIRM NETWORKS

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

The first map, "Model Global Employment Law Firm Network for U.S.-Based Business with Offices in 9 Key U.S. Commercial Centers and Outside of U.S.," reflects a U.S.-based client's retention of lead counsel in New York for its global employment-related legal issues. As shown in this map, lead counsel in New York identifies, retains, and utilizes known and trusted counsel in various jurisdictions in Europe 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 European jurisdictions, subject to the laws in those jurisdictions.

The second map, "Model Global Employment Law Firm Network for London-Based Business Expanding into Key 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.

Model Global Employment Law Firm Network for U.S.-Based Business with Offices in 9 Key U.S. Commercial Centers and Outside of U.S.



Model Global Employment Law Firm Network for London-Based Business Expanding into Key U.S. Markets Through Lead Counsel in NY

