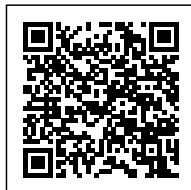


HOW GLOBALISATION IS AFFECTING THE LEGAL PROFESSION

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Increasing global uniformity of regulations and practices, work product, legal and ethical standards and legal fees, says Xavier Ruiz, has many consequences for the legal profession

Las consecuencias de la globalización de la profesión jurídica son muchas y variadas. Sin embargo, Xavier Ruiz considera que encontrar uniformidad en la calidad de los servicios jurídicos cuando se

llevar a cabo transacciones internacionales es clave. El mismo subraya la importancia tanto de los estándares de práctica legal como los éticos y de honorarios.

Two decades or so ago, a US or European General Counsel (GC) probably had a difficult time trying to identify a competent lawyer in a foreign jurisdiction, much more in a developing country, to advise on local legal matters.

Lawyering and language skills in many countries worldwide were not up to US and European multinationals' standards. A domestic lawyer capable of translating and interpreting say the Mexican Civil Code was an asset for a GC, especially when local laws and practices were not too sophisticated.

Today, our GC, or someone in their team, speaks at least one foreign language, and likely trained in a foreign jurisdiction. Local lawyers are usually fluent in at least one foreign language, received additional training abroad (mostly in the US or UK) and are capable of providing competent advice on increasingly sophisticated local laws.

In addition, the expansion of common law, or 'Anglo-Saxon', practice (especially in the fields of corporate and finance transactions) has made our GCs more comfortable when working outside of their jurisdiction as the approach to resolving legal issues and the methodology and manner of negotiating and closing a transaction is increasingly more uniform around the world. Uniformity is now the name of the game for the legal practitioner in international business transactions.

For the legal profession, the consequences of this increasing uniformity and, in general, of the globalisation of the economy are many.

First, the role of 'interface' lawyers (most often found in 'foreign desks' of international law firms) has quickly disappeared. Clients can now directly retain a sophisticated foreign, specialist, lawyer who probably also speaks the client's own language.

In addition, lawyers who work for international clients must be able to operate in a foreign language (most likely English) and be familiar with international practices and usages, mostly common law inspired.

A new type of legal practitioner has also emerged – the practice or industry expert, in contrast with the substantive law expert. Today, specialities such as project finance, M&A, energy and arbitration are based more on know-how and practice/industry expertise than on local regulation. Legal harmonisation and standardisation have made it possible to 'export' this know-how and minimise the role of local, non specialist lawyers. Practice or industry experts are now increasingly driving the transactions leaving local practitioners with a supporting and advisory role.

As the degree of sophistication of lawyers around the world increases, so do legal costs. Many law firms in developing countries have different rates for international clients and for local clients. Retaining counsel in say, Brazil, is probably as expensive as in the US.

Globalisation has resulted in a 'de facto' adoption of international standards in matters such as professional liability, ethics, diversity/non discrimination policies and pro-bono programmes. Clients now expect their counsel around the world to apply those standards. As the office network grows, partners of global law firms are increasingly more vulnerable to malpractice lawsuits, even if the wrongdoer is a partner at a remote office of the firm.

Finally, it is increasingly more apparent that local law firms are gradually losing ground to global firms. A decade ago, an international law firm setting up shop in a new jurisdiction would attract the international work of local companies by leveraging its network. Today, they successfully compete with local law firms for local work.

By being unable to compete on the same terms as international firms, local firms allow a Trojan horse into their castle and may risk losing premier local work. Further, global fee arrangements are increasingly more common to the detriment of purely local firms.

Local firms may have no option but to expand by following their clients – which is rarely the case – or remain a local player catering to a local clientele, with a clear impact on their economics. Conflicts of interests facing global firms and a better fee structure may, however, provide an opportunity for local firms to service multinational companies in their home jurisdiction. Practice and industry expertise may also allow them to service local clients abroad with the assistance of foreign counsel.

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