

# Do You Want Swiss With That?

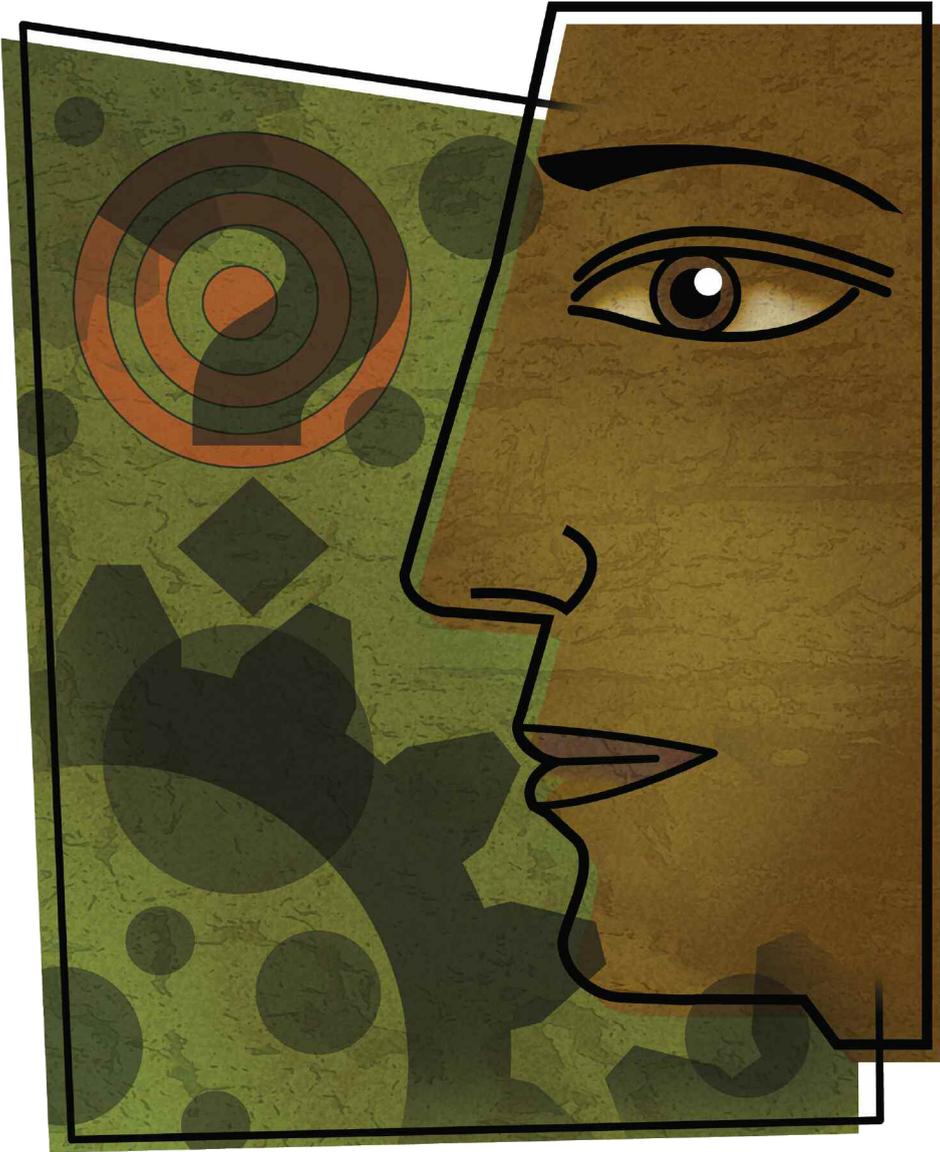
Client perceptions of the trend toward  
global law firms

The unabated growth, diversification, consolidation and geographical sprawl of law firms has reached the point where they might better be called “legal service delivery engines” — huge machines designed to capitalize on economies of scale, global footprints, cross-border referrals, myriad offices and specialized practice groups and client service teams.

By Pamela H. Woldow  
and Douglas Richardson

**B**ecause this consolidation trend ostensibly inures to clients’ advantage, it is certainly appropriate to ask whether the clients are aware of — or even very much care about — the underlying business structure of their outside vendors.

In the U.S. and globally, “merger mania” continues, but now we’re seeing more interesting organizational twists. As our partner Ed Wesemann puts it, “Traditional mergers involved firms of differing sizes where the larger firm effectively acquired the smaller — the assets of the two firms were merged and a single partnership was created.”



But for firms now operating on the ever-expanding global stage, Ed notes, “The intricacies of multinational tax law and international money transfers, currency fluctuations, and unique law society regulations in different countries, makes it hard to operate a consolidated internal firm with a single profit pool.”

In fact, many of the “marriages” of U.S. firms and those in other countries, even if they have created a powerfully consolidated marketing footprint, do not entertain a centralized entity and the pooling of profits. The parties can “live apart,” so to speak, by creating Swiss Vereins, a useful form of multiparty

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business organization consisting of a number of independent offices, each of which has limited liability vis-à-vis the others, even if they share a branding identity.

#### **WHAT ABOUT THE CLIENT?**

For law firms, Swiss Vereins offer obvious advantages in terms of market share, diversification and specialization of services, and, presumably, profitability — not to mention diminished liability exposure. The \$64,000 question, however, is: What, if anything, do clients get?

Today's chief legal officers have become more sophisticated and more demanding consumers of legal services, taking a far more active role in keeping a tight rein on outside legal spend. For engagements large and small, or for portfolios of legal matters, clients are more actively calling the shots, setting pricing standards and limits, and prescribing billing arrangements.

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As clients engage global super-entities, particularly in representations that involve large tranches of diverse services in geographically dispersed settings, the question arises whether they are pleased with, alarmed by, or indifferent to the legal structure of their law firm providers.

#### **THE ENVELOPE, PLEASE**

To find out how sophisticated consumers regard the trend toward Swiss Vereins, we took a straw poll of 47 chief legal officers of global companies, those who are known to be creative innovators and active engineers of law's "New Normal." What do you think about law firms becoming Swiss Vereins? we asked.

Put simply and bluntly, clients are largely indifferent. Of the 47 CLOs we

polled, only five said that they take an interest in and ask about how their law firms are structured. “We buy service, not structure,” said one. “So far, we’ve seen little evidence that service quality is affected one way or the other by a firm’s legal form, other than the fact that Swiss Vereins are more common in larger firms.

“We probably get some benefit from bigger footprints and perhaps better internal communication,” the client added. “For us, the real issue is operational efficiency and stability, overall service quality of service, and our judgment about whether they are delivering the value we need.” (See the accompanying article by our colleague Ahna Severts for more from our Edge survey.)

### **BUT WAIT, THERE'S MORE**

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“We probably have little chance of influencing such growth-related operational factors as compensation systems, firm culture, or firm-wide training and technology,” said one GC, “so we keep our hands off everything except the deliverables.” But, he continued, he is interested in the impact of certain factors, including:

- The global span of a firm and its ability to rapidly marshal diverse subject matter expertise in far-flung jurisdictions.
- The convenience of one-stop shopping and a single client relationship portal.
- A more robust presence and staffing capability than can be offered by firms with just a few lawyers in remote locations. Consolidated firms can offer both a greater breadth of services and greater bench

strength — and, hopefully, more streamlined communication and better collaboration, both internally and with the client.

- Economies of scale that can be passed on to the client.
- Powerful internal referral networks and the availability of lawyers familiar with international business expansion.
- Greater responsiveness and flexibility when dealing with cross-border matters.

### RECOGNIZING THE UPSIDE

Several survey respondents suggested that Swiss Vereins can offer real advantages to clients. Alex Cestero, General Counsel of Lufkin Industries, pointed out that having independent revenue centers can allow for greater rate flexibility and attendant cost-control benefits.

“Partners in verein firms can tailor their rates more closely to the local legal market, so we are not automatically paying inflated ‘global rates,’” he said. “For example, I do not have to pay a London partner rate when using a partner in a less developed area, such as Eastern Europe.”

Another respondent made a related point: “Non-verein global firms often have a global strategic plan that prescribes sky-high rates that may price highly skilled lawyers out of their own markets. When this happens, we lose on both rate and service quality. In Swiss Vereins, compensation — and therefore our costs — are not inflated just to hit a global target.”

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### VOTING “NO”

Several GCs, however, said they tend to shy away from firms where the member firms have only a loose association and are not centrally managed as in a traditional legal partnership. Some stated that Swiss Vereins were not the “preferred structure” they sought. Where there is strong centralized

management, they noted, there tends to be better accountability for overall quality of services.

Firms with more centralized management can push down standardized operating practices and set uniform standards for levels of competency. However, one GC emphasized that centralization is no guarantee of quality: “You can get subpar quality even in tightly managed firms.”



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## **THE LIABILITY ISSUE**

For some GCs, Swiss Vereins might also create concerns about liability problems or exposure to malpractice claims. From a law firm perspective, one of the supposed advantages of the Swiss Verein is that each member firm is immune from the liability of other members. So if partners in, say, Bolivia make a mistake, the partners in Australia aren't on the hook.

From the client perspective, however, this means that each member firm needs to be vetted for financial soundness, thus mitigating some of the economies-of-scale benefits. Many corporate legal departments routinely inquire into a firm's professional liability coverage before engaging it for significant matters, because their companies need the assurance that the firm can bear the financial risk of mistakes.

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### THE COURTS WEIGH IN

Interestingly, the liability issue may be changing, at least in the U.S. In 2009, a federal district court ruled that a member company of a Swiss Verein may be liable for the acts of an affiliated company in a different country. The plaintiffs had sought to hold accounting giant Deloitte Touche & Tohmatsu (DTT), a Swiss Verein, liable for the alleged misconduct of a DTT member firm in connection with Parmalat's downfall. The case was settled before trial, so the ultimate legal issue has not been clarified, but a door has been opened. (*In re Parmalat Securities Litigation*, 594 F. Supp. 2d 444 (S.D.N.Y. 2009))

Similarly, several cases against other professional Swiss Vereins have attempted to use vicarious liability and veil-piercing arguments to find the



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overall verein liable based on a single member's activities. So far, only one such argument has been successful in American courts, where the parent verein was found liable for securities fraud based on agency doctrine. (*Cromer Fin., Ltd. v. Berger*, 2002 U.S. Dist. LEXIS 7782 (S.D.N.Y.))

Whether or not these cases represent the start of a trend that reduces the desirability of Swiss Vereins, most vereins now expressly note their status on websites, emails and letterheads, in order to prevent future arguments based on agency.

## CONCLUSION

Overall, our informal survey supports the conclusion that clients place a higher premium on substance than on form, a conclusion consistent with a trend paralleling the growth of Swiss Vereins: the increase in legal project management and legal process improvement in many firms. Law firms should feel free to adopt a Swiss Verein if it suits them; they just shouldn't expect their clients to be impressed. •



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# Clients and the Global Law Firm

By Ahna M. Thoresen Severts

**L**aw firms have grown larger and more global in recent years; but what do their corporate clients think of this trend? In an informal survey of law department management, in-house counsel agreed that in some situations, global reach was an advantage bordering on a necessity. But they also made clear that the benefits of size and scope can be easily eclipsed by inattention to old-fashioned concepts of client service, efficiency and value.

## The pros

Not surprisingly, surveyed counsel valued the convenience of a global network of law offices that offers integrated cross-jurisdictional services. A global law firm reduces the information costs of selecting law firms and finding legal specialists across jurisdictions. As one in-house banking lawyer explained, "I handle transactions that sometimes involve a corporate parent in the U.S. and subsidiaries in 15 countries. If I have to deal with 15 different law firms to nail down the regulatory issues, that's just not going to work."

Working with a multi-jurisdictional law firm can also streamline the billing process. Busy in-house lawyers appreciate having a single relationship partner who can provide a firm-wide bill and a single point of contact for billing inquiries. Consolidating global legal spend may also reduce overall spend, due to volume discounts or fee reductions available to large clients.

Language and cultural barriers are another reason that corporate counsel turn to multi-jurisdictional firms. Several counsel pointed out that global firms understand the needs and expectations of U.S. corporations, simplifying the relationship and reducing the risk of misunderstandings about project scope and objectives. In addition, English-language skills can be assumed in a multi-jurisdictional firm but cannot be taken for granted with a local service provider. Finally, although few corporate counsel admit to being

swayed by considerations of status, most conceded that size and global reach are linked to firm prestige. Prominent firms can offer a type of informal insurance to the client, captured in the adage, "You don't get fired for hiring IBM." If an important and complex transaction or litigation does not go well, the CEO and others in a corporation will be less likely to second-guess the decision of the general counsel to retain a large global firm.

## The cons

Corporate counsel clearly value large multi-jurisdictional firms for their promise of seamless international service. But in our survey, they also made clear that the reality did not always live up to the marketing hype.

A multiplicity of offices also increases the opportunities for inefficiency. Some counsel complained of being handed off to a lawyer in another country with little or no background about the client's business or the subject matter of the consultation, requiring in-house counsel to repeat the explanation previously given to a domestic lawyer.

Other clients complained of duplication of effort, with particular frustration about telephone calls with a profusion of lawyers from different jurisdictions. As the deputy GC of an international retailer explained, "I can't tell you how many times I've been on a call with a partner in China while our billing partner listens in from Chicago. I don't need him."

Some surveyed counsel also expressed dissatisfaction with uneven standards of client service across jurisdictions, in one case describing it as "hit or miss." Having worked hard to find a domestic attorney who understands their business and is responsive to their needs, counsel find it frustrating when foreign partners do not measure up. Corporate counsel cited classic examples of poor communication: failure to provide regular status updates, non-responsiveness to phone calls and emails, and failure to provide clear, direct advice.

One in-house lawyer recalled a transaction where she asked a multi-jurisdictional firm to provide

guidance on a discrete U.K. regulatory issue, only to have the U.K. lawyer mark up the entire 50-page document that had already been agreed upon by the parties. Although only a minority of in-house counsel mentioned such problems, they were probably the most indignant. Having paid premium rates to hire the perceived “best and brightest,” corporate lawyers feel strongly that their lawyers should understand basic principles of client service.

Finally, many corporate counsel identified the high cost and unpredictability of fees as a significant downside of large multi-jurisdictional firms. The global law giants are generally perceived to be more expensive than their smaller counterparts, and they usually charge for time spent rather than value conferred.

Clients also dislike the billable hour system, believing it discourages efficiency, predictability of costs and consistency of service. Corporate

lawyers do business in a world of set budgets and increasing emphasis on cost containment where predictability is paramount. Yet their law firms are frequently oblivious to these pressures.

One in-house M&A specialist put it this way: “When we are doing a deal, the business needs an accurate estimate of the transaction costs up front. I have to work hard to hold our outside counsel to an agreed-upon budget. If there is no spending cap in place, they go AWOL. I start seeing charges for special regulatory experts that I did not ask for and did not approve.”

In summary, the message for law firms from our survey is simple: a global strategy offers important opportunities, but can never compensate for poor fundamentals. Multi-jurisdictional law firm structures, whether traditional or innovative, must be designed to motivate and deliver efficient, client-focused services that represent good value. •



## ***Clients: Perspective, process and priority***

**A**hna M. Thoresen Severts' deep experience as a large firm partner and senior in-house counsel for a Fortune 100 multinational company has given her comprehensive knowledge of all aspects of legal department and law firm operations and interactions. Recognized as a process innovator, Ahna has particular expertise in legal department work allocation, knowledge management, legal process improvement (including outsourcing and offshoring) and legal project management.

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