

Law Firms' Value Proposition: A Peek into Today's Corporate Needs

If businesses go global then so must their legal advisors.¹

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1. Abstract

This paper gives a salutary view of the recent entry of Multi National Firms (MNFs), majority of which are of a global footprint, venturing into Africa and in particular the Southern African region. It investigates, albeit in brief, some of the more obvious attractions drawing MNFs to Southern Africa and the obvious gaps that local law firms may be failing to meet. The paper shows that the regulatory and professional bodies of MNFs, particularly in England and Wales, have deliberate policies and support services that ensure that Barristers and Solicitors are equipped with the necessary tools and world focus to better advise clients itching to increase their global footprint.

It is shown that Zambia has not been spared from the pressures of MNFs representing a cohort of clients locally. However, unlike other countries like South Africa where MNFs have set up physical presence within the jurisdiction, Zambia still has protectionist legislation against this trend. Notwithstanding, the skills gap between MNFs and local law firms is ominous in large, complex specialised legal practice areas such as energy, infrastructure, capital markets, public offerings, and greenfield projects.

The questions to inform this paper are whether the exclusionary measures against MNFs practising locally are effective, what interventions can be rolled out by the Law Association of Zambia to bolster current capacities of local law firms, and the aspects that local law firms need to focus on in order to compete favourably with MNFs.

¹ Allen & Overy Paper Presentation, Business of Law seminar, Monday 30 September 2013 (Washington, D.C.) Tuesday 1 October 2013 (New York), p 1

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2. Historical Development of today's MNF

A discourse of the development of the Multi National Firm ("MNF"), at least in the United States of America, cannot be complete without reference to Paul D. Cravath who is credited for developing the 'Cravath system' over a century ago.² This system has been viewed as a stable and durable method of firm recruitment of highly qualified but inexperienced law graduates whose promise to make partner created strong drive and energy resulting in a rush to the top.³ This model was a refinement of principles before Cravath's time, but Cravath streamlined them on the rationale of recruits being drilled into the firm's philosophy, undergoing training and increased responsibility upto a point when a select number would make partnership.⁴

It has been observed that notwithstanding the United States developing later than the United Kingdom, the large law firm traces its origins from the United States.⁵ Emerging out of the 1870 surge in commerce and business in the United States, buoyed by the new American law school system, law students became finely graded with them becoming editors of the law review and entering prestigious law firms.⁶

3. The Features of a MNF

Emergence of the modern big law firm has been traced to 6 critical elements: partners, other lawyers, relations to clients, work, support system, and new kinds of knowledge.⁷ This is said to have emerged around the beginning of the 19th Century in America and formed the bedrock of the modern day large firm, and perhaps still holds true for the most part today.

3.1 Partners

It is argued that the modern large law firm has a shared approach to the firms' clients, that is, post payment of salaries and expenses, and profits are shared among partners as pre agreed usually in some form of partnership agreement.⁸ This is contrasted with smaller firms which for all intents and purposes ends in 'practice within a practice' between partners.

² Marc Gzczsalanter and Thomas Palay (1991), *Tournament of Lawyers – the Transformation of the Big Law Firm*, The University of Chicago Press, Chicago and London

³ Otherwise referred to as 'promotion to partnership tournament.'

⁴ *Ibid*, p 9

⁵ Flood, John (2007) "Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions," *Indiana Journal of Global Legal Studies*: p 41

⁶ Robert W. Gordon, *The American Legal Profession, 1870-2000*, in *CAMBRIDGE HISTORY OF LAW IN AMERICA* (Christopher Tomlins & Michael Grossberg eds., forthcoming 2007) (manuscript at 20-21, on file with author).

⁷ *Ibid* pp 4,5

⁸ *Ibid*, p 4

An interesting variation to full partnership is the development of lateral hires, partners or higher-level associates from other firms. The new career positions such as permanent associates, junior and non equity partners increases remuneration without full right and privileges granted to senior or equity partners.⁹

3.2 Permanent Staff

Notwithstanding the ubiquitous nature of MNF's, there are relatively few of these large law firms within the general population of law firms; they are however big in size, the largest of them have over 3000 lawyers located in offices throughout the world.¹⁰

The modern large firm will ordinarily have a cohort of salaried associates, rather than revolving clerks that are not on staff pay roll. The carefully selected associates are absorbed within the structures of the firm and it is expected that they will eventually rise through the ranks to partnership. Through this mentorship process, their seniors will prefer training, supervision and increased delegation of work.¹¹

3.3 Clients

Another evident feature of an MNF is that clients will predominantly be Multi National Companies (MNC's) that thrive on economies of scale. The client needs will inevitably cut across the spectrum of the services offered by the firm across the various sections of the firm. Such clients are deemed as the clients of the entire firm¹², and will usually require an entire value chain of services.

A school of thought under this head is that of spatial differentiation, a phenomenon which occurs through mergers or the creation of new offices in different geographical locations, typically reducing the firm's dependence on limited set of clients.¹³

3.4 Nature of the Work

Closely linked to the nature of clients is the focus on value addition services. As aptly put by some, the shift has been from courtroom advocate to business advisor, that is, the capacity of the MNF advocates to convince his client of the need for his services that would ultimately

⁹ Pamela S. Tolbert, *Organizations of Professionals: Governance Structures in Large Law Firms*, (Cornell University ILR School, 1991)

¹⁰ Flood, John (2007) "Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions," *Indiana Journal of Global Legal Studies*: p 49

¹¹ *Ibid* p 5

¹² *Ibid* p 5

¹³ Stevens M., *The Big Eight*, (New York: Macmillan, 1981).

yield more profit.¹⁴ The value proposition under this head is that the MNF would walk right by the client through the entire business value chain of acquisition, negotiation, contracting performance and dispute resolution.

3.5 Information Communication Technologies

A contrast has been drawn from the underlying rationale of older smaller firms of being ‘family firms’ drawing strength from personal face to face interactions with clients, to the larger more modern MNFs that leverage off communication technologies to maximise firm time and reduce the need for physical interaction.¹⁵ A concomitant development therefore has been for the office design of the MNF to replicate that of its larger corporate clients. It is now atypical to find the offices and conference rooms of an MNF identical to a large multinational bank, replite with videoconferencing, information management systems, billing software and law reports kept in the form of software.

3.6 Synergies with Legal Networks

The historical development of modern legal networks has been traced back to just over four decades somewhere around the 1980’s. At this point, law firms were seeking ways to leverage off each either in increasing their client and geographical footprint. Starting as informal clubs, these networks are now run as stand alone businesses of their own right quite unlike those of their accountancy professional counterparts. The current modest estimate is that there are over 160 networks.¹⁶

4. **Factors drawing MNFs to Africa**

4.1 Africa’s Growth Projectile

On a country outlook perspective, the World Bank in its *Doing Business* report outlines how easy or difficult it is for a local entrepreneur to open and run a small to medium size business when complying with relevant regulations using a ten criteria scale.¹⁷ In its 2017 Report, the World Bank has ranked Zambia as 98 out of 190 economies, up four places from the previous year’s ranking of 94 indicating a fairly mid-tier rating to attract investors and advisors. Zambia’s economic outlook, despite the tough global economic conditions, projects an improvement in its GDP growth forecast at an average of 4% and 4.2 % for 2016 and 2017

¹⁴ Ibid p. 6

¹⁵ See ibid p.8

¹⁶ <https://www.hg.org/top-legal-networks.html>. Accessed on 24 January 2017.

¹⁷ World Bank. 2016. *Doing Business 2017 : equal opportunity for all – Zambia*. Doing Buisness 2017. Washington, D.C . : World Bank Group, pp.6, 10. The 10 indicia are Starting a Buisness, Dealing with Contruction Permits, Getting Electricity, Registering Property, Getting Credit, Protecting Minority Investors, Paying Taxes, Trading across Borders, Enforcing Contracts and Resolving Insolvency.

respectively. This is expected to be buoyed by an improved electricity situation, improved copper exports and better structural reforms.¹⁸

In order to ease the doing of business, the Business Regulatory Act aimed at providing for an efficient, cost effective and accessible business licensing system was enacted in 2014.¹⁹ The success of the Act is still a moot point in light of the deterioration of the World Bank rankings.

Notwithstanding, Zambia and Africa generally remains a long term investment destination for both investors and their advisors. The vision of the Zambian Government remains to be *A prosperous middle-income Nation by 2030*, and areas for economic growth are manufacturing, mining, technology, energy, and tourism as the main economic drivers.²⁰ It is expected that investments will continue to be driven in these growth sectors, and legal advisors will particularly play a critical role to meander the regulatory environment that is so critical to successful investment, both from local and foreign investors.

4.2 Underserviced Population

With a population of 16.2 million people and Gross National Income²¹ per capita of US \$ 1, 490, a divisive topic that has received increased stakeholder attention is the number of qualified lawyers currently servicing the national population. At the centre of this debate is the low pass rate at the bar exam administered by the Zambia Institute of Advanced Legal Education (“ZIALE”).²²

ZIALE is established pursuant to the Zambia Institute of Advanced Legal Education Act,²³ with an overarching objective to:

“provide national, regional and international legal post-graduate studies and training in legislative drafting.”²⁴

The Government made its position known in relation to recent results in which 16 out of 360 students were admitted to the bar. The Government stated that the low pass rate would have to be addressed, one of which was the building of a new campus to increase learning spaces, and

¹⁸ World Bank 2016. Zambia economic brief : raising revenue for economic recovery. Washington, D.C : World Bank Group, p1.

¹⁹ Act Number 3 of 2014.

²⁰ Vision 2030, Ministry of Commerce Trade and Industry, December 2006, pp 15-27

²¹ Ibid, p.6.

²² A concomittant argument is the underserviced Boards of companies in Walubita Luwabelwa and Kenneth K. Mwenda, Board membership in Zambian Banks: A nemesis to good corporate governance? Zambia Law Journal 2012/2013)

²³ Chapter 49 of the Laws of Zambia

²⁴ Ibid, Section 4 (1)

other action following recommendations from ZIALE.²⁵ It is not surprising therefore to consider a pass rate of 300 students at a sitting as a ‘record high’ admission rate.²⁶

Compounding the low pass rate is the belief that the low rate of qualified lawyers on the market has kept the cost of legal services high, as can be seen in the understaffing of the public litigation department of the Ministry.²⁷

4.3 Change in Legislation on Legal Fees

MNFs have naturally reacted to the local legislative environment that impacts on their bottomline. The constant global market analysis will drive decision making on how the geographical footprint will look. .

A case example is the move by the UK Government to cap legal fees in criminal negligence cases to stop “unscrupulous” lawyers charging excessive fees, which will result in a vast reduction of fees currently being charged.

The proposed cap announced by Health Secretary Jeremy Hunt is to impose a fixed cap on all cases up to 25, 000 pounds in England and Wales, expected to save the health service approximately 45 million pounds a year.²⁸

The mischief that has been targeted by the move is the concept of “ambulance chasing” and “creaming off”, a situation where law firms get excessive legal costs that dwarf the actual damages recovered on behalf of their clients. It has been estimated that clinical negligence costs in the NHS in England alone rose from 1.2 billion pounds in 2014/15 to 1.5 billion pounds in 2015/16, out of which legal costs amounted for 34 percent.²⁹

4.4 Chinese Driven Investments in Africa

It is estimated that from 2000 to 2011, Chinese total financial commitments to Africa reached \$ 73 billion, significantly higher than the official figure of foreign aid of \$ 15 billion.³⁰ Not without its own criticism, Chinese investments have been identified as not having developed a consistent and coherent strategy of integrating aid and investment, but rather driving a

²⁵ Honourable Minister Goven Lubinda, Minister of Justice, in the Daily Nation at www.dailynation.news. Accessed on 1st February 2017.

²⁶ See www.diggers.news/local/2018/03/18

²⁷ Ibid, Estimated that each advocate had about 400 pending cases to attend to

²⁸ www.thesun.co.uk. Accessed on 31st January 2017.

²⁹ Ibid

³⁰ Yu Zheng, Fudan University. China’s Aid and Investment in Africa : A Viable Solution to International Development? (2016), p 2. Available at www.hhs.se. Accessed on 31st January 2017.

profit-driven firm that use various aid schemes as a launching pad to satisfy their investment projects.³¹

The genesis of large scale investment by China in Africa has been traced by some authors to the 1955 Bandung Conference in Indonesia, which was the first large scale meeting between African and Asian States, leading to the first formal diplomatic relationship between China and Egypt.³²

Ever since private enterprises joined the state in utilising overseas development somewhat in 1985, China has made significant investment on the African continent with a special focus on assisting African states create their own special economic zones to facilitate Chinese companies invest in them.³³ It is noteworthy that the first special economic zone established pursuant to this Chinese strategy was in Zambia, in Chambishi on the Copperbelt region.³⁴

Inevitably, MNCs have woken up to the African-Asian relationship and have had to adapt to the new framework of FDI. The model of MNCs participation in this wave of investment has taken different models depending on the restrictions present within the various African jurisdictions. The model will then range from physical presence in different jurisdictions to sub-contracting of legal work to local firms. Clients dealing with Chinese Foreign Direct Investment (FDI) in Africa have further adapted by hiring in house Chinese legal counsel.

5. Exclusionary Measures against MNCs practising locally

In order to practice law within Zambia, one needs to be qualified as a practitioner. "Practitioner" is defined as a person who has been admitted to practice as an advocate and whose name is entered on the list of practitioners, commonly termed as the Roll.³⁵ Any person not meeting this criteria is termed as an "unqualified person", which term also extends to a practitioner who has not in force a practising certificate.³⁶

Admission to the Roll is done by a certificate of admission from the Chief Justice³⁷ after fulfilling pre-requisite qualification and payment procedures, and the authority to practice is further drawn from practising certificates issued by the Law Association of Zambia.³⁸

³¹ Ibid, p 3.

³² Yin-Wong Cheung (University of California), Jakob de Haan (De Nederlandsche Bank, University of Groningen and Cesifo, Munich), XingWang Qian (SUNY, Buffalo State College), Shu Yu (University of Groningen), China's Investments in Africa (2011), p 4. Available at www.ippanigeria.org. Accessed on 31st January 2017.

³³ Ibid

³⁴ Ibid

³⁵ Section 2, Legal Practitioners Act, Chapter 30 of the Laws of Zambia

³⁶ Ibid

³⁷ Ibid, Section 13

³⁸ Ibid, Section 35

It is tempting to draw a distinction in the Act between a Barrister and Solicitor, as some sections refer to the term “advocate”. The distinction however becomes murky when considering the definition of “practice”. The terms practice and advocate in certain sections of the Act seem to be used interchangeably.

To add to the interchangeability of terms, the Act also utilises the word “Lawyer”.³⁹ The Act imposes an obligation of an applicant wishing to be registered on the Roll to undertake in part that once admitted on the Roll, he shall not, until he has satisfied the Law Association of Zambia that he has gained the requisite practical experience to-

*“...establish or become a partner in, any firm of **lawyers**; ...” [Emphasis mine]⁴⁰*

However, combing through the sections one gets the sense that the term “Lawyer” is predominantly used in reference to a person who is qualified to practice in a jurisdiction other than Zambia, and such category of persons can also be admitted to the Roll after fulfilling minimum qualification criteria.⁴¹

Expectedly, the Act proscribes unqualified persons from acting as an advocate,⁴² pretending to be an advocate,⁴³ or performs work of a non advocate nature that for a fee, gain or reward that does not fall within the exceptions.⁴⁴

6. Recommendations

6.1 Library and Information Services

In keeping with the adage that a good lawyer is one who knows where to find the law, it is cardinal that there should be an, accessible, affordable and readily available resource to members in order to provide the most up-to-date, in depth and specialised service to demanding clients. This is cardinal in order for local law firms to compete internationally.

Taking a leaf from the English Law Society, a local law firm can pay a modest fee in order to make queries that will require more than a prescribed time to respond to.⁴⁵ In order to

³⁹ For a discussion on the qualifications of ‘Lawyers’ as Company Secretaries, see Walubita Luwabelwa & Mumba Malila, The role of The Company Secretary : A Tale of Two Worlds, The International Journal of Multi Disciplinary Research, 2018. p 6

⁴⁰ Ibid, Section 13A (a) (ii)

⁴¹ For an elaborate prequalification criteria, see Ibid Sections 2 and 11.

⁴² Ibid, Section 42

⁴³ Although the act must be “Wilfull”, Ibid Section 43

⁴⁴ Ibid, Section 44

⁴⁵ 30 pounds plus VAT for Research per 30 minutes for Law Society members. www.lawsociety.org.uk. Accessed on 31st January 2017.

compete with MNFs, at the very least, the Law Association of Zambia should be able to provide access to upto date precedents, law cases, legal journals, commentary and legislation.

Trial runs with LexisNexis access has been attempted by the Law Society, but these efforts should be scaled up to ensure consistency. This should culminate in a project based approach that can focuss on building its own library service with dedicated law librarian that can be both physical and online. Collaborations with existing services such as Kas law, Zamlii can be explored as a strating point, but it is suggested that the Law Association of Zambia should take pole position in owning and runnibg library resources to cheapen the cost by leveraging on economies of scale of the number of its members.

More modern tutorial services should be explored using Information Communication Tools (ICT) such as blogs, and video conference facilities. This is particularly in light of the high cost of legal materials.

6.2 Practice Advice Services

It is proposed that the Law Association of Zambia adopts the free and confidential helpline model to its members to offer advice on practice and procedure. To manage costs, the Association can begin with a specific time period of the day for the hotline with one or two qualified practitioners, thereafter building on to having a fully operational hotline.

The cost of the exercise can be supported in various methods such as funding from cooperating partners, commercial hire out of the Association Venues, member subscriptions, and access fees. To mitigate potential exposure, the legal advise provided can be accompanied by usual disclaimers.

Although the adhoc trainings have a positive impact towards attendees, they unfortunately are ad hoc in nature and have not had the staying or persuasive effect on the profession as a whole. The effectiveness of the training is also subject to willingness by practitioners to put into practice the knowldged gleaned from the workshops.

6.3 Accreditation Services

As an alternative to independent law firm accreditation services, the Law Association of Zambia should consider its own form of accreditation service.⁴⁶ This can run as a form of categorisation service run by the Association that can assist a client be guided as to the group of firms that have met certain criteria in specialised areas of law, sucj as family law, commercial law, construction law, immigration, litigation, wills, negligence, mediation etc. A

⁴⁶ See for instance Lexcel, CQS for conveyancing, WIQS for wills and inheritance etc.

proposal would be for the Association to adopt minimum criteria that blends both practice and academic criteries eg ICOSA, LLM, cases one, years ta the bar.

6.4 Realignment of Association Strategic Focus

It is submitted that the current protectionist measures of requiring local licensing of advocates is commendable in building local capacity.

Notwithstanding, the Law Association of Zambia under its enabling Act acts as regulator, licensor, complaints handler, disciplinary authority, trainer and member's capacity builder. As contrasted with the United Kingdom bifurcated system that has segmented these roles among different bodies and between Solicitors and Barristers, and having introduced a 'regulator of regulator' body, it is key to rethink the current capacities and inherent skewing of focus of the Association in fulfilling such a wide mandate.

The temptation for a Law Society with such a wide mandate is to focus on matters traditionally considered more "hard core" issues at the expense of deliberate and sustainable interventions to upskill its members with *sui generis* and trending legal skills. These hard core issues typically deal with administration and delivery of justice, constitutionalism, good governance, social justice and the rule of law.⁴⁷

The Bar Council and Law Society have set the pace in delivering effective services to their members. Beyond skills upskilling and client support services, the Association should consider welfare support interventions such as LawCare, equality and diversity free hotline service, and nursery and parental hub to be in touch with the difficulties that advocates are facing to meet the optimal career – home life balance.

6.5 Review of Licensing Standards

Local firms have a big role to play in upskilling and modernising their approach to provision of legal services. Local protectionist measures are not in and of themselves sufficient to upskill local counsel.

During the discussion relating to the features of a typical MNF, it was noted that there is a great investment chasm between the MNFs and local counsel.

A school of thought that has been mooted is that at the point of licensing law firms, criteria beyond the character and good standing of the applicants can be considered. Minimum criteria can be set for factors such as number of partners, library resources and ICT tools can be

⁴⁷ See for instance message from the President's Desk in the Law Association of Zambia Newsletter, 4th Edition, 2016

factored in. Currently, the Legal Practitioners' Rules 2002 gives the Legal Practitioners Committee broad powers to validate the "suitability" of a Practitioner's office. It provides that:

- "...A practitioner shall-*
- (a) ensure that every office where the practitioner or the practitioner's firm is located is decent, easily accessible and in an environment conducive and suitable for a legal practice;*
 - (b) not share office accommodation and facilities with non-practitioners.*
- (2) For purposes of sub-rule (1) the Legal Practitioners Committee shall have power to inspect the suitability of a practitioner's office at any time."⁴⁸*

An assessment of Zambian law firms shows that as regards partner size, an average local law firm partnership averages three partners, with a vast majority of single run law firms. Exceptions of law firms with five or more partners are the so called 'bigger firms' include Corpus Legal Practitioners, Chibesakunda and Company, The scorge of law practices having a 'practice within a practice' between partners is not uncommon, leading upto law firm splits thereby further bifurcating the practice.

Mentorship is usually an unstructured process of a partner calling on an associate to attend an urgent court matter, and the associate will be shielded from meeting the bigger clients of the partner. Although LAZ has attempted to structure a mentorship programme, this has not been without its own inadequacies.

Due to the growing size of the company, a good amount of clients for the average start up law firm will comprise acquaintencies and former acquaintencies and referees from larger firms arising out of conflict of interest, with a bias towards litigation, criminal, probate and conveyancing work. Additionally, walking into a typical law firm does not resonate the grand multi national law firm buildings as most law firms occupy rented space rather than their own modern buildings that are devoid of up-to-date ICT tools.

6.6 Self Rebranding

Notwithstanding that the article has focussed on the role of LAZ, local prcatitioners alike have a personal role to play. Investment in self towards the needs of the client is critical; private practice practitioners need to place premium on understanding a client's business. Law firms should increasingly look for law recruits with prior business experience and spend more time

⁴⁸ Rule 13 (1), (2)

and resources on training new hires about business and organizational leadership and management.⁴⁹

One effect of the enormous growth in law firms has been the upward trajectory of specialization within them and also among offices in the same firm. Each unit within the firm has become a firm within a firm,⁵⁰ which can form a good earning point for local law firms.

In addition to specialising, a global approach to legal education and training is critical. Just as young lawyers from jurisdictions outside the Anglo-American nexus now find it almost requisite to obtain an LL.M. degree at a major United States or United Kingdom law school to understand global legal techniques,⁵¹ legal practitioners within Zambia are slowly acquiring a global outlook of legal skills by acquiring post graduate legal qualifications from leading international law schools. This should be encouraged.

7. Conclusion

It has been shown that MNFs venturing into Africa have been attracted by several factors, primary of which has been the recent growth in FDI into the African continent together with interest shown by MNC's in investing in the continent. The growth in MNFs interest has been both direct set up of offices and agent relationships with local law firms. Unfortunately, the gap in sophistication between local law firms and MNFs, notwithstanding that local firms will be closer to understanding the local law than MNFs, has raised debate as to whether the protectionist provisions in certain jurisdictions like Zambia can sustain the gaps coming to the fore when sophisticated clients demand the minimum standards provided by the MNFs. Law Societies will therefore play a critical role in upskilling their members to meet this demand, by both taking a leaf from Law Societies in advanced jurisdictions like England, and by encouraging their members to meet certain minimum service requirements.

⁴⁹ Allen & Overy Paper Presentation, Business of Law seminar, Monday 30 September 2013 (Washington, D.C.) Tuesday 1 October 2013 (New York), p 4

⁵⁰ See Gerard Hanlon, *Lawyers, The State and the Market: Professionalism Revisited* 129- 30 (MacMillan Press LTD 1999).

⁵¹ See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039, 1040 (2002)

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