

# Serving the Foreign Client

A Walker Clark Background Briefing

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## New clients, new opportunities, new challenges

The globalization of business presents new opportunities and challenges for law firms that previously served mostly local or national clients. In developing countries, in particular, lawyers are now being invited to act for foreign corporations with increasingly complex transactional work or litigation. Often, this work goes by default to one of the large global firms or to one of the largest firms in the local jurisdiction. Foreign clients sometimes mistakenly assume that only the largest and best-known firms are able to serve them.

Our experience demonstrates that biggest is not always best. Foreign clients present a major opportunity for the many entrepreneurial, high-quality midsize and small firms in many countries. In many cases, foreign clients find that the smaller firm may be better able to meet their specific needs and service expectations. In short, the smaller firm has the opportunity to compete on quality, not just price.

*As cross-border and global business issues become more common, many law firms now face, for the first time, the challenges and opportunities of acting for foreign clients. Even law firms that already do cross-border legal work encounter new and different expectations from new clients from the other side of the world, where local customs and practice may be profoundly different from the firm's previous experience with clients from neighboring countries or one of the major business centers.*

*Serving the foreign client requires more than good cross-cultural skills. It is a learning process. The authors recommend that law firms invest considerable time and effort at the beginning of the relationship to discuss and define the client's expectations, as well as any practical, economic, or political implications in the firm's home jurisdiction. When acting for a foreign client, law firms should assume nothing. In today's quickly changing global marketplace, assumptions based on yesterday's experience might not be reliable guides for client satisfaction tomorrow.*

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If the smaller firm is part of an international law firm network with a working commitment to quality standards, it may enjoy an even greater competitive advantage because of its international capabilities through its network membership. Network membership is not a prerequisite to being able to compete for international legal work; but the right network – one that is more than just a referral service – can project the smaller firm's quality advantage much farther out into the world legal market than most small firms could do on their own.

The authors' interviews with almost 2,000 corporate clients of law firms over the past 14 years demonstrate that, for most of these clients, the quality of the law firm's service is as important as the ultimate legal results. Moreover, these clients define quality in terms of availability, efficiency, responsiveness to changing needs, understanding of the client's business objectives, and knowledge of the local legal, economic, and political systems.

For large global firms and smaller local firms alike, the highest obstacle to successful long-term relationships with foreign clients is the clear communication and understanding of common expectations. Put another way, what the foreign client expects and what the local law firm understands about those expectations are often poles apart.

Likewise, foreign clients – even those with local subsidiaries or operating divisions – often do not fully understand the way in

which local political systems, legal practice customs, standards of professional responsibility, and economic environment may limit or shape their ability to achieve their business goals in the law firm's country.

This paper serves as an informal checklist for law firms that have been engaged by a foreign client. It is very important to understand that, in this age of globalization, the term *foreign client* includes not only the client located in another country, but also the local office or subsidiary of a foreign company. In fact, the relationships between a law firm, the local subsidiary or office, and the corporate headquarters in another country may pose the most complex client-service challenge in the practice of law.

### **An agenda for the discussion with the foreign client**

We recommend that an ongoing discussion begin as soon as the foreign client approaches the local firm. To the extent permitted by local rules of professional responsibility, these earliest contacts should include a detailed exchange aimed at achieving four long-term goals in the engagement:

A thorough understanding of the client's business objectives in the context of political, economic, and social systems in the local jurisdiction;

- An understanding of how different business practices, customs, and etiquette can affect the relationship

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between the law firm and its foreign client;

- An agreement about engagement management and client service issues;
- A commitment to avoid unverified assumptions and to address issues when they arise.

These four points are important for three reasons.

First of all, they represent the four areas that most frequently cause client dissatisfaction with a law firm in another jurisdiction, whether across the border or across the world. When foreign clients terminate their relationship with a law firm, it is usually for reasons that fall within one or more of these four categories.

Second, close attention in each of these four areas will not only reduce misunderstandings, but will also protect profitability for the law firm. By having discussed and defined the client's expectations in advance, rather than learning them along the way, the law firm immensely increases its ability to do the work efficiently and correctly the first time.

Finally, the ability and willingness of a law firm to discuss these issues at the beginning of the relationship, and to demonstrate an ability to respond to them, are substantial advantages in the competition for international legal work. Although a foreign client may have business interests in many countries, the most important question in selecting a law firm is: Which firm can best deliver high-

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quality service in the local courts, regulatory agencies, and business community?

One last point bears emphasis: This must not be a one-time discussion. Instead, to be successful, the law firm must take the lead in providing opportunities and enthusiasm for a continuous conversation about these issues. The goal is not just to satisfy the client in one matter or piece of legal work. Instead, it is to build a trusting relationship that will encourage the client to contact the law firm whenever the client has legal work in the firm's jurisdiction.

### **Understanding the political, economic, and social contexts**

- “We know that they are good lawyers, but they just don't understand our business.”
- “We don't need a big law firm. We need some lawyers who can be our legal guides in that country.”
- “They are always telling us what we cannot do in their country. We want someone to show us how we can do it consistent with local laws and business practice.”
- “We want practical legal advice – how to do something. All they give us are these great long dissertations about local law.”

Comments like these are all too typical of the great gap that exists between many

foreign clients and their local law firms. They are not too dissimilar from criticisms that clients often have of law firms in their own jurisdictions. However, different cultures, legal systems and customs, and political environments make the fundamental process of communication much more complicated when dealing with a foreign client.

Understanding the client's business is one of the most important indicators of quality in legal services. It always appears among the top quality factors in client satisfaction surveys conducted by law firms and their marketing consultants. When dealing with a foreign client, however, it is not enough for the lawyers to learn and understand the client's business objectives, and to communicate that understanding to every fee earner who works on the client's files. The firm must also communicate to the client the practical ways in which local laws, regulations, business and professional customs, and economic and social issues will affect the client's ability to achieve business goals in the law firm's jurisdiction. Understanding the client's business is very much a matter of two-way communication.

As soon as permissible, the law firm and the foreign client must discuss these issues and develop specific, detailed strategies and plans to deal with each one:

### **1. What are the client's goals in the matter and how do they relate to the client's overall business objectives and strategy?**

When a matter begins, especially in litigation, foreign clients may be unaware of local factors that could make it more difficult to achieve the client's goals. The law firm can provide substantial additional value to the foreign client by identifying and explaining such obstacles at the earliest moment. This can lead to strategies and tactics that can save the client substantial amounts in fees, business losses, and opportunity costs.

### **2. What are the implications for the client's position in their home market?**

If, for example, the foreign client has engaged the firm to help establish a large local manufacturing or assembly facility, there may be adverse reaction in the home market if this will result in the loss of a substantial number of jobs at home. The controversy in the client's home market, and the desire to mitigate any adverse effects, will affect the level of commitment and pace of execution for the project.

If labor or environmental regulations in the law firm's jurisdiction are perceived as being weaker than those in the home market, this could require the law firm to be able to explain local laws with a degree of clarity and precision that will avoid misinterpretation or

misquoting in the press in the client's home country.

Considerations such as these may produce quickly shifting priorities for the client with respect to the local legal work. The law firm needs to be aware of these risks from the beginning.

### **3. What are the implications in the local jurisdiction?**

This question will be discussed, in part, during the conversation about the foreign client's overall business objectives and strategy. However, local implications should also be a specific, ongoing agenda item as the client's legal strategy and implementing tactics emerge during the course of the engagement. For example:

- What are the local political, social, and economic issues and implications involved in accomplishing the client's goals in the law firm's country?
- Could the client's position or objectives produce an adverse reaction in the law firm's local market, thereby worsening the client's position rather than strengthening it?
- By acting for a foreign client, will the firm risk the loss of long-established relationships with local clients?
- Would some of the firm's local clients view the engagement as a

commercial conflict of interest, even though it might not be a legal conflict?

Some firms may want to document the results of these discussions, as an addendum to the engagement letter or in a separate lawyer-client communiqué that is circulated, under appropriate conditions of confidentiality, to everyone in the firm who will be working on the foreign client's file.

### **Identify and understand cultural differences**

Professional courtesy and tolerance for differences usually allow lawyers to overlook mistakes in cross-cultural relations. However, repeated insensitivity to the business customs and etiquette of the foreign client's culture will eventually undermine the professional relationship.

The local law firm and its foreign client must understand differences in the professional and social cultures of the two countries, and at a level of intimacy that cannot be derived from a book.

Proceeding on assumptions – even those derived from trusted sources – can be risky. The experiences of other lawyers, or one's own past experience with other clients from the same country, are not always reliable guides for building trust and confidence in a new client. This is why we recommend that the law firm discuss cultural differences with the foreign client and share the information

with everyone who works on the client's files.

Here are some of the more common differences:

### **1. Professional precedence and deference**

The rules of precedence and deference can vary significantly among countries, even in the same general region of the world. Observance of the foreign client's courtesies in these areas – especially by support staff – can powerfully impress people in the client organization. It shows that the firm invested the effort not only to learn the client's customs, but to disseminate the information throughout the firm.

Some of these differences – such as the use of academic titles, using the word attorney as synonymous with lawyer, or the proper distinction between associate, assistant, legal assistant, and secretary – are relatively simple; but they are evidence of an effort to learn about the client's professional culture.

Some of the differences may be more subtle and may even appear counter-intuitive. For example, in some countries deference is shown to the person with the senior position in an organization; in others, deference is based on age. Speaking first to the senior officer in a client company would be expected at a meeting in one country; but, in another country, it could be considered discourteous to an

older person, even though that person is not senior in the organization.

It is unlikely that any engagement was ever terminated because of one or two unintentional breaches of local etiquette; but repeated ignorance of basic professional courtesies can quickly undermine the relationship.

### **2. Communications**

In some countries, it is expected or even preferred that routine, administrative messages be communicated through assistants or secretaries. In others, a partner might be offended, and consider it disrespectful, to receive a message directly from a secretary in another firm.

Whether across town, across a border, or across an ocean, communications are the lifeblood of the lawyer-client relationship. Even unintentional breaches of communications decorum, if repeated, can become a relationship-threatening obstruction.

### **3. Holidays**

Not all countries consider “24-by-7 availability” to be particularly admirable or a part of their professional or business culture. Holidays and vacations are considered inviolable family and personal time. In these cultures, for a law firm to telephone a client at home or on holiday, except in the direst emergency, could be considered deeply disrespectful of the client's family.

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Law firms need to learn and respect their clients' expectations about communications during non-business hours. The best way to do this is to ask the client directly.

Here are some of the issues that have the greatest potential for misunderstandings and client dissatisfaction. Each should be addressed in the engagement letter:

### **4. Role of associates and assistants**

There is considerable variation in the role and authority of associates and legal assistants from country to country. Some foreign clients will insist that all but the most basic functions and tasks be performed by partners. Others will expect the law firm to control fees by delegating work to associates and assistants whenever possible.

### **1. Availability and access**

- Who will be the law firm's points of contact in the client organization?
- What direct access will the law firm have to senior and mid-level managers in the client organization?
- To what extent does the client expect the firm's lawyers to be available to travel to the client's headquarters or some other distant site of client operations?

## **Agree on policies and standards for engagement management and client service**

Defining service standards and policies on items such as responsiveness in communications, billing, and the respective responsibilities of the law firm and the client should take place at the outset of any engagement. It becomes even more important to do so when the client is a foreign entity.

### **2. Responsiveness**

What will be the normal time for response to telephone calls, electronic mail, and other correspondence from the foreign client?

Foreign clients may have expectations about administrative details of the engagement that are very different from the law firm's standard operating practices. A law firm cannot expect that a foreign client, no matter how large or sophisticated, is already familiar with local customs and practice in the legal profession.

### **3. Working language(s)**

Language is one of the areas with the greatest risk of misunderstandings arising from unverified assumptions. It often requires the most detailed discussion at the outset of the engagement. If the first language of the foreign client is different from that of the law firm, the firm should be sure to address language-related questions such as:

- **What will be the working language or languages for the engagement?**

The term *working language* refers to the language in which correspondence, pleadings, memoranda, and other documents will normally be prepared, absent specific direction otherwise.

Working language issues are often complicated when a foreign client engages the firm to perform legal work arising out of operations of a subsidiary in the firm's country. To avoid costly additional work later, the firm should clarify the working language questions at the earliest opportunity.

- **Will documents be translated or in original language?**

Some law firms and some clients prefer to work with untranslated documents, even when they are in a language other than the firm's or client's first language.

- If documents are to be translated, who will provide the translations?
- What qualifications and quality assurance standards will the client require of translations contracted or provided by the law firm?

- **What are the language capabilities of support staff and technicians in the client organization?**

What effect will reduced language skills and capabilities among junior personnel have on the delivery of legal services to the client?

Even though the senior leaders and in-house counsel of the foreign client organization might be fluent in the working language, capabilities may decrease sharply among junior managers and staff in the client organization.

- **Are regional or technical vocabularies required?**

Does the client organization observe any significant regional variations in working language?

For example, a Latin American firm acting for a British client may have little difficulty working with in-house counsel in London; but it may find a Glasgow accent almost impenetrable. Regional differences are frequently a source of pride, but they may need to be discussed candidly but respectfully at the outset of the engagement. Likewise, the law firm should identify the need to learn any special technical jargon, colloquialisms, and acronyms used in the client organization.

#### **4. Status reports**

- Does the client want periodic status reports?
- If so, what should they address and in what format should they be prepared?

#### **5. Delegation of legal work**

- What are the client's expectations with respect to the delegation of legal tasks and functions to junior lawyers and non-lawyer fee earners?
- What functions does the client expect to be performed by a partner?

#### **6. Communications with the foreign client's home office and local subsidiaries**

- To what extent, and with respect to what issues, may the law firm communicate directly with the foreign client's headquarters?
- When should the firm communicate through the foreign client's local subsidiary?

#### **7. Communications with third parties**

When, if at all, may the firm communicate directly with other providers of professional or business services to the client, such as accountants, engineers, or banks?

Some clients may desire and expect that the law firm will communicate directly with local providers in the firm's jurisdiction. Other clients may prefer to have all such communications through in-house counsel or other corporate officers.

#### **8. Billing**

How often will fees be billed? How much detail does the client require on the invoice?

Billing practices vary considerably. A foreign client who is used to itemized, detailed hourly billing might take exception to the summary form of invoice that is customary for the law firm's local clients.

#### **9. Expenses and disbursements**

The range of expenses and disbursements that are accepted as reimbursable can vary considerably from country to country. What is customary in one jurisdiction might be viewed as bordering on dishonesty in another. Unless reimbursement of expenses and disbursements is discussed and agreed at the start, the law firm should expect the foreign client to challenge some of these charges.

#### **10. Payment**

It may be the custom in the foreign client's country to age professional services invoices for up to 90 to 120

days. A demand for payment within 30 days might be viewed as distrusting and insulting to the client's integrity.

Law firms must also be very careful about attempting to charge interest on accounts that are more than 30 days old. In some countries, interest payments, especially to providers of trusted professional services, are considered highly improper or even immoral.

Likewise, litigation to collect a fee is considered to be a breach of professional ethics in some countries. Even though these professional rules might not apply to a law firm outside the client's home jurisdiction, even the suggestion of possible legal action to collect a fee could be viewed as highly offensive by the client, especially if the client feels that there are unresolved service issues.

### Checking assumptions

Implicit in the approach outlined in this paper is the wisdom of avoiding acting on assumptions about what the foreign client wants, needs, or expects. The better practice is always to ask directly, to transform unverified assumptions and anecdotes into clear standards and guidelines for the law firm and the foreign client to work together more effectively.

When considering the practice of law in a foreign country, many lawyers often suffer from two apparently contradictory set of assumptions.

- **Everyone practices law the same way I do.**

Although, as is pointed out below, there are certain common cross-cultural principles in the practice of law, there are also some important differences.

For example, different standards of professional ethics can make the word *marketing* mean one thing to a lawyer in New York and quite another thing to a lawyer in Nigeria, where restrictions on communications with clients and non-clients are tighter than they are in the United States. The marketing consultant who is well-received by New York lawyers might horrify an audience in Lagos. Her aggressive recommendations to an American audience would not be practical in Nigeria, and could even weaken the position of a Nigerian firm that followed her advice.

Even in this age of globalization, there remain important differences in practice customs from one country to another.

The practice customs of law firms in the client's home jurisdiction will shape that client's perceptions and expectations of all law firms, not just the local ones. What the foreign client has come to expect from engagements with local firms might be significantly different from the professional culture and practice customs among law firms in another country. When dealing with a foreign client, therefore, the law firm cannot assume that the foreign client's experiences or perceptions of law firms

are similar to what the firm's local clients possess.

- **Other legal systems are fundamentally different.**

The unfamiliar often appears different or even threatening. In the authors' consulting practice with law firms around the world, we often encounter lawyers who view foreign legal systems as being fundamentally different from their own. In fact, there are at least three common values that we have found in law firms of all sizes, in all parts of the world:

- A respect for the rule of law
- Common core ethical values of honesty, diligence, and loyalty
- Dedication to serving the client in accordance with the law and professional ethics.

The law firm should look for points of similarity as well as differences. The best way to do this is through frequent, candid communications. As the service provider, the law firm should take the responsibility and initiative to ensure that this ongoing dialogue remains candid, pertinent, and timely.

This can be challenging when dealing with a client from a culture that does not use candor or directness in business discourse. In fact, some clients might consider as rude the frank, hard-hitting directness that is

prized in North America. The law firm seeking honest evaluation and feedback from its foreign client may have to rely on subtle non-verbal cues and verbal nuances from the client in order to understand the client's full unspoken message.

Client service calls – whether in person or by telephone – and tailored client satisfaction surveys are two of the most cost-effective ways to provide an accurate, ongoing check on the firm's client service assumptions. Even more effective is a strategy of multiple levels of contact between the law firm and the client organization, instead of the more traditional single point of contact.

Law firms that operate dedicated client teams – a designated group of fee earners working together to serve a specific client – are usually more effective at this ongoing dialogue than law firms organized along traditional practice group lines and departmental structures. Even if a firm keeps the traditional practice groups, it should always consider creation of a client team for each foreign client. The client team is by far the most successful way to be alert to and manage cross-cultural issues presented by engagements with foreign clients.

Regardless of the mechanism or vehicle the law firm uses, it must never rely on second-hand information, the experiences of other firms, or even its own experience with different clients from the same country. To do so substantially increases the risk of

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misunderstandings that can quickly escalate to the level of client service issues. As with any other client, when in doubt about a client's expectations, ask about them. Better still, don't wait until there is doubt.

### **A learning process**

Like every other worthwhile human relationship, serving the foreign client is a learning process. Therefore, we recommend that the issues and topics outlined in this paper should not be one-time discussions. Instead, the law firm should constantly try to revalidate and update its knowledge of the foreign client's professional and business culture, as well as the political, economic, and social contexts of the foreign client's business goals.

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