

Entering the Emerging Markets of Asia: Insight for North American Law Firms

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No law firm leader needs to be told that times have been tough. Given the mass layoffs and cost cutting measures seen in the legal industry, law firm partners have long been looking for ways to boost revenue amid the gloom and doom. Long before the global financial crisis, North American law firms have considered Asia an attractive market with larger law firms already well entrenched in open markets such as Hong Kong and Singapore. In the traditionally closed markets of India, South Korea, and Indonesia for example, some of these firms have well placed alliances that they use to offer their clients a truly global reach.

In June of this year, Lang Michener LLP became the first Canadian law firm registered to practice in Hong Kong via a partnership with local firm Angela Ho & Associates.

One of the benefits of integrating with a local Hong Kong firm is the potential upside offered by CEPA (Closer Economic Partnership Arrangement). This trade agreement now allows Hong Kong law firms deeper access to practice law in the mainland. The fact that very few firms have taken advantage of CEPA may suggest that both Hong Kong and foreign firms believe other entry modes to be as effective

Not Just Asia

However, it is not just Asia law firms are interested in. As the Western legal market matures, many law firms have been creating a presence in other emerging markets through a number of various entry strategies. It was reported recently in *American Lawyer* that Shook, Hardy, and Bacon has set up a formal alliance with its long time partner firm, Araque Reyna Sosa Viso and Pittier, a 25 lawyer firm in Caracas (which is where most other law firms are located), Venezuela. The US firm has not yet set up an office there although two other large US law firms have (Hogan and Hartson, and Squire, Sanders, and Dempsey). A recent report in Top Legal International states that Blake Cassels and Graydon have become the first Canadian law firm to set up in Saudi through a joint venture with a local firm. In Hong Kong, there has been a spate of activity including the merger between Mayer Brown and Johnson Stokes Master, as well as Reed Smith acquiring Richards Butler in 2007, a year after merging with Richards Butler' UK operation.

New Horizons in Asian Legal Markets

Hong Kong and Mainland China – long considered a strategic location for serving clients in Asia and as a gateway into China, reforms to the Closer Economic Partnership Agreement (CEPA) between Hong Kong and China are further liberalizing the mainland legal market. Currently, foreign law firms cannot practice Chinese law or operate in association with mainland law firms (obviously firms get round this). Under supplement VI to CEPA, Hong Kong law firms will, from October 2009, be able to work in association with Chinese firms in Guangdong.

Additionally, Hong Kong lawyers with no less than 5 years legal practice can apply to practice as mainland lawyers after acquiring the mainland's legal qualification and training of one month offered by the mainland lawyers association. This should make Hong Kong law firms more attractive to foreign law firms as a point of entry to China, the Mayer Brown JSM merger a case in point.

Korea – the foreign legal consulting act (FLCA) is expected to take force on the 26th September, 2009. This will allow foreign law firms to set up local offices although they will not be permitted to practice local law, enter into joint ventures, or hire Korean lawyers. The market will be opened up gradually with full liberalization expected in 2016 subject to ratification. US law firms benefit from this due to the Free Trade Agreement between the US and Korea signed in 2007. North American law firms should not expect an easy ride, according to an article in Asia Legal Business, Kim Byoung-Jai (partner at Korea's third largest law firm by headcount) says that his firm are ready and will beat all comers to the market. He believes the unique culture and business context of the country will give Korean firms a significant advantage. That maybe correct for smaller niche practices but for the larger firms that compete head on with foreign firms for big ticket transactional work, these assumptions may not hold. A number of mergers have already occurred in anticipation of foreign competition. Foreign firms have traditionally run their Korean practices out of places like Hong Kong but will probably start looking at expanding their presence in the region given that Korea is the US' seventh largest trade partner. Firms can start building their Korean expertise by hiring lawyers with a Korean background and getting involved in initiatives such as those started by UC Irvine in collaboration with Seoul National University. According to an article in Legal Week, Cleary Gottlieb Steen and Hamilton among others, have expressed strong interest in the market. At the end of the day, each firm will have to evaluate the attractiveness of the market at this stage based on their overall growth strategy and the value they can offer clients through such expansion. Judging by the role of Paul Hastings, along with Lee and Ko, in Korea's largest IPO of 2009, US firms find the market increasingly attractive.

Indonesia – a closed market essentially, Indonesia has begun to attract the interest of foreign law firms as investment in the country rises. Natural resources related work is one of the key success stories. Most of the top local firms have foreign legal consultants to advise on cross border work whilst firms such as Baker and McKenzie and Herbert Smith have strong associations with local firms. A number of law firms run their Indonesian practices out of Hong Kong or Singapore. India and China are key investors and it seems that the country has fared better than many others in Asia and is expected to grow at a rapid pace. North American law firms will want to consider Indonesia as part of their Asian strategy despite the legal market being closed to foreign firms.

India – whether this market will open and when given the recent comments by the Indian law society president that it never should is anybody's guess. Law firms and their clients have been outsourcing work to India for many years as Legal Process Outsourcing (LPO) has become more accepted. There aren't too many world class law firms in India according to Bloomberg and the

good ones are inundated with alliance offers (Clifford Chance is tied up with AZB, Allen and Overy with Trilegal). Given the huge inbound and outbound investment in the country it is hard to ignore the Indian market if you are involved in large scale transactional work. Many international firms have been building resources in their Indian capabilities for a while now in anticipation of the market opening up with a number running their Indian practices from Hong Kong or Singapore. There has also a growing trend of knowledge process outsourcing (KPO) where we have seen US lawyers actually move to India to work. The main cities for law firms include Mumbai and New Delhi.

Malaysia – another closed market for the time being, the Malaysian legal market is considered to be one of the most developed in the region behind Singapore. Liberalization has been talked about for a while but seems to be stalling. Additionally, foreign law firms don't seem overly interested in setting up an office for practices such as Islamic finance only. An article in Asian Legal Business quotes senior partners at firms Clifford Chance and Allen & Overy who state that without full liberalization, the market is not especially viable. Domestic firms seem happy to hear this although different stakeholders have different views. Malaysia is the largest Islamic Finance and Banking market in the region, so while it make no sense for BigLaw or magic circle firms to think about setting up a presence, smaller practices may find it worthwhile should the market eventually open up. At least they may consider building resources in this area. Technology and life sciences are also areas that the government is backing heavily and could be attractive for niche practices.

Singapore – being one of the most sophisticated legal markets in Asia, it is also highly competitive. In opening the legal market, Singapore would only allow foreign firms to practice local law through joint venture arrangements with Singaporean firms (for example Clifford Chance and Wong partnership). This model has not been deemed very successful and much of that could be to do with the difficulties in managing joint ventures in the Asian context for Western firms. The government has since created a licensing scheme for foreign law firms (Qualifying Foreign Law Practice) who upon successful application can hire local lawyers to work within their firm. Six licenses have been granted so far (notable firms include Herbert Smith, White and Case, and Latham and Watkins) with more apparently a real possibility according to the government. It is not all good news however. After White and Case split with its local partner Venture Law, comment in the blogosphere was that US firms without local partners would become overpriced foreign lawyers with limited local practice knowledge. Since the government is pushing the country as a center for arbitration in the region, foreign firms are actually allowed to practice in this area irrespective of the licensing conditions. According to the Practical Lawyer Co, some practices such as commercial litigation remain off limits although an enhanced joint venture model is being rolled out that will allow foreign firms to hire local lawyers in profit sharing schemes with their local partners. Still a number of firms use Singapore mainly as a hub to serve other practices. Singaporean firms have also looked beyond their current markets as the first joint venture between a Chinese firm (Dacheng) and a Singaporean firm

(Central Chambers) demonstrates. A roundtable conducted by Asia Law and Practice with in house counsel suggests there are opportunities in the market as talent is limited, particularly in specialist areas, for example, environmental law. The government is also trying to attract biotech investment.

Market Entry Strategy to Asia

North American law firms have traditionally been well behind their UK counterparts in creating an international presence. There is a real feeling in Asia and other emerging markets that North American firms have plenty of room for expansion and the skills and expertise they bring to the market are in high demand. However, creating an Asia strategy and implementing market entry is not easy given the complexities of legal markets in the region and the need often times to create alliances. These alliances are necessary due to the restrictions of foreign law firm practice and the impact of cultural differences when doing business. It is ironic then that these cultural differences create many of the problems in law firm alliances.

Additionally it is somewhat difficult to assess the quality of law firms in emerging markets. The problem arises since there is a lack of objective and reliable data upon which to accurately judge firms or the quality of the legal talent in any specific locale. In China there are over 12,500 law firms with 130,000 licensed Chinese lawyers. How many would be truly competitive on an international basis? Moreover, full integration in the case of a merger is very hard to achieve between partners of disparate size and profits per equity partner (PEP), not to mention the cultural issues involved.

We don't tend to see many consortiums or licensing agreements involving law firms, although according to the Wall Street Journal, US law firm McDermott, licensed its name to a Chinese law firm (Yuen Da) for a fee and presumably to claim it has an office on the ground in China.

Strategic alliances are the most common form of arrangement between law firms yet their use is surrounded by failure and disillusionment. Research suggests up to 50% of alliances fail. In an article published in the MIT Sloan Management Review (2008), Bettina Buchel highlights a number of minefields that can impair alliance performance. These include unclear partner roles, unequal sharing of risks and benefits, not being prepared for the inevitable crisis, and no formal exit mechanisms.

Similarly, Patricia Anslinger and Justin Jenk (consultants at Accenture) suggest six key factors to enhancing alliance success chances:

- (1) develop clear, common objectives and definition of success;
- (2) ensure proper alliance form;
- (3) determine appropriate governance model with clear decision-making;

- (4) anticipate the most likely conflicts;
- (5) plan for evolution; and
- (6) establish clear metrics to track and measure success.

What these factors suggest, and indeed what research shows, is that a marketing mind set is crucial to the outcome of an alliance. Being client and market focused must be part of your thinking especially considering recent research that demonstrates social capital is not a good indicator of firm performance from an internationalization perspective (that is, following your clients as the main basis of your decision does not produce optimal outcomes).

As mentioned, a major hurdle for North American firms seeking out alliances or joint ventures in emerging markets such as Asia is that of culture. National cultural characteristics can have a major impact on alliance success because it is the individual interactions between the players that determine the quality of such alliances. For example, research conducted by Yadong Luo (Administrative Science Quarterly, 2001) shows that attachment between parties is impeded by cultural distance.

Unfortunately, the US and Canada are highly individualistic societies whereas most Asian societies are collectivist. This means that the different values given by each party in terms of relationship building and sharing of information is rooted in varying perspectives. In other words, North American firms are likely to look at the alliance from a transaction basis (time and costs) whereas Asian firms are likely to look at it from a resource basis (building capability) perspective. This can cause fundamental conflicts as each party expects something different from the other.

If you assign people from either firm to regularly interact it might be worthwhile looking at choosing people who are from similar national cultural backgrounds. If the relationship is closer (joint venture, merger), then the firm leaders and their goals will have a major impact on the outcomes, and hence finding partners with compatible goals and beliefs becomes even more important.

Asia and other emerging economies are proving attractive destinations for law firms from North America but how you reach that destination has a major impact on the potential benefit and future viability of your firm's internationalization strategy.

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