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Globalisation of Legal Services

Presented by

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GLOBALISATION OF LEGAL SERVICES

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Synopsis

Globalisation is one of those hot button words of our times. It may mean different things to different people, but it is nevertheless very relevant to all of us. This paper explores what globalisation may mean for those who provide legal services to the financial services industry. In doing so, it will put forward a number of propositions which, hopefully, will assist discussion.

The propositions are drawn from my own, personal observations working as a buyer of legal services in a globalising Australian financial institution. I have added, in Appendix C, a recommended reading list for those who may wish to explore the issues further.

Statistics to make you think.....

To reinforce the importance of globalisation as an issue for lawyers, note the following:

- 46 of 90 CEOs of leading companies in Australia report offshore.
- Up to 6 major Australian companies are considering moving their centre of administration offshore.
- The size of the global arena will have increased nearly 12-fold by 2027.
- In 2000, the world's stock of liquid financial assets (debt paper, equities and cash) was 7 times larger than it was in 1980.
- Finance sector liberalisation has opened borders to the free flow of capital, so that an estimated US$1.5 trillion churns through world currency markets each day.
- The value of mergers and acquisitions worldwide last year (2000) notched up yet another record: US$3.5 trillion, up from US$3.3 trillion in 1999 and US$2.5 trillion in 1998
- In 1999, five firms controlled 50 % of the global markets in aerospace, in electronic components, automobiles, airlines, electronics and steel. Five controlled 70 % in consumer durables, five controlled 40 % in oil, personal computers and media. 51% of

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the largest economies in the world in 1999 were corporations not countries: Canada was number 8, Australia was between 10 and 15 - Walmart was number 12.

- In 1999, the sales of 200 companies represented 28.3 per cent of the world's GDP.
- McKinseys estimate that the value of the world economy that is "globally contestable" (ie open to global competitors in product, service or asset ownership markets) rose from US$4 trillion in 1995 to US$21 trillion in 2000.

Propositions

The propositions will be framed by reference to these issues:

1 What does a globalising financial services organisation want and need from its external legal services suppliers? What is the role of in-house counsel in making the buying decisions, and what influences *them*? As primary buyers of legal services, what are the greatest organisational challenges that globalisation presents for in-house counsel?

2 In buying legal services for cross-border activities, how does a buyer choose as between (a) a quality local firm, (b) a multinational law firm, and (c) a multinational *multidisciplinary* firm (ie the legal division of an accounting firm)? Issues to consider under this heading include:

(a) Are clients primarily looking for the "one-stop shop" with "seamless service" or do they want best-on-the-ground local expertise in each country they do business in?

(b) How much depends on the type of work we're talking about in any particular case?

(c) Do globalising clients necessarily want their local home jurisdiction relationship firm to follow them around the world? What are the advantages and disadvantages of this? How has globalisation affected traditional law firm/client relationships?

(d) Does size matter? How much?

(e) Brand name v's personal relationships - which matters most? Do buyers tend to go after known or "name" individuals rather than the brand name?

(f) How important is cost in the overall equation? Are pressures on buyers to keep external legal costs down increasing? Is the perception that globalisation of law firms increases or reduces costs? Note the increasing use by buyers of tenders and panelling, mandatory discounts, favourable rates etc. What cost advantages do Australasian firms have to offer?

(g) What role to Australasian firms have to play in these moves?

3. What conclusions can be drawn from these developments? What are the lessons for in house counsel? What are the lessons for law firms?

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1. What does a globalising financial services organisation want and need from its external legal services suppliers?

See Annexure 1 and parts of Annexures 4 and 7 for views on why law and professional services firms are globalising.

Proposition 1.1: Globalising clients want what clients have always wanted - service providers who can help them be more competitive. On the global stage, the challenge for law firms is about relevance - how to help the client be more competitive in many different local markets as well as the global market (whatever that may mean). The peculiar characteristics of the legal profession around the world have made this harder than it has been for other professions because (a) laws differ from country to country, (b) lawyers are heavily regulated locally, (c) in any given market there are significant barriers to new entrants, (d) short-term cashflow cycles militate against long-term capital investment decisions in law firms, and (e) the consensus decision-making model dictated by partnerships makes high risk investment decisions harder to take.

Proposition 1.2: The volume and complexity of legal work generated by globalising corporations is beyond the servicing capability of in house teams - thus, more work is outsourced. This outsourcing is typically controlled by in house lawyers themselves. What influences them in making the buying decision seems little changed. The fundamentals still count - the consistent message is quality, cost and responsiveness. Surprisingly, the mere fact of size and geographic spread does not necessarily carry determinative weight, and there are even signs of a backlash against globalisation of legal services. But the firm that can offer quality, cost, responsiveness *and* geographic spread is at a definite advantage *See Annexure 2.*

Proposition 1.3: Globalisation creates great organisational challenges for in house counsel. A major challenge is how best to deal with work in jurisdictions outside their home base, where they may not have the experience or expertise either to do the work themselves or to select an appropriate outsourcing partner, while at the same time keeping a tight rein on costs. In no small measure, firms (be they local or multijurisdictional, legal or multidisciplinary) which help in house counsel resolve these challenges will reap the rewards offered by the increase in outsourcing. *See Annexure 3.*

Summary: In summary, the basics remain the same but there is evidence of a greater need to provide cross-jurisdictional support and this support is preferred from one supplier if that supplier can meet consistent quality and cost criteria.

2. In buying legal services for cross-border activities, how does a buyer choose as between (a) a quality local firm, (b) a multinational law firm, and (c) a multinational *multidisciplinary* firm (ie the legal division of an accounting firm)?

Proposition 2.1: "*Everyone agrees that the volume of cross-border deals will grow, and that big corporate clients will increasingly need cross-border legal expertise. But there is no agreement on how firms can provide this*". Not all globalising clients are looking for the "one-stop shop" with "seamless service". However, merging firms seem convinced that clients do want what they are offering. *See Annexure 4 and the table at Part 2 of Appendix B.*

Proposition 2.2: Much depends on the type of work we're talking about in any particular case. The answer to the question "who to use?" can only make sense in the context of the work type being considered, and the costs it can bear. There may well be only a narrow sliver of work at the top end that demands the high-value-add benefits and multijurisdictional presence that globalised law firms can provide. This sliver might include:

- complex, cross-border transactional work (eg capital markets, project financing)
- strategic transactions (eg mergers/acquisitions, JV's)
- cross-border specialist or niche work (eg IT/IP, tax, regulatory, telco/media)

Proposition 2.3: Globalising clients do not necessarily want their local home jurisdiction relationship firm to follow them around the world. There certainly are advantages in having them do so in appropriate cases (eg project managing major matters, using inside knowledge of client's requirements), and US and UK firms, as well as some Australian firms, have demonstrated their ability to do this, particularly in Asia. However, if the longer-term requirement is for best-on-the-ground local expertise and capability, an inability to deliver on that front will not usually be saved by a long-standing relationship.

Proposition 2.4: Size does matter, but perhaps not as much as some firms might think. It gives a firm credibility and a seat at the table to be considered for larger more complex cross-border work, but the job will still usually go to the firm that has the requisite quality individuals and the right pricing structure. *See Annexure 5 and the table at Part 2 of Appendix B.*

Proposition 2.5: Brand name v's personal relationships - which matters most? Globalisation of clients (whether via merger or by organic expansion) has a great potential to interfere with existing, and even long-standing, personal relationships on which many client-firm relationships are based. Buyers will feel increasing pressure in the discharge their duty to the organisation to get the best lawyer for the job. While there is a safety and comfort factor in using a brand name firm, ie the "no one ever got sacked for using IBM" syndrome, nevertheless, sophisticated and well-informed buyers will always exercise their right to seek the best man (or woman) for the job. He (or she) may not necessarily be in one of the company's panel firms, or in a mega firm - so long as the decision-maker feels comfortable in justifying his/her choice to their superiors and internal clients, if challenged. The more highly specialised the task, the more willing the buyer will be to seek out a highly experienced specialist, regardless of brand name or institutional relationship. *See Annexure 6 and Appendix A.*

Proposition 2.6: Cost remains a very important factor in the overall equation. There is constant, and steadily increasing, pressure on buyers (ie usually, in house counsel) to keep the external legal spend under control. There is a perception in some quarters that globalisation of law firms increases costs. There are clear trends in the increasing use by buyers of tenders and panelling, mandatory discounts, favourable "relationship" rates etc. *See Annexure 7 and Appendix A.*

Proposition 2.7: Australasian firms definitely have a role to play in the globalisation of legal services, though the precise size and shape of the model (or models) is still evolving. Cost advantages are obvious, and can be leveraged through "unbundling" of work. Advances in technology mean that some types of work can be exported from high cost legal markets (eg London, New York, Hong Kong, Singapore) to lower cost jurisdictions with no quality diminution (eg Australasia). This gives Australasian firms a globalisation competitive advantage, at least in the medium term, but the challenge is to satisfy buyers that they have the requisite quality, expertise and experience There is much official support for the export of Australian legal services. *See Annexure 8 and the "New Zealand" article in Annexure 1.*

Summary: In summary, in buying cross-border services, the preference is moving to firms that have all of quality, brand name and more jurisdictional cover than a top quality local firm in one jurisdiction.

3. What conclusions can be drawn from these developments? What are the lessons for in-house counsel? What are the lessons for law firms?

1 The buyers of legal services in globalising corporations are sophisticated in that they know what they want and how to get it. They are usually very experienced lawyers themselves and relatively impervious to marketing *per se*.

2 As far as buyers are concerned, it's still primarily about quality - always has been, always will be.

3 Assuming an acceptable level of quality, cost the next most important factor in the minds of buyers. The jury is still out on whether globalisation of firms increases or reduces costs, but Australasian firms may have an advantage in this regard in the medium term.

4 Buyers are not particularly drawn to globalising firms just because of their geographic spread. They still need to compete on quality and cost. However, firms that have the quality *and* can operate in more than one of the relevant jurisdictions, are likely to get preference. Experienced buyers will usually go for the best-on-the-ground local expertise they can afford, regardless of where it is housed.

5 In the battle between the pure law firms and the multidisciplinary "professional services firms" for legal work, it is too early to identify a victor and, indeed, there may well be room for both.

6 Australasian firms have a role to play in the globalisation game, but each firm must now, or very soon, make a choice, or have the market make it for them: stay domestic or globalise? If the latter, they must make further choice: grow organically, merge with an international law firm or merge with one of the Big Five "professional services firms"? In making these choices, they should pay close heed to what their clients, present and future, want from them.

See Annexure 9 for further observations by McKinseys on the US/European front.

ANNEXURE 1

What's driving change?

Mary Cranston, Chair of Pillsbury Winthrop, a firm with 900 lawyers across the globe, including Sydney (Ms Cranston was named by the US National Law Journal last year as one of the 100 most influential lawyers in America) maintains that, as Australian corporations become more active internationally, those that seek to service them would need to come to terms with the international market place. If they don't they may well be cutting themselves off from the future.

Source: ***Law firms eye the Big Five for marriage****, C Merritt, Australian Financial Review, 9 May 2001*

In Australia, all of the Big Five are "hitched" to a legal operation in Australia except Deloittes, but even that may soon change, as they unwrap their strategy to "connect some major law firms around the world into a top-tier global law firm". Those that already have legal capability have demonstrated impressive growth in that capability since acquisition.

*Source:****Big ones all hitched, except Deloitte****, M Byrne, Australian Financial Review, 9 May 2001*

On the other hand, *"despite disagreement about how to tackle globalisation, there is universal agreement that the big five accounting firms represent little threat, except in the specialist area of tax advice. "I don't want to sound complacent, but they're not even a blip on the horizon," says the head of one New York firm. "Maybe in five or ten years, but I doubt it." "We just don't meet them in the marketplace," says Clifford Chance's [senior partner] Mr [Kenneth] Clarke.*

Ironically, the accounting firms, which nowadays prefer to be known as "professional service" firms, are using the same "one-stop shop" argument as Mr Clarke to justify their foray into legal services. But their idea of one-stop shopping involves not just a collection of different legal specialties, but advice on business strategy, financing, management, computer systems and personnel as well. "Clients like teams that are integrated," says Samuel DiPiazza, head of PricewaterhouseCoopers's tax and legal services practice in North America. The accounting firms also have huge international networks of offices, dwarfing those of even the biggest law firms. PricewaterhouseCoopers, for example, has 150,000 employees in 150 countries, compared with Clifford Chance's 6,500 in 20 countries.

The accounting giants must still clear regulatory hurdles in many countries to compete in legal services, especially in America, where bar associations continue to ban lawyers from sharing profits with other professions. But the top law firms are not counting on such barriers to defend their turf. Most believe that, despite opposition from some lawyers, the barriers will soon fall, and they agree with the accountants that conflict-of-interest concerns can be resolved. Yet they believe that the accounting firms will never be able to attract the very best lawyers needed to compete at the top of the market. "The culture's different. None of us would want to work for them," says a senior partner at one New York firm. A similar argument is heard from top strategy consultants, whose turf the accountants have also sought to invade. The accountants' real targets, say lawyers and consultants alike, are hundreds of middle-ranking practitioners working for less money and for smaller companies. Many of these are already starting to lose business.

Source: ***The Battle of the Atlantic****, The Economist, 24 Feb, 2000*

In a study published in the NSW Law Society Journal, Gray, King and Woellner highlight the following pressures for change in what they call "the legal industry":

- competition from within the profession, from other professions and, potentially, global competitors;
- changes in customer expectations and loyalty
- information technology, which has transformed economic practices and permitted improved linkages between clients and professionals
- the importance of (and difficulties in) retaining professionalism while adapting to changes
- globalisation, particularly as it affects the larger firms.

Source: ***Facing up to change****, J Gray, P King & R Woellner, (1998) 36 (2) LSJ 44*

New Zealand

While globalisation and convergence may be thoroughly overworked buzzwords, they nevertheless represent real challenges for commercial lawyers...

For example, with their high concentration of foreign ownership, management control of New Zealand businesses is increasingly being exercised from overseas. In the banking industry, for instance, many divisions which would previously have reported to a New Zealand general manager now have direct reporting lines into head offices in Melbourne and Sydney. Clearly day-to-day decision-making powers are being drawn away from New Zealand and being globalised across businesses' international networks.

Equally the steady march of convergence is being felt across a multitude of industries. The banking and finance industries have long been the subject of convergence between bankers, managed fund providers and insurers. Now further convergence is occurring between investment advisers, financial planners and product providers. This is likely to increase as banks, insurers, utility suppliers and retailers attempt to extract maximum value from their existing client relationships by extending the range of products they promote beyond their traditional boundaries.

This contrasts markedly with the manner in which most traditional legal service providers have carried on business in the last decade.

Firstly, lawyers, particularly in New Zealand, have clung to their jurisdictional boundaries steadfastly refusing to provide global advice. While many firms have formed associations or alliances with Australian and Asian legal networks, none have yet sought to provide a truly multi-national approach. Where advice or input is required in respect of the application of other jurisdictions, overseas firms have traditionally provided separate responses that the client is left to co-ordinate into a compatible and cohesive result.

The same approach is typified in the reaction to convergence. Internally law firms have divided themselves into clearly-defined specialist groups. While there are advantages in providing specialised and expert advice, in many cases these divisions have become inflexible, with reluctance to integrate various specialities into a single cohesive response. Often completely separate tax, banking and commercial advice will be provided without recognition of the interdependency of the areas.

It is not surprising then that when lawyers are challenged to step outside the legal discipline entirely their reaction is negative.

The almost complete loss of tax consulting and tax advisory work to the accountancy firms throughout the 80s and 90s is a clear demonstration of the cost of the profession's inability to adapt and meet challenges. Even with the benefit of legal professional privilege protection, the legal professional was unable to resist the major inroads made by the chartered accountants firms in this area. We now face a situation where the "Big Five" business advisory practices enjoy the vast majority of tax consultancy work, and in fact employ many more legally qualified staff practising in this area than their legal counterparts.

Similar trends are beginning to appear in the provision of risk management, employee benefits, compliance advice, corporate finance and mergers & acquisitions practice and corporate recovery.

Major accounting firms in Europe have also made inroads into litigation support services and alternative dispute resolution...

So what are the realities of globalisation and convergence for commercial lawyers?

While globalisation of law itself may be some way off, clearly the way major businesses approach management of legal services is increasingly determined on a global basis. As banks or financial institutions seek to introduce new products they will be looking towards trans-Tasman if not global compliance. No longer will products be individually designed for each market. Therefore, if New Zealand law firms wish to continue providing services to these organisations, they will need to have access to these clients in the location where the product design decisions are being made, and have access to the necessary multi-jurisdictional skills to provide a single cohesive solution to client requirements.

Mere associations with overseas firms will not provide the relationship from which such a service can be provided.

Equally lawyers need to adapt to provide clients with the full range of services required as their businesses converge. For example, when approaching a new business venture, a financial institution will need to consider economic, process, intellectual technology, legal compliance, human resources and a host of other factors in evaluating that business. The legal services provider who can supply an integrated and consistent response will obviously have an advantage over those who provide only a single aspect of the solution. While some lawyers will be able to accumulate multi-disciplinary skills to enable them to provide this service, eventually some degree of cooperation with other professions will be essential. Otherwise other professionals, not so narrowly focused or restricted by traditional boundaries, will step into the void.

While historically the legal profession might have fought incursions into its marketplaces in the courts, increasingly that response will become unavailable and unpopular. As a profession with an already questionable public profile, lawyers cannot afford to be perceived by the public as resisting the provision of more economical, client-focused or efficient services for their own benefit. The wave of deregulation, consumerism and open marketplace competition is unlikely to be defeated in the long term.

While it is a common objection that the rules of professional conduct prevent closer cooperation, this argument is fundamentally flawed. These standards of professional conduct are designed for the protection and benefit of the lawyer's client. If these standards prevent the lawyer from providing the client with the service the client requires, then surely the response is to reform the standards, not to deny the service. If in fact the standards exist only to protect the lawyer then

they should be discarded immediately. No profession, however noble or steeped in tradition, has the right to use the law to protect its professional interests at the expense of its clients.

Is it all then doom and gloom for the legal profession in New Zealand? Clearly for those who wish to retain the traditional methods in approach to practice the answer is yes. However, for those prepared to innovate, think laterally and cooperate across jurisdictions and disciplines the outlook is not necessarily bleak.

An interesting trend is developing in the Australian market that may well provide great opportunities in New Zealand. Many Australian firms are exploiting the cost differential between Sydney and Melbourne to transfer work to the lower cost centre while delivering and billing the service at premium rates. If there is opportunity for this arbitrage between Melbourne and Sydney, enormous openings must exist between jurisdictions. Imagine the advantages to be gained between the New York and Wellington markets.

This advantage, coupled with a creative approach to inter-jurisdictional and inter-disciplinary relations could provide a bright future for both multi-disciplinary practices and traditional legal service providers.

Source: ***Globalisation and convergence: challenges for commercial lawyers****, Simon McArley*

The UK

Research conducted by the Law Society of England & Wales into 7 of the largest international law firms based in London (ie firms which are international practices with significant numbers of lawyers working outside the UK) has concluded that:

- Most of the firms aim to practise local law in whichever jurisdiction they are located.
- The rate of growth of overseas practice and of the revenues which it generates is considerable.
- The move overseas has been driven by the desires of the firms themselves to continue to expand their business.
- The financial base of the City of London remains key to this development and in all cases the London office remains the core of the practice.
- There is virtual consensus that, within the next decade, there will be significant international mergers leading to a small number of global law firms.
- Amidst this, there is a powerful dissenting view that law is not a global product and that attempts to market legal services in this way will undermine the traditional expertise of English lawyers.

Source: Law Society of England & Wales, ***Research Study No. 35,*** *July 1999*

The Law Society also maintains that, with increasing globalisation of business in general, large firms which can handle multi-national legal work will continue to be in demand. Larger firms operating in such a global market are however open to competition from:

- other large firms, with fluctuations in the reputation and staff of specialist departments
- smaller niche firms with lower overheads
- top Wall Street and other large US firms

- large accountancy firms, several of whom have developed legal offices.

Source: Law Society of England & Wales, ***Fact Sheet C: Large Corporate Firms.***

The USA

"Historically, the theory of "who called me yesterday" dominated law firm growth. The notion of building a firm or practice for the express purpose of targeting specific clients or industries was unheard of. Instead, firms added new lawyers, new U.S. offices, and even new offices abroad -- and then watched to see what opportunities arose. The phrase "opportunistic growth" was (and still is) fairly common in our profession. Of course, our clients learned long ago that if you sit back and wait for the right opportunities, your competitors will grab them up before you ever see them. Somehow, until very recently, lawyers and law firms were convinced that they were immune from the basic economic forces that influence the rest of the world.

Today, as the number of chairs representing Big Law grow fewer by the day, law firms that don't want to be left standing when the music stops know that globalization is key to securing a seat. But in the haste to keep up with competition, many U.S. firms are still holding on to the old theories of growth as they dive into global waters.

Going global means more than opening a London office because everyone else is doing it: It requires charting a course toward new markets that best meet the needs of a targeted industry.

Source: ***Strategic growth of law firms****, BS Levin, Legal Times, 26 March 2001*

Trans-Atlantic

AFTER Gaedertz, a German law firm, failed to agree last month to a merger with Norton Rose, a British firm, it decided to break itself up. Gaedertz's office in Hamburg linked with Latham & Watkins, an American firm; the team in Cologne joined Norton Rose anyway; and the Berlin office has yet to decide what to do. The different bits of the firm could not agree on which partner to go with; ***but all of them did agree that international partners are essential for survival in the globalising legal world****. (emphasis added)*

That is the general consensus in Europe, and Clifford Chance, a British firm, has been the most aggressive in pursuit of a global strategy. It became the world's largest law firm after its merger with New York's Rogers & Wells and Germany's Pünder, Volhard, Weber & Axster in 1999, and it may add yet more (smaller) practices in Europe and Asia to its empire this year.

*New York firms, on the other hand, tend to be sceptical about the Clifford Chance route. "****We do not see demand for a global firm from our clients,****" says John Ettinger at Davis Polk & Wardwell. Davis Polk, like many of its peers in New York, practises only American law and prefers the "best friends" approach to globalisation. Best friends co-operate closely in their respective jurisdictions but keep their independence. Davis Polk's partner in Germany, for instance, is Hengeler Müller Weitzel Wirtz, the only top German firm that still prefers to go it alone. (emphasis added)*

Some New Yorkers have deliberately limited themselves to a narrow local market. Schulte Roth & Zabel, for example, is very profitable thanks to its specialisation in alternative investment, in particular in hedge funds. About 50 of the firm's 275 lawyers advise on alternative investment.

The city's lawyers are lucky that New York's financial community has remained remarkably loyal to a very small circle of local firms. Morgan Stanley turns to Davis Polk for its legal advice, while Goldman Sachs sticks mostly to Sullivan & Cromwell. "In the past ten years we have seen an increasing percentage of the best-paying litigation and deal work consolidating at fewer and fewer elite firms—all New York-based," says The American Lawyer, a trade magazine.

However, New York's elite continues to remain aloof from international deals for reasons other than internal strategy. One reason is the small matter of partners' profits. At most leading New York firms, the partners' share of profits depends on how much business they bring in: they eat what they kill. This system sits uneasily with London firms, which believe that their "lockstep" system—sharing profits among partners according to seniority—encourages teamwork. It is difficult to persuade New Yorkers to accept the big pay cut that can come with a switch to a lockstep calculation.

Over the past decade, therefore, London's leading firms have felt obliged to set up in the world's largest capital market on their own. But, despite costly expansion, they have signally failed to make decent inroads into the American market. This sobering experience has left them with an even greater desire to link up with New Yorkers.

The one big carrot that London firms can dangle in front of reticent Americans is the increasing importance of cross-border deals in Europe. These are highly profitable for the legal profession, and the hottest market today is Germany, which until a decade ago was virtually inaccessible to non-German law firms. A supreme-court decision in 1992 allowed German law firms to merge, and triggered a flurry of deals.

Shown the cold shoulder in America, many London firms have turned to German practices for partners: Linklaters merged with Oppenhoff & Rädler last month, and Clifford Chance with Pünder. Freshfields Bruckhaus Deringer is the result of a merger between Freshfields, a British firm, and two top German practices.

Most New Yorkers still reckon that they can remain competitive in Europe by sprucing up their operations and hiring local lawyers. But they could change their minds if a top New York firm were to merge with a top London firm. When rumours of a merger between Freshfields and Cleary, Gottlieb, Steen & Hamilton circulated late last year, New Yorkers pricked up their ears. The two firms have never been in talks, says Alan Peck, Freshfields' chief executive. But Freshfields continues to go courting across the Atlantic.

Source: ***Unrequited love****, The Economist, 22 Feb 2001*

ANNEXURE 2

Proposition 1.2

The role of in house counsel

The evidence from the UK and the USA is that the amount of legal work being outsourced is increasing, and that in house counsel control that process.

- **UK:** *"In house lawyers are directing an increasing volume of work to their colleagues in private practice, according to a survey of over 1,200 lawyers (half of whom were in house lawyers) conducted by the Law Society of England & Wales"*: ***Lawyers Weekly*** (Aust), 11 May 2001.
- **USA:** see Part I Appendix B. Also, the American Corporate Counsel Association's Survey of Chief Legal Officers Oct 2000 found that 35% of the 77 Chief Legal Officers who responded said they would be increasing the work they outsourced to outside counsel.

Are in house lawyers influenced by what the multinational firms have to offer? The evidence is not conclusive but it seems the fundamentals remain the same:

- In March 2001, *Lawyers Weekly* (Australia) published the results of a national survey of in house counsel on the factors they considered important in selecting a law firm. In order of importance (from most important down), they were (i) understanding of the particular situation, (ii) existing relationship/personal contact, (iii) reputation of particular lawyer, (iv) perceived value for money, (v) previous experience with the organisation, (vi) understanding of the business. Size of the firm came a distant 14th.
- In May 2001, *Asiamoney's* survey of Asia's top in house counsel led them to conclude that *"As to how people choose their firms, fees proved not to be the deciding factor - instead, in-depth specialist practice knowledge was the key criterion, followed by good understanding of the client's business. The global firms such as Baker & McKenzie, Clifford Chance, Freshfields and Linklaters & Alliance may be a little disheartened to learn that* ***an international network is the least important issue for our respondents***": (emphasis added). The full results of this survey ranked criteria when choosing law firms in the following order: (i) in-depth specialist practice knowledge, (ii) understanding my business/company, (iii) fees, (iv) reputation, (v) breadth of network, (vi) confidentiality and (vii) international network
- See the results of the *Pricewaterhouse Coopers Survey of General Counsel July 2000 (USA)* in Part 2 of Appendix B. Note the elevated position of (i) specialised expertise, (ii) perceived quality of service and (iii) perceived ability to deliver cost efficient services. Note the relatively low position of factors like (a) ability to serve the company in multiple locations or regions, and (b) size of firm.
- See the quotes from in-house lawyers of major US-based multinationals in Appendix A.

"Mergers and acquisitions have disrupted many long-standing relationships between companies and their outside counsel. And in the face of heightened global competition, companies

increasingly base purchases of legal services on a more objective assessment of their value, defined as benefits net of price. ***Deregulation, globalization, and greater transparency—promoted in part by information technology—have expanded the choices available to corporate general counsels and made it easier than ever for them to compare the services and prices of law firms.*** *(emphasis added)*

For routine legal needs, such as environmental compliance and insurance defence, the goal is now to obtain satisfactory legal services at minimum cost. In these areas, companies are turning to in-house counsel or to whatever outside counsel offers the best price for competent work. By contrast, for high-value-added legal services, ***such as M&A and capital-markets transactions, companies are more likely to look—and pay a premium—for the best attorney in a particular subpractice.*** *This bifurcated approach to legal services rewards law firms that have distinctive depth and breadth of expertise in high-value practice areas and penalizes those with large numbers of lawyers in practices whose services are becoming commoditized" (emphasis added)*

Source: ***Lawyers get down to business****, WM Becker, MF Herman, PA Samuelson and AP Webb, The McKinsey Quarterly 2001 No.2*

"Kevin Sowerbutts, in-house counsel at BNP Paribas, says that using a global service can save time. "A global firm can co-ordinate the local legal advice. We don't have to liaise separately with an individual firm." Another advantage is consistency. "It makes them set standards irrespective of jurisdiction." ***However, a global network is certainly not the only thing he looks at in selecting a firm. "We tend to develop our own relationships with firms in local jurisdictions and that is not based on whether they have relations with firms in the UK." Relevant experience and quality are what he looks for in a local firm. "We keep a close eye on quality control and there has to be a specific degree of expertise."*** *(emphasis added)*

Richard Slater, partner at Slaughter and May, concedes that for some kinds of work, a global firm will win out. "For regulatory matters, a banker may want a UK lawyer who can provide him with an answer from his 12 offices around Europe." Slater argues however that for advisory or M&A work the banks "want the best guy for M&A work in each country." Tim Polglase of Norton Rose takes a similar view, arguing that banks are still working on a country by country basis at least when it comes to New York and English advice. "We act for a number of global banks but we don't have an office in New York. Most banks have separate panels in London and New York and I don't see that changing for years." This view is endorsed by a source at an investment bank who says that whilst an international network is valuable, quality and local expertise in each country is paramount. "We use the best firm on the ground in each country."

Richard Slater argues that not being 'global' has not affected Slaughter and May's work at all. "We have no shortage of international work." Peter Dickinson of Rowe and Maw agrees. "Our strong relationships in Europe allow us to deliver a seamless service in the same way that a firm with a global spread of offices can."

The continuing viability of this approach is questioned. In Morley's opinion it is not the best long-term strategy. With the best local firms being snapped up by the global players, says A&O's David Morley, "they may wake up, look around and there will be no-one left to be best friends with." Some argue that it doesn't even work now. "I don't think it works," said one in-house source at an investment bank. "You don't have the London partners beating the local partners over the head. You don't get the same level of service."

One way for a law firm to survive is to position itself as a niche player. Kevin Sowerbutts at BNP Paribas argues that there will always be room for a specialist, particularly where a global firm

ANNEXURE 3

Proposition 1.3

What challenges does globalisation pose for in house counsel ?

The American Corporate Counsel Association's *Survey of Chief Legal Officers Oct 2000* found that the top 3 organisational challenges that globalisation created for in house counsel were:

1 Managing the delivery of legal services

2 Identifying [appropriate] outside counsel

3 Global communications with their lawyers

When the *PricewaterhouseCoopers Survey of General Counsel July 2000* (USA) asked respondents to identify the 3 greatest challenges facing them as a corporate legal department (in order of importance) the following results were recorded:

1 Providing proactive/preventive legal services

2 Budget constraints

3 Corporate legal department staffing constraints

4 Ability to obtain information from management

5 Management support

6 Technology

7 Ability to obtain information from law firms

8 Law firm staffing

ANNEXURE 4

Proposition 2.1

Choosing between (a) a quality local firm, (b) a multinational law firm, and (c) a multinational *multidisciplinary* firm (ie the legal division of an accounting firm)

How do you choose law firms for litigation outside the United States?	
Recommendations from domestic counsel	33.3%
Use of a multinational law firm	21.8%
Use of a law firm network	10.3%
Left to the discretion of company lawyers in those locations	36.7%
In countries where I know, reputation is the primary method	18.3%
Other	6.8%
n/a	6.8%

Source: ***Corporate Legal Times Survey of Chief Litigators,*** *Dec 2000*

In its *Multidisciplinary Practices: Legal Professional Privilege and Conflict of Interest issues* paper, released in October 2000, the Law Council of Australia has called for lawyers to be allowed to go into practice with other professionals.

MDPs allow legal practitioners to share profits with other professionals. Currently in Australia, only the New South Wales Government has legislated to allow a legal partnership to share profits with non-lawyer partners. MDPs are prohibited under all other State and Territory laws regulating the legal profession. The Law Council's 1998 MDP policy is generally regarded as one of the most progressive internationally and developments in Australia are being closely watched overseas. The President of the Law Council, Dr Gordon Hughes said, "MDPs offer real benefits to both the professionals involved and to consumers. They offer consumers more choice and the convenience of 'one-stop-shops' where they can obtain advice from a range of professionals on a matter. In rural or regional areas, for instance where costs are high and clients few, being able to share the costs of doing business would attract solicitors and other professionals. For lawyers, MDPs offer the potential for costs savings and the chance to work closely with other professionals. There is no doubt that interest in multidisciplinary teams operating under a single business structure is growing among lawyers."

The Law Council's progressive MDP policy is in stark contrast to the position of the American Bar Association (ABA) which rejected MDPs earlier this year. Dr Gordon Hughes said, "The Law Council has not been dissuaded from its position on MDPs by events in the United States. We believe the ABA has got it wrong on MDPs and their outlook is too conservative. The Law Council's Issues Paper will make a significant contribution to the debate in Australia and internationally on the introduction of MDPs."

Tim Holden, Chief Executive of Ernst & Young, predicts that large Australian law firms must either become members of a large global firm, join forces with one of the Big Five or become smaller, more specialist organisations operating within the domestic market. According to him, within 10 years there will be more than 6 to 8 large global law practices - and 2 or 3 are likely to be multidisciplinary accounting firms.

In the same article, Chris Merritt looks at the "game of musical chairs" being played by the Big Five accountants firms with the large Australian law firms, and contrasts the theory with possible reality. While the common argument is that law firms are looking to "*attract a merger partner who will protect them form the forces of globalisation that are about to sap the Australian legal market for legal services of its most lucrative work*", he questions the truth of this theory and asks "*is a global merger the only way of responding to globalisation? And even if it is, are the Big Five professional services firms all that attractive*?"

Source: ***Law firms eye the Big Five for marriage****, C Merritt, Australian Financial Review, 9 May 2001*

A private survey recently conducted for some Australian law firms among general counsel of major financial institutions and corporations indicated that:

- only 27% of respondents would consider an accounting firm for legal work
- on the other hand, 57% of respondents would consider using a dual expertise firm for legal work.

"Capital today is moving across borders at lightning speed in order to pursue the most attractive investment opportunities. At the same time, deregulation has opened to competition significant parts of the US and European economies, including telecommunications, airlines, and electric power. As a result, companies that might have excelled locally or regionally suddenly find themselves competing against others with world-class expertise. To compete effectively, they must typically upgrade their skills, develop a distinctive basis for competition, and aggressively reduce costs.

Such globalizing companies increasingly seek out law firms that can provide consistent "multilocal" support and integrated cross-border assistance for significant global M&A and capital-markets transactions, as well as antitrust and tax matters. We have no reason to believe that the trend toward globalization will stop at these practice areas. *Moreover, as US and UK law have come to govern the activities of the world's leading financial institutions and corporations, first-rate law firms in the United States and the United Kingdom have gained a distinct advantage in cross-border legal transactions. Recognizing this "Anglo-Saxon upper hand," most top German law firms have either allied or merged with leading UK law firms during the past two years." (emphasis added)*

Source: ***Lawyers get down to business****, WM Becker, MF Herman, PA Samuelson and AP Webb, The McKinsey Quarterly 2001 No.2*

"The two firms [ie Clifford Chance and Rogers & Wells] are betting that clients, particularly financial institutions, want one-stop shopping for legal advice around the world, and that the firm will be able to increase their market share by offering that before competitors can.

Clients confirm that it's a good idea in principle. Michael Ross, deputy general counsel of Citigroup in New York, cites a recent syndicated loan that posed legal issues in the U.S., Mexico, Spain, Holland, and the Cayman Islands. "Having one firm able to operate in all those jurisdictions is attractive," says Ross, whose bank has used both firms.

Similarly, a Clifford Chance/Rogers & Wells-like firm would have an edge with The Prudential Insurance Company of America for international "real estate merchant banking" and private equity work, says its general counsel, John Liftin, a former Rogers & Wells partner, even though Rogers & Wells hasn't done much work for the company.

Having depth in both English and American law under one roof would be an advantage in many deals where it isn't clear at the beginning which law will be most advantageous, says William McDavid, general counsel of Chase Manhattan Corporation, another mutual client. If you start with English lawyers, they'll lean toward English law, he complains, while an American firm has a stake in using New York law."

Source: ***The New World Order****, JE Morris, The American Lawyer, 1 Aug 1999*

"Everyone agrees that the volume of cross-border deals will grow, and that big corporate clients will increasingly need cross-border legal expertise. ***But there is no agreement on how firms can provide this.*** *At one extreme is Clifford Chance, which is firmly committed to a "one-stop shop" model of a global law firm with offices in many countries around the world, able to practise local as well as American and English law, and capable of handling a wide variety of legal work for big companies and financial institutions. "The clients are demanding it," claims Mr Clarke. He says that the sheer complexity of international transactions means that only a single, unified law firm can deliver a "seamless" global service, and adds that world firms will also be able to attract the best new young lawyers. (emphasis added)*

Most New York firms scoff at these arguments. For example, Cravath, Swaine & Moore, one of the most profitable firms in the United States, has small offices in London and Hong Kong but no branches in America—and no plan to open any new offices. It is convinced that this will not hamper its ability to win work on the biggest transactions. Last month it was lead counsel to Time Warner, a long-established client, on its merger with AOL.

Bob Joffe, Cravath's presiding partner, maintains that the most demanding and lucrative international assignments will always go to firms with the highest-quality lawyers, not those with the most lawyers in the most places*. If a client needs a lawyer in another country, Cravath uses the traditional method of sharing the work with a local firm. "We'll go find the best person we can and we'll tell the client that's what we've done," he explains. "We think that's better than telling the client that we're using our partner in Berlin because he just happens to be idle." Big companies are sophisticated consumers of legal services. They do not need a "one-stop shop", insists Mr Joffe. (emphasis added)*

This also happens to be the attitude of Slaughter & May, London's most profitable firm and the only one of the top London firms not seeking merger partners in Europe or New York. Slaughter and Cravath describe themselves as "best friends", referring work to each other when necessary.

In fact, most New York firms have not been as emphatic as Cravath. Many, such as Shearman & Sterling; Skadden, Arps, Slate, Meagher & Flom; Sullivan & Cromwell; Cleary, Gottlieb, Steen &

Hamilton; Davis Polk & Wardwell; and White & Case, have expanded abroad in recent years. But nearly all have done so more warily than the London firms. And all except White & Case share a strong distaste for the idea of merging with another big firm. They view it as enormously risky and a threat to the quality of their service. "We train our own talent," says Cravath's Mr Joffe. "It even disturbs me that our firm is spread over 12 floors here in a single building. I would prefer to be able to see all my partners every day." The head of another firm agrees: ***"There are real diseconomies of scale in this business. We're not making widgets."*** *(emphasis added)*

...most law firms still do most of their business within their own domestic market. But for the biggest and richest law firms the growth of world capital markets, and the globalisation in most other industries, means that advising on cross-border deals is becoming the fastest-growing and most lucrative aspect of their business. Being big at home is no longer good enough.

If global law giants are ever to emerge, they are likely to grow out of the top-tier New York and London firms. These are the firms that already advise the world's biggest companies and banks. They cream off the best business in two of the world's three biggest capital markets, which generate the most lucrative legal work. They work in English, the language of international business. More significantly, for historical reasons and because companies everywhere want to tap the London and New York capital markets, a growing proportion of international business is conducted under English or American law, even when the firms involved are continental European or Asian.

But there are also big differences between the New York and London firms. New York firms are in the world's biggest legal market, which has been booming in recent years, and they have close ties to the three largest investment banks—Morgan Stanley, Goldman Sachs and Merrill Lynch. This gives them a prime advantage in winning an advisory role in big deals, even when they do not employ many, or sometimes any, lawyers locally. London firms, by contrast, have a far smaller domestic market and looser ties to the investment banks—and thus feel a greater need to expand abroad.

Source: ***The Battle of the Atlantic****, The Economist, 24 Feb, 2000*

ANNEXURE 5

Proposition 2.4

How much does size matter?

How important is size of firm when selecting outside counsel?	
Very important	3.4%
Somewhat important	40.2%
Of minimal importance	33.3%
Important for certain matters	21.8%
Other comments:	
Large enough to handle case	27.6%
We choose lawyers, not firms	10.3%
Lower costs with smaller firms	5.7%
Smaller firms--more efficient	3.4%
Larger firms--more resources	2.3%
Smaller firms--less conflict of interest	1.1%

Source: ***Corporate Legal Times Survey of Chief Litigators****, Dec 2000*

"Growth is an imperative for professional services firms. Big is beautiful when it means providing such things as career opportunities for good lawyers (who would otherwise have to wait for partners to retire or die), leverage to sustain profitability and the critical mass necessary to gain access to certain types of work or make efficient use of a firm's resources and infrastructure.

However, insurers report that big is not always beautiful especially when growth occurs by merger and principals are distracted by merger negotiations and implementation or when growth occurs so rapidly that it outstrips the infrastructure and resources required to manage and deliver services effectively. In these circumstances the risk of a claim is said to increase."

Source: ***Risk management: beware world-wide risk trends****, R North, (1998) 36 (10) LSJ 46*

ANNEXURE 6

Proposition 2.5

Brand name v's personal relationships

"In essence, all the top law firms, including Clifford Chance, the most outspoken champion of globalisation, are using the same argument against the ambitions of the accounting firms that the New York firms use against those of Clifford Chance and other London firms: that market segmentation is the key to legal services, because quality and reputation matter more than size or geographical reach. Being global will be less crucial than being best, even in the competition for international business.

... the accounting firms are already struggling to hold together their global, multi-disciplinary partnerships. A dispute between the auditing and consulting partners of Andersen Worldwide has been in arbitration for more than two years and could eventually lead to a complete divorce. PricewaterhouseCoopers is currently considering a reorganisation that would split the firm into three separate units.

Globalisation may not be the most competitive model for such a demanding and specialised service as legal advice. Big companies do not want a cross-border deal, especially a large one, to unravel because of an unanticipated legal snag. When billions are at stake, nobody is sacked for hiring the best lawyers. Even the sometimes inflated bills of the top firms are a small fraction of the cost of such deals, and far less than the investment bankers' fees. For these reasons, the world's biggest companies have traditionally played safe and reached for one of the top New York or London firms.

That is why these firms have long dominated the most lucrative end of the legal marketplace in a way only recently achieved by the world's three biggest investment banks. But, unlike the investment banks, they do not need to raise large amounts of capital to stay in business, and so do not need to grow beyond a certain size to maintain their position. Moreover, it is harder to hold together a law firm than an investment bank, whose employees cannot easily walk out and establish a rival firm. That makes extensive global networks riskier to build and more difficult to manage.

London firms such as Clifford Chance are gambling that they can overcome these difficulties and strike it rich by offering a variety of legal services across the globe to the world's biggest companies. But most New York firms are gambling on the opposite proposition: that excelling in a few key areas of the law will continue to win them work on the biggest and most lucrative deals, even if more world-straddling law firms do emerge. "You might be willing to settle for second-best when hiring a podiatrist," says Cravath's Mr Joffe, "but not when you need a brain surgeon."

Source: ***The Battle of the Atlantic****, The Economist, 24 Feb, 2000*

...Neil Francis, legal director of UK-based house builder Persimmon, said: "If we were going abroad we would make the decision about experts at that time. We deal with lawyers rather than with companies."

Source: ***In-house lawyers reject globalism as too costly****, The Lawyer (UK) 31 January 2000*

ANNEXURE 7

Proposition 2.6

Cost as a factor

"Globalisation of law firms merely pushes up costs and offers no guarantee of quality, a straw poll of in-house lawyers has concluded.

At The Lawyer's in-house forum the 70 counsel present were asked if they favoured mass expansion and ***only one said yes.*** *(emphasis added)*

The thumbs-down may indicate future snubs to many of the City's largest law firms, which have already publicly committed themselves to globalisation.

But while some conference delegates argue that it shunts up costs and offers no guarantee of quality, others say globalisation is inevitable and a reflection of the way clients have expanded their business.

Sally Shorthose, head of legal at Novartis, sitting on the forum panel, said: "Law firms are just following their clients in going global. Everyone has to keep up."

But she added: ***"Fees are high with global firms and we are all under enormous pressure to keep expenses down."*** *(emphasis added)*

Aileen Leventon, panel member and PricewaterhouseCoopers partner, says: "The philosophy behind a global law firm is that there's a narrow sliver of work that requires a multi-jurisdictional presence. Some work is highly specialised, while other work will be routine. The most effective firm to complete all these transactions could be a global one."

From the audience, Stephen Walsh, British Airways' head of legal, voiced his concerns: "I feel concerned that as a result of globalisation our freedom of choice is restricted and I do not see any great benefit here for BA."

He added that there was an opportunity for middle-tier firms to distinguish themselves from the global giants and win outsourced work.

Louise Woodhead, a partner at Wragge & Co, said: "It's enough of a challenge for one office to grow without the risk of dropping standards and diluting investment in things like IT. A global structure puts up overheads and prices."

Neil Francis, legal director of UK-based house builder Persimmon, said: ***"If we were going abroad we would make the decision about experts at that time. We deal with lawyers rather than with companies."*** *(emphasis added)*

But head of legal at bank Coutts & Co, Chalmers Carr, said: "Globalised firms are a source of comfort to people who don't have the relevant knowledge of firms in other jurisdictions."

Source: ***In-house lawyers reject globalism as too costly****, The Lawyer (UK) 31 January 2000*

ANNEXURE 8

Proposition 2.7

Australasian firms exporting legal services

Much has been written about the Law Council's role in developing and shaping the national legal profession. In a rapidly shrinking world, where global forces – economic, political and social – now impact dramatically on our domestic policies and way of life, the role that the Law Council has carved out for itself at an international level also demands recognition.

Some 5 years ago, the Law Council began to frame and develop an international strategy which called for closer engagement with overseas legal professional bodies, with a primary focus on Asia...

Global economic forces have provided another element to the Law Council's international strategy. Legal practice, and particularly the provision of business law services, has been dramatically and irrevocably changed by reason of the rapid globalisation of business, the international capital market, the ease of international travel and the increasing sophistication of technology and telecommunications. No government and no national legal profession can ignore these forces. ***It is simply not practical for governments or legal professional bodies to ignore the effects of globalisation and to seek to build protective walls around their national jurisdictions and their national professions.*** *(emphasis added)*

One of the key strategies recognised in the Law Council's Business Plan for 2000/2001 is to facilitate transnational legal practice. There are both domestic and international aspects of this strategy. On the domestic front, the Law Council has played an important role in the preparation and implementation of the Model Practice of Foreign Law Bill which facilitates the practice of foreign law in Australia by overseas lawyers. I have had productive discussions with the Hon Joe Hockey MP, the Federal Minister for Financial Services and Regulation, who recognises that the Australia-wide implementation of the Model Bill would be a positive step towards the achievement of the Federal Government's strategic policy of establishing Australia as a centre for global financial services.

The international aspect of the Law Council's strategy is to promote the export of Australian legal services by advocating the removal of restrictions on Australian lawyers practising in overseas jurisdictions, particularly in Asia. The Law Council works closely with the International Legal Services Advisory Council (ILSAC) on these issues. [author's note: see below]

The export of legal services is now a significant component in the export of professional and technical services from Australia. It is the second highest export in this category after engineering services. In terms of the balance of trade, the surplus on legal services exports is the highest of all categories of professional and technical services.

Underpinning the Law Council's efforts for greater market access for Australian lawyers in Asia, has been the introduction of a systematic program to strengthen the Law Council's institutional linkages with legal professional associations, overseas law admission bodies and regulatory bodies. The Law Council has now signed Memoranda of Understanding of friendship and co-operation with 10 professional associations in North East and South East Asia.

The Law Council has taken the view that agreement on the liberalisation of market access requirements in Asian countries will not be achieved without measured steps to build up mutual

trust and the formal strengthening of ties between the Law Council and these Asian legal professional bodies.

While this is necessarily a long term strategy, it is pleasing to see positive results from all the hard work that the profession and the federal government have put into this goal. For example, following the Australian Legal Services Mission to China in July 1999, led by the Commonwealth Attorney-General and in which the Law Council was strongly represented, the Chinese Government granted two further licences to Australian law firms to practice foreign law in China. The Attorney-General said that the granting of these licences was a direct result of the high level representations made to the Chinese authorities during the mission.

There have also been some interesting developments in Singapore which are reported on in detail in this newsletter. The Singapore Attorney-General recently announced that an Australian law firm has been awarded a formal law alliance licence with a Singapore law firm. This is good news. It is one step forward in terms of greater access by Australian law firms to the legal services market in Singapore.

The Law Council is disappointed, though, that no Australian law firm has yet been granted a joint venture law licence which would permit integrated practice of Singapore and foreign law. A number of these joint venture law licences have recently been issued to English and American law firms.

The Law Council wants suitably qualified Australian law firms to be given the opportunity to practise in Singapore under similar arrangements.

Source: Law Council of Australia, ***President's Message*** *by Dr Gordon Hughes October 2000*

The International Legal Services Advisory Council (ILSAC) is a part-time advisory Council which provides a consultative forum for private and public sector interests on issues relevant to international legal services.

Mission and Objectives - 2000 to 2003

To improve the international performance of Australia's legal and related services, particularly in such areas as international trade involving these services and the globalisation of legal practice, international legal cooperation, international legal education and training and international commercial dispute resolution, by

- *supporting the development of Australia's legal and related services of international relevance or potential, including the development of a strategic vision which reflects the longer term collaborative, commercial and other opportunities available to Australia and the important linkages between sectoral activities;*
- *helping to ensure that government policies affecting legal and related services and their development and international performance are well informed and appropriately coordinated; and*
- *promoting and facilitating the efficient collection, analysis and dissemination of information bearing on the sector's international performance.*

ILSAC was established by the Federal Government as a Committee in June 1990 for a three year term. It was re-constituted as a Council in 1993, 1996 and again in 2000 for a further term which

will conclude on 31 December 2003. The Council has been chaired by Sir Laurence Street, a former Chief Justice of New South Wales, since its inception.

The Council's seventeen members are drawn from private legal practice in Australia, commercial dispute resolution centres, legal education institutions and legal professional bodies. ILSAC's membership also includes nominated representatives from relevant government departments and agencies.

Source: ***Australian Legal Services Export Development Strategy Outline 1999 to 2002***

ANNEXURE 9

Lessons: The US/European perspective

Although the precise evolution of the legal industry is impossible to predict, we believe that some winning strategies can already be identified.

Two classes of shaper are likely to emerge as winners: the global mega firms and the new-economy firms. The first class of shaper will have upward of 2,000 attorneys and (like Skadden, Arps) a broad but coherent set of practices and locales permitting it to command a significant premium by helping large clients with their most lucrative legal issues, such as cross-practice and cross-border support in the M&A and capital-markets arenas. To play this role, the mega firms will invest considerable sums in their IT and knowledge-management infrastructure. In most cases, they will also have to increase their resources by making significant acquisitions or mergers in a number of countries relatively soon. The winners will therefore have to be skilled at negotiating and structuring deals and at integrating and governing a large, diverse, and highly dispersed group of attorneys.

And new-economy firms such as Wilson Sonsini and Cooley Godward, though they haven't achieved the profitability or scale of Skadden, Arps, have already reshaped the legal landscape and are likely to go on increasing their earnings significantly. With offices in Silicon Valley, these firms saw the opportunity in their backyard and developed distinctive expertise to serve the high-tech industry and emerging growth companies. They also operate under a new economic model—equity in lieu of some fees—that permits them to attract high-tech clients around the world and to follow start-up activity to new locales, including Austin, Texas; Denver, Colorado; McLean, Virginia; and Seattle, Washington.

Elite Wall Street firms, such as Wachtell, Cravath, and relatively small firms that focus on practices such as intellectual property and litigation, will continue to benefit from winning specialist strategies. These firms will build ever-greater depth and breadth of expertise and global reach to capture the highest-value work in their narrow set of practices. They will have to grow organically and, in some cases, seek mergers with or acquisitions of firms that have compatible practice portfolios and cultures.

Among the full-service integrators, there will likely be two classes of winner: US "aggregators" and multidisciplinary firms. A half dozen US aggregators will consolidate moderately profitable local and regional firms to achieve greater depth and breadth of expertise in high-value practices, as well as greater geographic presence, while also taking aggressive steps to improve profitability. The resulting firms will have upward of 1,500 attorneys, focusing primarily on the US market. These US aggregators will need to arm themselves with the managerial skill of the global mega firms, though in most cases they will lack the latter's international presence, profitability, depth of expertise, and ability to dominate the most lucrative practice areas. To be successful in the long run, the US aggregators will have to shed their underperforming partners and practices quickly while they refocus and retool other practices and roll up formerly independent firms into new, larger entities.

Multidisciplinary firms will offer their clients coordinated global access to standard accounting and legal services. But with the notable exception of tax work, these firms will tend to focus on less profitable practice and client segments than will the global mega firms.

In addition to choosing and executing a winning strategy, all law firms should make a handful of "no-regrets" moves to improve their competitiveness and thus their ability to recruit and retain

talented attorneys and to attract desirable merger partners. Chief among these moves are improving profits per partner, increasing the depth and breadth of expertise in strong practices, and developing a more corporate governance structure that facilitates faster and better decision making and execution. While such actions, which include shedding underperforming practices and partners, will be hard for most firms, this course is surely more desirable than the alternative: leaving their fate in the hands of others.

Source: ***Lawyers get down to business****, WM Becker, MF Herman, PA Samuelson and AP Webb, The McKinsey Quarterly 2001 No.2*

APPENDIX A

Quotes from in-house lawyers of major US-based multinationals

ON CHOOSING FIRMS: "*Cost is always an issue, but quality is our No. 1 concern...We want to limit the number of firms we deal with because we want to have a strong relationship with lawyers who understand us. Also, our business tends to be complex, and we really do need the expertise of a major national law firm in most cases. For example, as a second firm in the equities area, we use Cahill Gordon & Reindel*" in New York. With outside counsel, "*we have, as a policy, an up-front discussion on how a matter should be staffed and an estimate of fees...We don't want to pay to train junior lawyers. We have limits on disbursements, but the real savings is in thinking through up front how a matter is going to be staffed; there is tremendous pressure from the business side on this.*" **Rachel F. Robbins, General Counsel, J.P. Morgan & Co. Inc.**

ON PRIMARY OUTSIDE COUNSEL: "*We don't really have any. We pick lawyers, not law firms. In-house litigators handle all major litigation, with outside lawyers added to level the geographical playing field. I'm a firm believer in [having] a local presence.*" **Robert E. McCarthy, Senior Vice President, General Counsel and Secretary, Time Inc.**

ON PRIMARY OUTSIDE COUNSEL: For intellectual property work, "*we use four firms on a regular basis, and, except for one, have used them for years and years... We are on the lookout for firms whose cost structure is advantageous. We don't feel constrained to use firms in New York or Boston, so a firm with North Carolina billing rates has an advantage, but it is a secondary consideration to what a firm can bring to the table in terms of expertise. We try to seek out smaller boutique firms. It means we are not paying for the same overhead and we are one of their biggest clients. And another factor [in choosing a firm] is their willingness to partner up with us in creative billing arrangements.*" **Barry Nagler, Vice President and General Counsel, Reebok International Ltd.**

ON OUTSIDE COUNSEL: "*I'm trying to get away from the expensive big city firms...We've made a concerted effort to place work with regional and local firms because they are less expensive and will often do just as good a job as the big, marquee firms.... Lawyers are fungible. You can find lots of people, if you are willing to look, who can do an excellent job...For most of what we send outside there is a wide range of choices.*" **ON PRICING**: "*Managers like me who are under the gun have to break away from firms we've had relationships with over the years...There is no confusion ... that if you want Kodak's legal business, you have to be price-competitive. The element of competition has driven down our average costs. I view lawyers to be vendors like other vendors. If we're going to buy a hundred tons of hardwood or pulp, instead of a ton, we expect to get a break, a volume discount. I view the purchase of legal services pretty much the same way.*" **Gary P. Van Graafeiland, Senior Vice President and General Counsel, Eastman Kodak Co.**

ON CHANGING COUNSEL: "*One of the things I have decided to do is evaluate who we are using....I think that a lot of times when a company--as is the case with ours--has used the same counsel for 25 years, the reasons for having a particular law firm may no longer be valid....We are also going into new areas of the world, and I want to...make sure that we have the best representation...rather than just calling up a firm that we have a contact with in the United States and saying, 'Who's your guy in Singapore*?' Ms. Henry recently retained Freshfields because "*it has the reputation of being more like an American firm, as does Slaughter & May, and I've been very pleased and comfortable with the people I've worked with.*" **ON CHOOSING FIRMS:** "*When you are hiring lawyers, you want to get the most bang for your buck: You don't want to hire the equivalent of a Bentley when all you need is a Toyota....Secondly, I always try to hire people who I believe are smarter than I am. And thirdly, in every kind of intense project--and most of the things we use outside counsel for are very important to us and will probably involve several periods of working intensively together--the personal chemistry is very important. I always felt that as an outside counsel you did your best for everybody, but there were some clients you liked working with and you knew in your heart of hearts that perhaps they got a little bit better work product than others did.*" **Nancy L. Henry, Senior Vice President and Chief Legal Counsel, The Dun & Bradstreet Corp.**

ON CHOOSING COUNSEL: The company in the past used more firms, but "*we have reduced the number of outside counsel because it is more cost-effective to utilize partnering concepts with fewer firms [and this way] avoid re-creating the wheel...We find that with fewer firms we are better able to cultivate a focused understanding of our business and the associated legal issues.*" For international work, the company relies on firms "*in various locations, depending upon the strength of the firm.*" **Ellis McCracken, Vice President and General Counsel, Anheuser-Busch Companies, Inc.**

ON CHOOSING COUNSEL: "*I am not among those who responds terribly well to marketing efforts...We choose outside counsel very carefully on the basis of who we think is best suited to the particular matter. And that is why I'm always leery of the notion of regular outside counsel...I look for people with the right expertise...who I believe, based on experience or reputation, can work effectively with our lawyers in-house. We work generally on a team system in which responsibilities are divided.*" **Ellen Kaden, Executive Vice President, General Counsel and Secretary, CBS Inc.**

APPENDIX B

Source: Pricewaterhouse Coopers Survey of General Counsel July 2000 (USA)

Part 1

In each practice area, how do you anticipate the use of outside counsel will change in the next three years?

(1) Will bring more work inside (insource)
(2) Will send more work to outside counsel
(3) Will stay the same
(4) Will increase use of contract lawyers and paralegals

	1	2	3	4
Acquisitions and divestitures (exclude international)	19.3%	**8.6%**	71.4%	0.7%
Antitrust	8.1%	**8.1%**	82.9%	0.8%
Bankruptcy	7.9%	**7.0%**	83.3%	1.8%
Benefits/ERISA	14.8%	**7.7%**	76.8%	0.7%
Capital markets	9.8%	**10.6%**	77.2%	2.4%
Contracts (exclude government contracts)	16.9%	**2.7%**	79.1%	1.4%
Environmental (include litigation)	8.9%	**7.4%**	82.2%	1.5%
General corporate	20.4%	**1.4%**	76.9%	1.4%
Government contracts	6.7%	**4.8%**	86.7%	1.9%
Intellectual property (include litigation, exclude all patent)	22.6%	**13.9%**	62.0%	1.5%
International (include acquisitions and divestitures)	20.2%	**14.3%**	62.2%	3.4%
Labor/employment	20.1%	**9.4%**	67.8%	2.7%
Litigation (plaintiff and defense)	6.1%	**12.2%**	79.1%	2.7%
Real estate	8.0%	**6.5%**	84.1%	1.4%
Regulatory	16.1%	**7.3%**	75.9%	0.7%
Securities/finance	16.3%	**8.5%**	73.6%	1.6%
Tax	2.2%	**8.1%**	88.1%	1.5%

Part 2:

Indicate the importance of each criterion for selecting outside counsel.	Very Important (1)	Somewhat Important (2)	Not Important (3)	Average
a. Willingness to learn the company's business and strategies	74.5%	21.6%	3.9%	1.3
b. Specialized expertise	94.1%	5.9%	0%	1.1
c. Loyalty toward the firm and/or history with the company	34.6%	56.2%	9.2%	1.7
d. Geographic location	16.4%	65.1%	18.4%	2.0
e. Ability to serve the company in multiple locations or regions	12.4%	42.5%	45.1%	2.3
f. Preferred supplier/must hire	1.4%	23.3%	75.3%	2.7
g. Willingness and/or experience with alternative fee structures	18.3%	54.2%	27.5%	2.1
h. Willingness to take risk	21.6%	56.2%	22.2%	2.0
i. Referrals from other firms/corporations	20.8%	58.4%	20.8%	2.0
j. Perceived quality of service	93.4%	5.9%	0.7%	1.1
k. Individual lawyer	85.0%	13.7%	1.3%	1.2
l. Internal politics of the corporation	5.2%	37.3%	57.5%	2.5
m. Use and sharing of technologies and work products	17.8%	52.0%	30.3%	2.1
n. Perception of firm organization and use of leverage (partner/pyramid structure)	11.2%	44.1%	44.7%	2.3
o. Perceived ability of firm to deliver cost efficient services (quality assumed)	72.5%	24.8%	2.6%	1.3
p. Reputation in legal industry	47.1%	45.8%	7.2%	1.6
q. Responsiveness	97.4%	2.6%	0%	1.0
r. Size of law firm	5.2%	46.4%	48.4%	2.4
s. The firm's culture fits the company's culture	23.7%	46.1%	30.3%	2.1
t. Communication skills of attorneys	76.5%	22.2%	1.3%	1.2
u. Willingness to team or partner with the company	53.9%	35.5%	10.5%	1.6
v. Company trusts the firm	84.3%	12.4%	3.3%	1.2

APPENDIX C

Recommended reading

This topic has generated an enormous amount of literature. The environment is changing so quickly that material can quickly be rendered out of date. The author has found the following references useful (set out in reverse chronological order):

Lawyers get down to business, WM Becker, MF Herman, PA Samuelson and AP Webb, The McKinsey Quarterly 2001, No.2

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Mission: Merger, KM Hildebrandt, Legal Times, 27 March 2001

Strategic growth of law firms, BS Levin, Legal Times, 26 March 2001

What's hot, what's not - The corporate counsel report, Lawyers Weekly (Aust), 9 March 2001

Do global banks need global law firms? Chambers Commercial Law, March 2001

Unrequited love, The Economist, 22 Feb 2001.

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Who's going global? A Frankel, The American Lawyer, 8 Nov 2000

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It's time for Australia to go global, The Lawyer (UK), 29 May 2000

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Cheap and easy global practices do not exist, The Lawyer (UK), 1 May 2000

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The New World Order, JE Morris, The American Lawyer, 1 Aug 1999

Getting to Global, LL Bryan and JN Fraser, The McKinsey Quarterly 1999, No.4

Facing up to change, J Gray, P King & R Woellner, (1998) 36 (2) LSJ 44

Risk management: beware world-wide risk trends, R North, (1998) 36 (10) LSJ 46

Teamwork across time and space, R Benson-Armer and TY Hsieh, The McKinsey Quarterly 1997, No.4

New work habits for a radically changing world, Price Pritchett