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Law Firms Going Global: A Baedeker Guide

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Packing your bags and jetting off to new offices abroad

Thomas Friedman told us a couple of years ago that “[The World is Flat.](#)” The annual AmLaw reports on law firm profitability strongly suggests that as law firms go global, taking advantage of the new flat world, profits seem to soar. But perhaps globalization is not all that it’s cut out to be. And, even if it’s for your firm, going global requires heightened diligence and vigilance.

A recent article in The Economist,

subtitled “[Globalisation slows profit growth for many law firms](#)” concludes that going global dampens and slows profitability. The Economist suggests that global expansion can be an expensive mistake.

Foreign Offices as Revenue Enhancers?

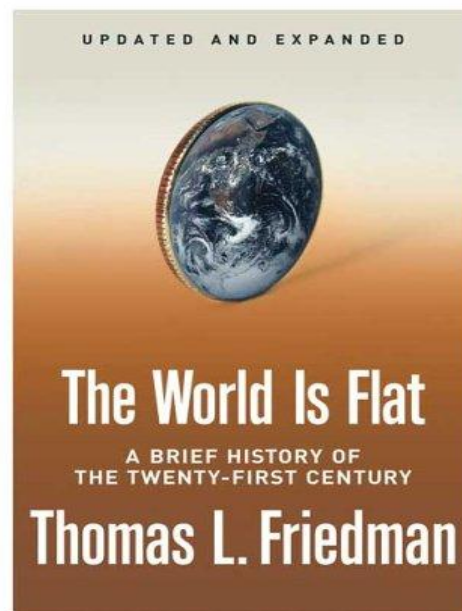
I recently [reported](#) on the *The National Law Journal’s Managing Partners’ Breakfast Meeting*. As I noted, the panel leading the discussion consisted of

[Tom Mills](#) of Winston & Strawn, [Alice Fisher](#) of Latham and [Elizabeth Stern](#) of Baker & Mackenzie, each of which served as their respective law firms' Washington offices managing partners. Each firm represented on the panel was global and certainly eminently profitable. Winston & Strawn has 15 offices, of which seven are outside the United States. It reported gross revenues of \$717,000,000, 868 lawyers and profits per partner for 2010 of \$1,385,000. Latham boasts 31 offices, of which 19 are abroad. Latham's gross revenues for the same period of \$1,929,000,000, earned off of the backs of 1,939 lawyers. PPP at Latham for the period was \$1,995,000. Baker, which has a June 30 Fiscal year, reported revenues of \$2,104,000,000 produced at 68 offices, of which 58 are outside the United States, where 3,768 lawyers work. Baker reported PPP of \$1,125,000.



Baker & Mackenzie stands apart. For more than 30 years, Baker's business model was unique in that it consisted of a web of dozens of offices throughout the world. It has consistently been at the top of the heap of AmLaw 100 firms in terms of headcount and at or near the top of the heap in terms of gross revenues. It has never been at the top of the AmLaw listings in terms of either profits per partner or profits per equity partner. The Baker model has been, for decades, to be the

“go to” firm for matters international. While PPP of \$1,125,000 is nothing to sneeze at, it is substantially lower than the firms that make up the AmLaw top ten. [Coudert Brothers](#), a firm founded in 1853, pursued a similar strategy of pan globalism. By 2006, it had 650 lawyers spread around the globe in 28 offices. In that year, after years of declining revenues and profitability, Coudert dissolved and filed for bankruptcy. A significant number of Coudert partners joined Baker, following aborted discussions between the two firms aimed at a merger.



All of the panelist attributed a great deal of their respective firms' growth to their firm's global platforms. Earlier, The Economist reported on the growing trend of law firm globalization and some of the technical difficulties for law firms which seek to leave their native shores and set up beachheads abroad ([certainly a worthwhile read for those firms seeking to go global](#)).

Going global is not the unique province of AmLaw 200 firms. Two hundred lawyer Atlanta based [Smith, Gambrell & Russell](#) maintains an office in

[Frankfurt](#). One hundred and seventy Cleveland based [Benesch, Friedlander, Coplan & Aronoff](#) maintains an office in [Shanghai](#). And there are many others.

The single most important metric of the success of a law firm's offshore branch office is whether it is a net importer or exporter of legal services. Most law firm foreign offices are net importers of services. Despite this disappointing result and reality, law firms continue to plant foreign offices in a fashion most akin to the Nineteenth Century urge by industrialized nations to engage in blatant and boisterous colonialism. The analogy is most apt, as you will see below.

But going global is rife with additional landmines, some of which are described below.



Can Global Collaboration be Accomplished?

First, as I recently [wrote](#), the key to future success for law firms is collaboration. Cultural and language differences, as well as an army of 1,000 or more lawyers in a dozen or more nations poses some serious obstacles to advancing a culture of

collaboration. In addition, the nature of the attorney – client relationship varies widely from nation to nation. In some cultures, lawyers are trusted business advisers and confidants. In other cultures, lawyers are mere scribes. In some areas of the world clients treat lawyers as an obstacle to getting business done and dissembling when dealing with one's own lawyers is commonplace.



Impacts of Local Upheavals on the Firm as a Whole

Second, in discussing strategic planning with attendees of the recent conference as well as with managing partners I regularly meet with, I was rather shocked to learn that virtually no global law firm has a [disaster recovery program](#) in the event of a disaster in a major foreign branch. The greater a law firm's footprint, the more likely one of those footprints may well land on a landmine. Disasters may be of a natural kind, such as an earthquake on Japan (from which Japanese branches of foreign law firms are still reeling). Local disasters may be politically inspired, such as in the instance of a regime change or as is [now taking place in Russia](#). Or, most critically, a disaster may well be the consequence of local financial upheaval. Of course, the most foreboding crisis is the continued upheavals in the Euro zone; should the Euro collapse, the consequences will be devastating at every level. But, oddly, while

lawyers are trained to always contemplate sundry adverse contingencies as they counsel their clients, I have yet to meet a law firm that has a plan in place should the Euro collapse.

The ability to exercise management and fiscal control over a global expanse is also problematic, [as recently shown in the instance](#) of a practice leader in an Asian branch of a US law firm who allegedly improperly pocketed million of dollars of client escrow funds resulting in a loss to the law firm of a claimed \$32,000,000. I do not, of course, suggest that purely domestic law firms are immune from partner defalcations, as [recent press reports](#) demonstrate.

In addition, going global necessarily results in substantial additional overhead costs, tax issues and subjects the law firm to compliance with foreign rules, which are often extremely xenophobic.



Foreign Offices Spinning Off to Compete with the Mother Ship

At the NLJ Managing Partners Breakfast, there seemed to be a general consensus that Asia provides the greatest opportunity for law firms, with most speakers, both on the panel and in the audience, suggesting that China still offered the greatest opportunity. However, another suggested that the profession must be mindful of the Chinese business model,

which seems to be the Chinese asking foreigner to come to China and perform a service or build a product, followed by the Chinese saying “let me see how you do that.” That in turn is followed by “teach us how to do that,” and ultimately “okay, we now know how to do that on our own, so you can leave and we will do so.” A leading managing partner, suggested, only perhaps slightly in jest, that “in a couple of years, these managing partners meetings will only be attended by Chinese managing partners.”



This is not a uniquely Chinese phenomenon. As firms hire local lawyers, train them in the ways of BigLaw practice and allow these lawyers to bond with the mother ship’s clients, the allure to these lawyers to spin off and form their own firm, taking the clients with them may be irresistible. These local lawyers have gained the clients’ confidence and demonstrated their ability to deliver high quality legal services. They are fully aware that they can set up shop, unburdened by the groaning weight of BigLaw overhead and offer materially lower rates, while pocketing a vastly higher percentage of the profit for their own benefit. [This has already occurred](#) a number of times and will certainly occur in the future. A BigLaw firm, having invested substantial sums in the branch office then

confronts a Hobson's dilemma: Cut its losses and get out of Dodge or invest even more money locally and hope to save both face and its prior investment.



More Offices = More Conflicts of Interest

Having lots of lawyers in many countries is neat and certainly does provide some nice bragging rights. However, it also makes the potential of conflicts of interest far more serious and the ability to thoroughly vet new clients and matters almost impossible. Global corporations do business all over the world using different business structures and under a variety of names, not always even English. This point was driven home for me as a partner at a global law firm recently related an incident that caused great embarrassment and some serious erosion of his relationship with one of his largest clients; a global Fortune 100 company.. As he related to me, he was visiting with the client general counsel seeking to further enhance the relationship and hoping to get some more business. The two dined in the corporate dining room and upon returning to the GC's office, the client thumbed through the batch of mail that was left for him while they dined. One particular large envelope, marked "Urgent" caught the GC's eye and he opened the envelope, examined the contents, and turned to the law firm partner and said, "Jim, I know you would like to leave here with some juicy

new business. We just got served with papers in which there is a major claim of patent infringement on one of our major products. From what I see in these papers, the other side is looking for \$1,500,000,000 in damages. I want you to handle this case and treat it as a 'bet the company case', with no holds barred, especially since you know the lawyer on the other side. They are your partners in Belgium."



FCPA and Securities Fraud Risks

Pay to play is an element of trade that does not have its roots in the New World. Rather, bribery, corruption or other forms of [baksheesh](#) is the way of life in most of the world. Similarly, tax fraud is in the national DNA of many countries. And financial and accounting irregularities are rife in certain parts of the world. There is always a likelihood that local companies or branches of global companies located abroad routinely engage in this type of conduct. Of course, much of this conduct may run afoul of the [Foreign Corrupt Practices Act](#). Of course, in the event of a law firm's client being accused of a violation of the FCPA arising out of the conduct in a nation in which a law firm has a branch, there is terrific opportunity for that law firm to conduct the required investigations and defend the follow on

domestic prosecutions and litigations in the United States, charging premium rates. But in my view, sooner rather than later, a global law firm will likely be charged with FCPA violations, either because a client takes an “advice of counsel” defense line or because of a zealous regulator, prosecutor or a *qui tam* plaintiff.

I wonder how many law firms have written policies in place regarding steps to be taken when member of the firm that the client is engaged in systematic FCPA violations. I certainly haven’t found any.

One of the great varieties of exports that China sends to these shores are [securities class actions](#) predicated on an apparent Chinese sense that disclosure rules don’t really apply to them. Again, while some law firms are profitably enjoying defending Chinese companies because of this Chinese penchant, to the extent that law firms have been involved in the representation of the issuer, as with FCPA claims, it is only a matter of time that a global law firm will be named as an aider or abettor.



Structuring an International Law Firm

Most global law firms are organized as a single partnership. Others are organized as Swiss vereins, which are essentially an association of membership organizations formed under an umbrella

formed under Swiss Law. Global accounting firms have long been organized as vereins, largely for tax purposes and to help insulate the firm as a whole from liabilities incurred in discrete jurisdictions. [Peter Kalis](#) the eminent leader of global [K&L Gates](#) (39 offices, 16 abroad, reported gross revenues of \$1,055,500,000, PPP of \$930,000 and 1,763 lawyers) has been a [vocal harsh critic](#) of law firms that are formed as vereins. Kalis’ singular objection is the vereins “debased the financial results upon which [AmLaw] ranking rests.” [My own view](#) is that too many AmLaw firms debase those rankings by gaming their own reported numbers. The accounting profession, as noted, has long been an adherent of verein systems and it has never been suggested that these firms do not accurately report on their own revenues and profits.



Some jurisdictions do not permit local lawyers to partner with a foreign firm and do not allow any law firm on their soil which have as partners who are not members of that jurisdiction’s bar. Thus, where permissible, global firms form an affiliation with a local law firm or establish an office which is limited to advising on legal matters in which the global firm has operating offices. The latter option is the format in which Greenberg Traurig [plans on opening its 34th office in Israel](#), a jurisdiction not otherwise hospitable to having foreign law firms operate full service offices on its shores. Nine office [Mintz Levin](#) (two overseas) has [operated in Israel](#)

in this fashion for some time.

Conclusion

Notwithstanding all of these challenges, global law firms are eagerly eyeing opening offices in new markets such as Korea, Indonesia, Turkey, India and South America, particularly as barriers to entry are crumbling.

No, this is not a screed designed to prevent law firms from venturing abroad. Rather, branching globally requires a heightened degree of risk assessment and

once a firm branches offshore, it must impose heightened controls at every level. If you are going offshore, do so with eyes wide open.

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