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U.S. Firms Consider Mergers to Facilitate Global Reach



Ward Bower

By Ward Bower

The recent surprise announcement by Sonnenschein and Dentons of their proposed merger reinforces a number of trends that we in the US and our strategic alliance partner Jomati Consultants in the UK have seen emerging over the past year.

First, US firms are increasingly focusing on international expansion as their client bases demand legal services outside the US. These firms, often based on their experience of developing a London office (Sonnenschein opened in London in the 1990s but closed the office a few years later), realize how difficult, time-consuming, expensive and uncertain is the development of greenfield offices in mature legal markets. Given that their clients don't just need a UK capability, but often breadth and depth in Continental Europe, the Middle East and Asia, one or two new offices will be insufficient, so greenfield development will simply take too long and be too expensive. Accordingly, merger, despite its complexities, has become a more appealing option. US firms have given up looking for a mythical top tier 100-lawyer London boutique and are considering much larger mergers, especially if the merger partner has a significant international footprint.

Second, US firms, despite many partners' fixation with profit per partner (PEP) rankings in the AmLaw 100, are increasingly prepared to look for merger partners that do

not have as strong a PEP. Given that the cost of restructuring (i.e., exiting staff and partners) in the US is a fraction of the cost in the UK, and the devaluation of sterling from \$2 = £1 to \$1.45 = £1, it is perhaps inevitable that, in the short term at least, there is a divergence in profitability and firms are prepared to adopt different profit pools and remuneration structures with a view to devising a common remuneration structure and potentially a combined profit pool in the future.

Third, in order to facilitate a merger, firms are now willing to consider new corporate structures such as a Swiss Verein as the holding and co-ordination vehicle rather than to insist on an immediate move to one globally, fully financially-integrated partnership. This shows a new level of pragmatism given the

continued on page 8

Inside This Issue

<i>Law Firms in Transition: A Consensus on Change</i> . . .	2
<i>Know Thy Time: Improving Practice Group Leaders' Job Performance</i>	3
<i>Why Ethical Conflicts Are Still Very Relevant</i>	5
<i>MergerLine™: International Merger Market Shows Some Life</i>	6
<i>Avoiding Law Department Mission Creep</i>	7
<i>The UK Legal Services Act: Is It Finally Time for U.S. Law Firms to Take Notice?</i>	11

Global Reach ... *continued from cover*

business imperative of developing a credible international platform. This also avoids addressing, at least immediately, the difference between U.S. cash accounting and UK accrual accounting together with different financial year ends, typically 31st December for US firms and 30th April for UK firms. These types of structures are widely used by major accounting firms.

To some purists, a merger using such a structure is not a “real merger,” but the proper question to ask is: Will this new firm be able to provide the depth and breadth of coordinated client services that clients expect? If the firm can deliver, the structure will be irrelevant. If different profit pools and remuneration structures inhibit effective client service delivery, this will need to be addressed.

The March 2010 Jomati report *Globalisation After the Crisis* predicted that business pressures would force more firms to expand and deepen their international footprint and that mergers would become a much more common way to achieve that. We are aware of many U.S. firms that are actively considering international mergers. Inevitably there is still a high degree of caution, and most initial discussions abort. When you look at practice mix, client mix, client conflicts, international orientation and culture, the list of potential merger targets for any firm is usually very small. In the current economic environment, demanding immediate financial alignment may exclude any UK firm from the equation, thus alternative structures such as those discussed above.

With the Hogan Lovells deal, the SJ Berwin and Proskauer discussions, and the Sonnenschein and Dentons merger completed or announced in the first five months of 2010, the pace of activity is clearly accelerating. While there may not be many more deals in 2010, we expect current discussions and searches to culminate in more international mergers in 2011 and 2012. ♦

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