From the Editor

We are pleased to introduce our inaugural edition of the Transnational Legal Practice Committee (TLPC) Quarterly Newsletter. Our primary goal is to provide a platform for the publication of concise, researched and practical information on the access to the practice of law for foreign lawyers in jurisdictions around the globe. In addition, we will utilize this space for the diffusion of Committee news, highlighting upcoming events, projects and conferences and to recap the key talking points from these events.

Our committee is comprised of experts and practitioners from a remarkably diverse cross-section of nationalities, representing countries in North and South America, Asia, Oceana, Africa and Europe. With global coverage, we can provide our readers with insight on policy, regulation and market changes that influence the transnational practice of law. Focusing on different regions in each edition, our aim is to serve, over time, as a clearinghouse of global information from local and regional sources.
Committee News

Transnational Legal Practice Committee & the International Legal Practice Management Forum to Join Forces in Fall 2016

The TLPC and the International Legal Practice Management Forum (ILPMF) will merge committees to form the Transnational Practice Management Committee (TPMC) this Fall.

The committee welcomes lawyers from all sectors of the legal profession engaged in or managing the proviso of legal services to transnational clients who wish to share ideas to better understand, predict and guide changes on issues of global importance with regard to law practice management and the future of legal service delivery in today’s constantly changing cross-border and global business environments.

We study and promote alternative structures and methods for cross-border practice and interact with regulators, trade representatives, and other officials to lower barriers to competent multijurisdictional practice. We also provide a unique forum for transnational law firm management, as well as in-house counsel to multinational enterprises, to share information and insights on a variety of new and highly innovative operational processes and strategic considerations in the practice of law, including the convergence of technology on the day-to-day practice of law, ethics and anticorruption, the growth and geographic expansion of law firms, alternative business structures and service delivery methods, cross-cultural business skills, and collaborative international affiliations, associations, networks, and alliances.

Tokyo Panel Sessions, TLPC - ILPMF, SIL Fall Meeting 2016

The TLPC is pleased to host two sessions at this year’s fall meeting in Tokyo on the emergence of Alternative Business Structures in Asia (ABS) and on expansion strategies for law firms under the region’s latest regulatory developments. Our sister committee, the ILPMF, will also be hosting a session on the changing landscape of legal services in Asia, following worldwide trends in the uberization of service models.

The Growing Importance of Alternative Business Structures in the Asian-Pacific Region; TLPC Panel Session
Thursday, 20 October 2016, 4:30pm

The emergence of ABS in some major legal markets is changing the legal services landscape creating both new opportunities and challenges for lawyers and law firms. We will explore developments in a number of jurisdictions including developments in Asia and look at what services are being provided by ABSs and what can be learned from experiences in other professions. We will discuss existing outsourcing models operating in Asia, the growth of the Global law firms within Asia (including the Big 4 “accountants”) and consider the opportunities these new structures create. We will also investigate the likelihood of legal service markets in “protectionist” countries, such as India and the US, being opened up to these new business structures.

Chair/Moderator:
Norman K. Clark, Managing Principal, Walker Clark LLC, Fort Myers, Florida
Panelists:

Steven N. Richman, Member, Clark Hill PLC, Princeton, New Jersey
Sai Ree Yun, Managing Partner, Yulchon Seoul, Korea

Moving forward - Expansion Strategies for Law Firms in Asia under the Existing Regulatory Frameworks; TLPC Panel Session
Friday, 21 October 2016, 2:30pm

Many Asian economies remain the source of substantial growth. This creates opportunities for law firms to expand. This panel will look at successful models of both Asian and international firms strengthening their presence in key jurisdictions across Asia. Panelists will analyze recently implemented expansion strategies and will discuss the regulatory framework applicable in such context in major jurisdictions in Asia, including the impact of free trade agreements. The results of the panel discussion will enable attendants to better prepare the growth strategy of their own firms.

Chair/Moderator:

Dr. Hermann J. Knott, Luther
Muto Matsumura, Mori, Hamada & Matsumoto, Tokyo, Japan

Uberisation of the Legal Profession: Where Are We in Asia? ILPMF Panel Session
Thursday, 20 October 2016, 2:30pm

The US and Europe are experiencing material change in the landscape of legal services, following an unprecedented combination of economic, market and technological factors. The Panel will examine how these impacts are affecting the region with a particular focus on Japan, Korea and the neighbouring countries.

The panel will focus on three issues:

1. How innovation and technology affect the legal profession;
2. The surge of new competition for traditional law firms (“web” law firms e-legal servicing); and
3. Preliminary signs of uberization of the legal profession (comparative websites; freelancing; etc.).

Chair/Moderator:

Jean-Claude Rivalland

Panelists:

Dr. Masahiro Kotosaka, Associate Professor at Keio University, Tokyo, Japan
Koki Yamada, Partner at Hibiya-Nakata, Tokyo, Japan
Chunghwan Choi, Partner at Lee & Ko, Seoul, Korea
Taichiro Motoe, CEO, Bengo4.com, Tokyo, Japan

Albert Tan, Haynes Boone, Dallas, TX, United States of America

Panelists:

Eric J. Jiang, Senior Partner, Jurisino Law Group, Beijing, China
Tatsu Katayama, Anderson Mori & Tomatsu, Tokyo, Japan
Stefanie Tuen Thio, TSMP Law Corporation, Singapore
Report from TLPC Panel Session


*by S. Elisa Kim*

At the Section of International Law 2016 Spring Meeting in New York City from April 12 – 16, the TLPC hosted a lively and informative panel discussion, titled Future Forward: Change Transformation and the Mid-Career Lawyer.

Moderated by Committee Chair, Herman J. Knott, the panel comprised Andrew Perlman, Dean, Faculty of Law, Suffolk University & Vice-Chair, ABA Commission on the Future of Legal Services; Stephen Denyer, Head of City and International, the Law Society of England and Wales; Susan Hackett, CEO, Legal Executive Leadership, LLC; Andrea Lerdo de Tejada, VP, Office Legal Obligation, J.P. Morgan; Renée Dopplick, Director of Public Policy ACM; and Paul Paton, Dean, Faculty of Law, University of Alberta.

During this session, the Panel discussed the evolution of legal service offerings in the practice and the ramifications of the proliferation of new technologies and the changing definitions of legal work as the legal community moves forward.

**Andrew Perlman – Ice Hockey, Hot Dog Eating and the Future of Legal Services**

Andrew Perlman opened the panel with a discussion on the evolution of legal services and the role of the ABA Commission on the Future of Legal Services, created in August 2014 by ABA President William Hubbard. The commission was designed to conduct a comprehensive examination of legal services in the United States and recommend how to improve the delivery of, and the public’s access to, those services. Perlman summed-up the commission’s agenda with a nod to expert and author, Richard Susskind and ice hockey: “We [the legal community] need to skate to where the puck’s going, not where it is.”

Today, he posits, enterprising lawyers are developing new models for the provision of legal services in the US, (i.e., LegalZoom, Rocket Lawyer). Yet, the issue remains for many whether we continue to allow a place for these new models, and if so, how are we to regulate them and whether non-lawyers should be included in fee-sharing arrangements.

Closing with an anecdote about innovation, Perlman described the hot dog eating phenomenon, Takeru Kobayashi’s arrival on the competitive hot dog eating scene. Until then, hotdog eating competitions had involved contestants eating bun and wiener, together, in the same manner that most people casually consume hotdogs. Kobayashi was able to shatter the existing record and set a new record so far above the previous one by thinking outside of the box. He challenged the existing paradigm while sticking to the confines and limitation of the contest rules. Analogously, the legal community also needs to think outside the box and challenge the existing paradigm and status quo for the provision of legal services.

**Stephen Denyer – Changes in the UK Legal Market and the Law Society’s Role**

Stephen Denyer followed with a discussion on the Legal Market in the United Kingdom and the work that the Law Society of England and Wales is doing on the future of legal services. In the recent Legal Services Consumer Panel (LSCP) 2020 Legal Services report, the Law Society noted how the current paradigm is already being challenged in the U.K. and how these changes are being driven by: (a) global and national economic business
environments; (b) how clients buy legal services (including in-house buyers, as well as small and medium sized businesses and the public); (c) technological and process innovation; (d) new entrants and types of competition; and (e) wider political agendas around funding, regulation and the principles of access to justice.

Currently, decline in legal aid and rising costs drives buyers to DIY options or to purchase partial solutions – which drives opportunity for new entrants, especially legal tech and document automation companies. With one in four lawyers now practicing in-house, lawyers are providing value through increased specializations, while increased competition through non-lawyer providers of legal services is providing greater access to justice. The Law Society is considering taking a leading role at this point to build on its authority as the go-to point for anything connected with legal issues; while recognizing that its credibility will also hinge on being able to explain to consumers about non-solicitor options. There is a trade-off to be had by widening access and increasing demand for all with the acknowledgement that some work will not go to lawyers.

**Susan Hackett - “Clients don’t have legal problems; they have business problems”**

Susan Hackett examined the changing environment for services and the changing emphasis on decentralization in the office, with less cubicles, more integration and use of workstations. Comparing the advances in the professional marketplace, she calls out legal education on its hesitation to update the business model it imparts to students. To succeed, lawyers need to implement practices that drive better value and results and re-engineer our service models in order to differentiate themselves from thousands of other lawyers. Increasingly, legal expertise is not the only, and perhaps not even the primary, skill needed to solve most clients’ problems that implicate a legal component. She states, “clients don’t have legal problems; they have business problems.”

Lawyers must make a lifelong commitment to building new skills, rather than resting their laurels in a particular area of expertise. A successful lawyer is a T-shaped professional, someone who is able to apply broad cross-section of general business skills (e.g., project management, emotional intelligence, etc.), on top of a deep and relatively narrow platform of substantive expertise. Lawyers and law firms that establish a culture and internal mechanisms that promote and reward expanded skill sets will provide opportunities to win clients that value transparency and results.

**Andrea Lerdo de Tejada – A Narrative on Diversity and the Job Challenge for Foreign Lawyers**

Andrea Lerdo de Tejada offered a personal narrative on the advantages of international mobility, and the link to mentoring and diversity. She discussed her road to establishing herself in New York, via the efforts of her mentor. Tejada states, “it is as important to find a person that knows you and your work as it is to find the actual vacancy.”

During her work establishing the very first PRIDE Chapter in Mexico, she realized that being a triple minority could actually provide an advantage. Companies that cultivate a diverse workspace generate better business, promote loyalty in the workforce and provide a sense of community. She stressed that with the right attitude, international mobility is possible.

**Renée Dopplick — Opportunity in Technology**

Renée Dopplick proposed a model of thinking about technology as a partner for lawyers, and not
as merely a replacement for the work lawyers do. As a force for change, technology is having tremendous impact on the way lawyers, and the public, access and use legal information; the way lawyers use non-legal information to improve their practices and firms; and the way lawyers reach and interact with new audiences.

The digital transformation and era of big data bring new multidisciplinary opportunities to advance the rule of law, access to justice, and legal empowerment. Data mining and access to analytics have helped, and increasingly will help, lawyers win cases. And the growth of online legal information and big data have benefitted millions of consumers and small businesses by providing access to DIY online legal forms and information.

Additionally, social media, blogging, and virtual offices continue to grow as avenues for reaching specific and broad audiences. But lawyers need to be mindful of advertising restrictions, client privacy, and ethical obligations.

Paul Paton — The Mid-Career Lawyer in the Uber Age

Paul Paton closed the panel with an examination of the mid-career lawyer in the age of Uber, and the necessity to develop skills as a leader, not just as a lawyer. He highlighted a report by the Canadian Bar Association Legal Futures Task Force Report (August 2014), which stated that, “[t]he legal profession in Canada is entering a period of major change. The combined forces of globalization, technology and market liberalization are creating new services, new delivery mechanisms, and new forms of competition. At the same time that demand from existing clients is changing, there are still many individuals and communities in Canada with inadequate access to any type of legal services.”

Paul offers for a thought that “regulation will matter a whole lot less, but ethics will matter a whole lot more. He highlighted various alternative business models, some of which are already in existence: (a) limited lawyer/non-lawyer partnerships with a cap on non-lawyer ownership; (b) limited lawyer/non-lawyer partnerships with no cap on non-lawyer ownership; (c) MDPs offering non-legal services as a one stop shop; (d) passive outside investment with caps on non-lawyer investment; and (e) external passive investment with no caps on non-lawyer ownership with a stock market listing.

As the profession will progress, it is faced with a greater need for flexibility and scrutiny on how we provide access to legal services. We can no longer operate within a sheltered bubble, content to dole out legal advice sporadically to our clients. The increasing use of technology and greater international mobility is driving greater interaction with our clients. As we consider the future, we should embrace change wholeheartedly, even while scrutinizing the manner by which we move forward as a profession and questioning how we can provide greater access to justice as officers of the court.
Regional Reports

In our Regional Reports section, we aim to provide up-to-date discussion on issues concerning policy, regulation and markets connected to the access of the practice of law in foreign jurisdictions. Each edition will feature discussion on access to practice law in particular jurisdictions within a region or the region at-large. This edition we feature reports on Latin America and China.

**Latin American Trade Winds – Latin America Looks West**

*By Norman K. Clark*

Asian participation in international trade in Latin America has steadily grown since 2000, to the point that Latin American business people who want to anticipate the best opportunities for economic growth, as well as the lawyers who advise them, now look west, across the Pacific, rather than to North America and Europe. Although the United States, Canada, and Europe will remain important trading partners for Latin American economies, the largest part of the future growth in international trade and investment will come from Asia.

Starting from Almost Zero

One of the most remarkable features of the grown of trade between Asia and Latin America is that it was relatively non-existent before 1990. Trade between Asia and Latin America has grown steadily since 2000, more than doubling since 2005. Even with sluggish growth in 2015 and 2016, the total value of Asian-Latin American trade is expected to approach $750 billion by 2020. Chile, for example, has concluded eight free trade agreements with Asian countries since then. Following this trend, and hoping to facilitate it further, China has been especially busy since 2014 with negotiating and executing focused bilateral trade deals, such as those with Argentina and Brazil in the infrastructure, hydroelectricity, shipbuilding, natural resources, and transportation sectors.

This rapid growth is a clear signal that law firms that want to continue to succeed in the inbound and outbound international legal markets of Latin America need to rethink the role of Asia in their marketing and business development strategies, as well as to construct seamless connections between their Asian and Latin American practices.

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1 Norman Clark is the Managing Principal of Walker Clark LLC, an international strategic and management consulting firm that works exclusively with the international legal profession. He also is a member of the ABA Transnational Legal Practice Committee and a former Chair of the IBA Law Firm Management Committee. His published works include Good Governance in Law Firms: A Strategic Approach to Decision Making and Management Structure, London: Globe Law and Business (2014), which he edited and to which he contributed several chapters.


News Highlights

Here are links to recent developments and further commentary that are relevant to the growing importance of Asia trade to law firms with Latin American practices:


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**True Market Access to China’s Legal Services: Possibilities Under China’s New Regulatory Scheme**

*by Eric J. Jiang*

1. **Introduction**

Legal services are said to include advisory and representation services for host country law, home country and/or third country law, international law, legal documentation and certification, and other advisory and information services. For a discussion on market access to legal services in a particular country, however, the core issue is always whether such country allows foreign law firms to provide advisory and representation services on its domestic law. As it is not part of the basic commitments, but subject to specific commitments made by each WTO Member under the General Agreement on Trade in Services ("GATS"), market access to legal services in a host country could be seriously restricted or actually denied.

2. **Hard Regulations on Foreign Law Firms**

In its accession to the WTO in 2001, China allowed certain access to its legal services market. But on the core issue of domestic law practice, China has made no commitments to allowing foreign law firms provide advisory or representation services. In this regard, China only allows foreign law firms to provide "information on the impact of the Chinese legal environment."

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4 Eric J. Jiang is a Senior Partner at Jurisino Law Group, a Beijing-based Chinese law firm. He is qualified to practice law in China, U.S.A. and Canada. Mr. Jiang is a Vice Chair for the Law Firm Management Committee of the International Bar Association, and a Vice Chair for the Transnational Legal Practice Committee of the International Section of the American Bar Association. To contact the author, you may write to eric.jiang@jurisino.com.
For this reason, regulations amended or newly introduced after China's accession to the WTO have a purpose of ensuring that foreign law firms are not providing any advisory or representation services with regard to the Chinese law. Those regulations include the State Council's (i.e., the Chinese Cabinet’s) Regulations on the Administration of the Representative Institutions of Foreign Law Firms in China ("Basic Regulations"), and the Ministry of Justice's Implementation Rules for the Basic Regulations. By those regulations, a series of serious restrictions have been imposed on foreign law firms operating in China.

First, the regulations prohibit foreign investment in the sector of Chinese legal services or Chinese legal consulting, and allow only foreign investment in foreign and international legal services in the form of "Representative Office." The regulations further restrict the number of representative offices a foreign law firm could set up in China. Initially, only one was possible. Although, now, with certain conditions satisfied, a second, or even a third, may be possible.

Second, the regulations prohibit foreign law firms from providing advisory or representation services with regard to Chinese law, and actually prohibit any lawyer from any foreign law firm from interpreting Chinese law even in an arbitration case. Although the regulations do allow foreign law firms to provide "information on the impact of the Chinese legal environment," they require that foreign law firms insert a disclaimer on the work they provide to their clients that it is not a legal opinion, but merely an information on the impact of the Chinese legal environment.

Third, the regulations prohibit foreign law firms from hiring licensed Chinese lawyers, and require suspension of the license of any Chinese lawyer hired by any foreign law firm. As they will lose their licenses for the period of their employment at foreign law firms, these qualified Chinese lawyers are typically called "Chinese Legal Consultants," and they are also prohibited from interpreting Chinese law, advising, or representing clients on Chinese law.

Last, but not least, the regulations prohibit foreign citizens from taking the national bar exams and therefore from becoming qualified as Chinese lawyers. Although the Lawyers Act does not require citizenship for qualifying as a Chinese lawyer, the Ministry of Justice through its regulations on the national bar exams has imposed such requirement. Lawyers or persons from Hong Kong, Taiwan and Macao, as they are not foreign citizens, are allowed to take the national bar exams and to qualify as Chinese lawyers.

3. New Regulations Introduced in Shanghai Free Trade Zone

Facing a well-knit network of restrictions as briefly described above, foreign law firms have been struggling to develop profitable business in China. Various design-around strategies have been used, and the most common is to have the client retainer agreement signed with the home office of the foreign representative office. This has caused considerable loss of tax for China. Further, Chinese law firms have since started to expand into the international legal market. Large Chinese firms like King & Wood and Dacheng, not necessarily happy with their Swiss verein with Mallesons and Dentons, respectively, may wish to advocate for joint ventures between Chinese and foreign law firms.

On September 18, 2013, the State Council approved an overall action plan proposed by the Shanghai Municipal Government for implementing the policy of establishing the Shanghai Free Trade Zone ("SFTZ") and
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experimenting special policies. The action plan includes a proposal of "opening up" the legal services market. On January 27, 2014, the Ministry of Justice approved an action plan proposed by the Shanghai Bureau of Justice for pioneering new models of cooperation between Chinese and foreign law firms. On November 4, 2014, the Shanghai Bureau of Justice prepared two implementation rules and had them approved by the General Office of the Shanghai Municipal Government on November 18, 2014.

The new regulations do not allow joint ventures between Chinese and foreign law firms. Nevertheless, they allow Chinese and foreign law firms to cooperate in the following two ways: (a) seconding lawyers to each other's law firm; and (b) setting up a joint operation. As a prerequisite for such cooperation, the cooperating parties must have a representative or branch office in the SFTZ. Once a joint operation or cross-secondment is set up in the SFTZ, however, the lawyers involved are not limited to serving clients only from the SFTZ, but could serve any clients from anywhere.

4. True, But Indirect, Market Access

Following the publication of the new regulations, some international and Chinese law firms acted immediately. By April 15, 2015, Baker & McKenzie and a small Chinese law firm set up the first such joint operation in the SFTZ. By March 30, 2016, a second joint operation was set up between Holman Fenwick Willan and another Chinese law firm. It is reported that the Baker & McKenzie joint operation in the SFTZ has been in real operation and involved in at least 65 projects, aiming at the provision of "one-stop" full services to clients, from within or outside China. It is not clear whether any international and Chinese law firm have tried the cross-secondment approach.

From the provisions of the new regulations, it is clear that the new regulations do not intend to allow any equity joint venture between any foreign law firm and any Chinese law firm. The joint operation has to be contractual and cannot be a legal entity separate from their investors. Yet, the joint operation may have a separate office in the SFTZ, with a separate legal team and separate supporting staff, and market and provide legal services in the name of that office. To such extent a joint operation may be described as "contractual joint venture," something that was not uncommon in the early years of China's opening-up to foreign investments in manufacturing and other businesses. As such, it is believed that equity joint ventures between Chinese and foreign law firms will be allowed sooner or later.

Even for a cross-secondment arrangement, it may be also argued that certain market access has been allowed to foreign law firms in order for them to practice Chinese law. Although a seconded Chinese lawyer in a foreign law firm may still have to be registered with her Chinese law firm, the Chinese lawyer may be paid and managed by the foreign law firm, and provide advisory and representation services to the clients of the foreign law firm. In short, the foreign law firm can now provide Chinese law services to its clients through one or more seconded Chinese lawyers, something the “Chinese Legal Consultants” could not do lawfully.

5. Conclusions

In short, even with accession to the WTO, China has maintained hard regulations on foreign law firms for the purpose of preventing them from practicing Chinese law. Since 2014, nevertheless, China has introduced certain new regulations for the Shanghai Free Trade Zone, aiming at allowing certain market access to foreign law firms in order for them to practice, although indirectly, Chinese
law. Certain international law firms have chosen to seize this opportunity and form joint operations with their Chinese partners. It remains to be seen whether more international law firms will follow and how such joint operations will change the Chinese legal service market.

Get Involved

Listserv

Joining the Transnational Legal Practice Committee listserv is free for any member of the Section of International Law. To join, visit the Committee webpage and click on “join.”

http://apps.americanbar.org/dch/committee.cfm?com=IC865000

Transnational Legal Practice Committee Quarterly Newsletter

Call for submissions: short articles for our Regional Reports section.

Next deadline: September 1, 2016

Themes: Japan and Southeast Asia:

1. Access to Practice of Law for Foreign Lawyers
2. Developments in Legal Service Markets

We are dedicated to making this Newsletter a useful and productive benefit of your ABA membership. To do that we need your feedback, suggestions and, especially, your contributions. We want to make this publication an informal and practical way to keep up with news related to our profession from around the world.

For more information or to submit proposed content, email dean.price@ie.edu.

Volunteer

The Transnational Legal Practice Committee relies on volunteers for all of its activities. The strength of our programs, publications, and special projects relies on the involvement and active participation of our members. We welcome your ideas, suggestions, and offers to assist. Whether you have 1 hour or 1 week during the next few months to volunteer, you can make a difference, meet new colleagues, and help advance the mission of the Committee. If you would like to get involved, please email the Committee Chair.
Calendar of Events

August 3 – 5, 2016
Section of International Law 2016 Retreat
The Ritz-Carlton-Half Moon Bay
One Miramontes Point Rd Half
Moon Bay, CA 94019

October 18 – 22, 2016
Section of International Law Fall Meeting 2016 in Tokyo
Hilton Tokyo
6-6-2 Nishishinjuku,
Shinjuku, Tokyo 160-0023 Japan
2016 Tokyo Pre-Meeting Flyer