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Emerging markets:
Taking the plunge

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Emerging opportunities

Andrew Hedley explores the different strategies being adopted by law firms to capitalise on opportunities in emerging markets

An effective strategy for capitalising on emerging market opportunities is a standing agenda item for the boards of internationally-minded firms. Indeed, the topic is so enduring that some markets have moved from emerging to emerged in the time that the subject has been under consideration. It has become clear that a range of options can be adopted, each with merits as well as potential drawbacks.

Those that are ultimately followed will emerge from the interplay of a number of factors – the firm's vision, the nature of its client base, practice capabilities, relational capital, appetite for risk, transnational structures and regulatory constraints, to name but a few.

The options can be viewed through a number of different lenses, as can the implementation routes adopted, but for the purposes of this article we shall consider primary dimensions while accepting that a more complex matrix will be adopted in many cases, with interplays at a number of levels.

Follow the client or market?

Many firms' emerging market strategies can be categorised as a 'client coattails' approach. In other words, their investment decisions are simply a reflection of those made by significant clients, requiring substantial volumes of legal advice which the firms are keen to service.

The historic longevity and nature of these client-firm relationships – often in the global finance or infrastructure fields – combined with the relatively small number of firms able to service such requirements have made this a viable (indeed sensible) strategy. Such a follow-the-client approach, with the client having continuing and substantial needs for the specialist services of the firm, will provide strong foundations for an emerging markets practice.

Whether or not the business is sustainable (or desirable) once a market moves from emerging to emerged will depend upon the firm's market positioning and its ability (or ambition) to use initial tranches of work to diversify its business.

Firms engaged in an early stage client-led entry to emerging markets will generally not be practising local law but rather calling on local firms on an ad hoc basis when required. Consequently, while the ability to practise local law is, in many cases, restricted by the regulatory environment, it is less of an issue for client-follower firms at this first stage of market entry. It is when a decision is taken to focus on the local market that such factors come to the fore.

In this scenario, firms deploy personnel from their home jurisdictions – creating expat communities – and employ dual-qualified local lawyers. Their offices are founded on the certainty of existing client revenue streams and focused on a small number of practice areas.

Firms that are market or sector based adopt a different approach. For them, local law expertise is required since their client proposition is founded on an ability to undertake upper mid-market work requiring multijurisdictional legal expertise on a global footprint.

It follows that such firms have eschewed the transfer of battalions of English or US-qualified lawyers, instead entering emerging markets through merger, alliance or association with local firms with strong track records in their target markets.

These differences in focus will also, of course, determine the jurisdictions to which each type of firm is most attracted and the cities in which they will establish themselves.

Practice-focused approaches

Similarly, there is a fundamental difference in strategy and execution between those firms with a global finance focus and those whose work is centred on the ongoing support of clients engaged in global trade or corporate activity. The ability to support transactional M&A activity completes the service model triumvirate.

There are fundamental strategic differences in the nature of firms focused on global finance and those centred on cross-border trade. Misunderstanding these differences can cause firms adopting 'me too' imitator strategies to target jurisdictions and cities that do not chime with their core strengths.

Historically the initial waves of law firms entering emerging markets were those with strong capital markets capabilities. However, firms with powerful natural resources practices (or those trying to build positions in this area) are increasingly taking the lead in jurisdictions with potential to satisfy the resource requirements of rising (and risen) Asian economies.

Consequently, Africa and Latin America have both been areas of focus for law firms over the past year (as well as established natural resources markets such as Australia and Canada).

Firms focused on supporting corporate activity and global trade in emerging markets will necessarily require locally-qualified lawyers (perhaps also dual-qualified lawyers). They will often be further characterised by their market focus.

While they may transfer home-jurisdiction partners around their global network to assist in relationship development and practice management, the principle revenue driver is local law delivered by local lawyers.

What this means in practice is the need to create links with local firms in a range of different ways. This includes full mergers, cherry-picking key partners or teams to establish greenfield sites, alliances under a common brand, exclusive alliances in which firms maintain their own brands (but perhaps under some overarching umbrella structure) or non-exclusive arrangements.

Global M&A strategies

Linked to but distinct from both finance and corporate support activity is the need to service the global M&A activity of large corporates. There are opportunities here for both types of firms as well as a 'third-way' model.

Global M&A work, being episodic and transactional in nature, does not require 'boots on the ground' in the same way in which the other models do. While the corporate entities created will have a need for ongoing legal support, the initial transaction and ongoing relationship are not necessarily linked in any causal way.

This can be clearly seen in the UK PLC market, with the differing natures (and pricing models) of firms that excel in specific arenas resulting in many PLCs operating a panel approach. They will include firms with high M&A expertise alongside those whose skills are in providing ongoing corporate support in order to balance efficiency, price and delivery, while managing risk appropriately. There is some crossover between the two, but the general principles of a 'horses for courses' approach are now well established.

Historically, M&A of this nature has found a natural home with the long-established global firms which, while having a finance focus, also have very strong corporate capabilities.

Recently, this global M&A market has been a fertile hunting ground for newly emerging upper to mid-market international players with strong mainstream corporate practices. These practices are historically based on longstanding public company relationships, which are well used to supporting M&A activity of a reasonably substantial nature.

While there will remain a category of ultra-high important global M&A deals which will default to the top-tier firms, deals

at the level below this are now regularly undertaken by upper to mid-market international firms. While not perhaps the very largest, such transactions can be of a impressive size; especially so when compared to the domestic market fare to which such new-pretender firms have been historically accustomed.

In this category, there is also the singular, but highly effective, approach adopted by Slaughter and May and its global 'best friends' network (with each being a top-tier firm in its own jurisdiction). By maintaining a focus on the corporate transaction market and not seeking to expand into other areas, firms are able to craft and execute a strategy that is flexible. The significant investment in infrastructure and the management challenges that Slaughters' competitors have been saddled with by pursuing a more diverse global strategy are not required.

Single firm or alliance?

A broad distinction is drawn here between firms that are a single legal entity and those that operate on an alliance model of one sort or the other.

A single legal entity is the model of the traditional purist (although, even here, local regulation means that this is not possible in all jurisdictions). The leaders of these organisations point to common culture, the alignment of interests through a single profit pool and the ability of a management team to deliver consistent systems and service levels as reasons why the single entity is the gold-standard approach.

It is fair to say that the global elite (defined by the nature of the work they undertake, the size of their transactions and brand positions) follow the single firm approach.

While a convenient means of differentiation from the single firm, the term 'alliance' is, in many respects, too crude a segmentation. By their very nature, alliances cover a very broad church of inter-firm arrangements.

At one extreme of convergence are Swiss vereins or other corporate structures seeking linkage between independent firms under a common brand and operating model. These structures aim to deliver a client experience that bears all of the hallmarks of 'one firm'. They target the marriage of consistent levels of high-quality client experience with flexible structures. This preserves the independence and autonomy of members, circumventing many of the significant challenges posed by profit sharing, tax regimes and regulatory compliance, as well as joint and several liability obligations.

The Swiss verein model has proved to be a highly effective way for a number of firms to build global footprints very quickly by removing many of the deal-breaker issues that can lead to intractable negotiations that take many months, if not years, for firms seeking full international mergers.

They have their critics but, if their operating models are robust and the client experience is of a high and consistent quality, there is no reason to suspect that the Swiss verein will not be an extremely effective model for firms positioning themselves in the global-relationship firm category, whether corporate market or practice focused.

Elsewhere in the alliance spectrum, there are a plethora of independently-branded networks and alliances that provide an international dimension for firms that have occasional needs for overseas advice but for whom the investment in developing their own multijurisdictional organisation would be uneconomic.

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While such alliances may have (or be actively seeking) member firms in emerging markets, it is likely that, by their very nature, such firms are unlikely to be involved in ongoing multijurisdictional matters, significant foreign direct investment or external flows of capital. In this sense, such arrangements may be regarded as 'safe-harbours' to satisfactorily accommodate the occasional international requirements of member firms, rather than as part of a wider strategy of international penetration.

Matching structure to strategy

Appropriate structure flows from strategic clarity.

Emerging markets provide a once-in-a-generation opportunity for firms to implement transformational step-changes to their market position and open new avenues for development.

Deciding which market position to adopt and understanding the best business model to follow, combined with the ability to structure appropriately and quickly, will separate those that aspire from those that succeed. mp

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