



Zambian law firms and international legal networks: Disruption or innovation

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Abstract

This article interrogates the proposition that there is added value to a law firm in belonging to international legal networks. The article outlines the current work performed by international networks, set of standards diffused across the networks and highlights the more common networks currently available. It is found that the common challenges facing small to mid-tier law firms in Zambia and globally stems mainly from undercapitalisation, that has a knock-on effect on capacity, client quality and poor Information Communication Technology facilities. It is positioned that clients are becoming ever demanding and networks now play a critical certification role which determines which law firms are approached by prime clients. Notwithstanding, practical levers that can turn the dial for local firms to break through the international networks include revisiting law firm financing, structure, business development and a deliberate effort at macro level to promote the local legal skill sets.

Keywords: lawyers, international legal networks, business development

1. Introduction

The advent of the global village has touched on many spheres of commerce. The provision of legal services that originally began as a jurisdiction specific service now crosses borders. Networking locally and internationally is vital in attracting deal flow, identification of relevant connections and opportunities ^[1].

Country specific nuances and cultures have over the years been broken down by leveraging best skill sets within jurisdictions, within a specified standards framework that conforms with each country's laws. This has also been driven by the need for multinational corporations to have a seamless legal experience across their geographical footprint.

The disengagement of country specific cultures and internationalisation of legal services is not always an easy one, though. It's been suggested, for instance, that German institutions lead to smaller law firms and lawyers that act as civil servants, scientists of the law and independent practitioners ^[2]. One natural consequence of the need to smoothen out the multinational corporation's experience across jurisdictions is the growth of international law firms. The antecedents of this relatively growing practice forms the substance of this article.

2. Legal Practice in Zambia

The Comprehensive Landscape Report describes Zambia's legal landscape as having changed drastically over the last 10 years. This is attributed to an increase in the number of education institutions, continued low admission rates, few opportunities for learnerships and jobs for lawyers ^[3]. The

number of lawyers has more than doubled over the last five years particularly driven by the increase in private education institutions ^[4]. The Zambia Institute of Advanced Legal Education (ZIALE) was also recently forced to allow students from private law schools following legislative amendments and judicial action. As a result, junior lawyers and learner legal practitioners are having more difficulty in attaining job security in the Zambian private sector ^[5].

Additionally, Zambia has a relatively small but mature legal market comprising both full service and niche firms with a bias towards litigation that are mainly concentrated in the capital Lusaka ^[6]. The law firms due to their midsize will naturally work their lawyers as far as possible and manage their staff costs, often pushing down earnings.

The cross-border work and large corporate deals are largely handled outside of Zambia ^[7]. For the local law firms that are part of international legal networks, such firms participate predominantly at the tail end by providing confirmation of the legal opinion provided by foreign law firms regarding the local legal position. The capacity to be the lead law firm and issue legal fees directly to international clients is therefore hampered, and such opportunities far and few in between.

3. Early growth of International Law Firms

In 1955, the US law firm Baker and McKenzie became the first to open an office overseas whilst the majority of English and US law firms only began a focussed overseas

¹ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 43

² James R. Faulconbridge, op cit 9

³ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 5

⁴ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 47

⁵ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 47

⁶ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 20

⁷ The cross-border work and large corporate deals are largely handled outside of Zambia.

expansion in the 1980's^[8].

This late arrival to the party is partly attributed to the barriers of non-heterogeneity across different jurisdictions, with each country insisting on its own stringent specific codes of practice and local licensing of its lawyers^[9].

A demonstration of how pervasive international law firms have now become is drawn from the fact that ranking agencies that used to focus on law firms and lawyers [discussed below] now have specific rankings of international law firms.

4. Law Firm Ratings

Ratings now play a key role in fulfilling multiple needs, primary among them being client book runs and providing critical information to potential clients to identify, evaluate and select the most appropriate lawyer for their legal needs^[10]. Law firms have been rated by various modes among them intelligence agencies, ranking agencies and international legal networks.

GRMINTELLIGENCE lists as "Most well-established international facing firms (in no particular order)" the following Zambian law firms :

Chibesakunda & Co^[11], *Corpus legal practitioners*^[12] *Musa Dudhia & Co.*^[13] *Other highly regarded law firms (in no particular order) have been listed as : AB & David, Christopher, Russell Cook & Company, ECB Legal Practitioners, Eric Silwamba, Jalasi and Linyama Legal Practitioners, Lewis Nathan, Mulenga Mundashi Kasonde (MMK) Legal Practitioners, Mwenye & Mwitwa - Advocates, Nchito & Nchito Advocates and Simeza, Sangwa & Associates*^[14]

5. Ranking Agencies

Ranking agencies have grown in leaps and bounds in terms of their number, complexity and marketing strategies. They now provide intermediary value-added services to clients by making necessary information available to aid decision making. Ranking agencies have clearly grown with admirable stoicism notwithstanding headwinds such as competition from other ranking agencies and legislative restrictions in some jurisdictions.

An overview of four of these agencies is highlighted below and the list is by no means exhaustive.

5.1 Chambers and Partners

Chambers has merited special mention within this article due to its pedigree and maturity in the rankings space. Additionally, Chambers has set the gold standard that has birthed other off shoots.

Chambers has been ranking lawyers and law firms (multinational or boutique) since 1990 using independent

research into the top law firms worldwide^[15]. Although law firms can also make their own submissions, the typical methodology utilised is interviews with clients, P2P interviews with lawyers and assessing the lawyers output^[16].

Chambers has developed criteria for ranking of law firms that assists maintain a modicum of international best practice;

- Technical Legal Ability: expertise and experience specific to the practice area and jurisdiction;
- Commercial vision and business understanding: awareness of the importance of these matters to a client's business, understanding of the future direction of their industry;
- Value for Money: efficient staffing, organisation and innovation to save client's time and money;
- Diligence: rigorous attention to detail, standards of professional conduct, service levels and support the growth strategies of their clients;
- Client service: speed, responsiveness, clear business language, decisive opinions; and
- Depth of team: ensuring strong support at all levels^[17].

Chambers will typically rank a law firm only in relation with a department save where the firm specialises in just one practice area^[18]. Chambers currently ranks five leading regional networks in Africa as Band 1: ALN, DLA Piper Africa, LEX Africa, Miranda Alliance and VdA Legal Partners^[19].

5.2 Legal500

Legal500 was founded by John Pritchard as part of a private business with the aim of providing best information and data for the international legal community^[20]. As part of its pledge, the firm's site posits that:

"Our goal is not short-term profit but long-term professional excellence"^[21]

Legal500 makes claim that the list of firms provides 'an easy one-stop-shop for corporate counsel and legal procurement departments to gather information on firms they are looking to instruct^[22]. The commercial profiles in

¹⁵ Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

¹⁶ Typically, through annual reviews. See Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

¹⁷ Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

¹⁸ It is not uncommon for a lawyer to be ranked and their law firm is not.

Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

¹⁹ Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>. The network uses a spectrum of 6 Bands; other recognition awards include senior statesperson, star and eminent practitioner, other noted practitioner, up-and-coming, star associate, associate-to-watch, skills and juniors, and spotlight. The big five South African law firms ranked include Bowmans, Cliff Decker Hofmeyr, ENSAfrica (Edward Nathan Sonnenbergs), Norton Rose Fulbright South Africa and Webber Wentzel (in alliance with Linklaters).

²⁰ Available at <https://www.legal500.com/>

²¹ Available at <https://www.legal500.com/>

²² Available at <https://www.legal500.com/>

⁸ James R Faulconbridge, Daniel Muzio and Andrew Cook, *Learning to be a lawyer in transnational law firms: communities of practice, institution and identity regulation*, Global Networks Journal, Leeds University Business School (2012) pp 5-6.

⁹ Ibid

¹⁰ For instance, see Martindale-Hubell rating services at <https://www.martindale.com/ratings-and-reviews/>

¹¹ Associated with DLA Piper

¹² Associated with several networks

¹³ Member of ALN

¹⁴ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 48

The Legal 500 allow in-house counsel to have an overview of important aspects of law firms : locations, key contacts, biographies, current rankings, and strengths ^[23]. Other features include five hundred magazine, profiles, power list, events, special reports, and comparative guides as value adds ^[24].

5.3 IFLR1000

IFLR1000 prides itself as ‘the guide to the world’s leading financial and corporate law firms’. The IFLR1000 has been producing legal market intelligence since 1990 and remains the only international legal directory dedicated to ranking law firms and lawyers based on financial and corporate transactional work.

5.4 ITR Tax

The website of the annual World Tax provides that the rankings provide a key resource in assisting tax professionals locate specialist advice ^[25]. A unique selling point of this ranking guide is that it is not restricted to law firms, but embraces tax experts across different professions like audit firms on the premise that all tax service providers pick instructions from the same pool of clients.

6. International Legal Networks

International legal networks are either ranked or unranked, and the slowly burgeoning list of networks has slowly led to international networks focussing on specific sector groups, practice groups and geographies. A few notable networks merit some mention.

ALN (formerly Africa Legal Network) traces its inception to 2004 and is an amalgam of corporate law firms from 15 African countries, providing a single, integrated platform for international clients to access legal counsel in Africa ^[26] ALN has its strength particularly in Sub-Saharan Africa ^[27]. The network topology comprises sector groups, namely energy and infrastructure, financial services and natural resources that enables it to provide clients with tailored industry-specific legal services ^[28]. An important feature of the network are its Gold Standards focused on improving IT infrastructure, client service standards, and knowledge sharing between firms.

DLA Piper Africa (DLA Piper) was established in 2005 by way of merger, aimed at creating a global firm that could handle the most important legal client needs wherever they do business ^[29]. DLA Piper Africa is a Swiss verein whose members are comprised of independent law firms in Africa working with DLA Piper ^[30], with the Zambian leading firm being Chibesakunda and Company. DLA Piper has lawyers in more than 40 countries in the Americas, Europe, the

Middle East, Africa and Asia Pacific, with a specific focus through practical and innovative legal solutions. Its client base spans private clients, governments and public sector ^[31].

LEX Africa is a network of circa 25 law firms out of which 24 are ranked in Chambers. The network has been in existence since 1993 with a primary focus of developing professional legal skills and business, and the network focusses on 6 core focus areas including; competition, banking and finance, M &A, dispute resolution ^[32]. The network aims to bolster its members capacity through integration, utilising events, secondment programmes to foster common professional values, approaches and standards, publications on operating in Africa; and guides on mining and on insolvency and business restructuring ^[33].

Miranda Alliance brings together close to 230 lawyers in 19 jurisdictions across 4 continents ^[34], with 10 member law firms ^[35]. The Alliance focusses on the Lusophony regions, African Portuguese-speaking countries and Africa's francophone jurisdictions ^[36]. The unique value proposition of the network worth mentioning includes webinar programmes, ongoing training and employee secondment to Miranda & Associados' Lisbon office ^[37]. Although the Alliance boasts French, German and Spanish desks offering support to clients within the network, there is currently no presence within Zambia ^[38].

The acronyms Vda stand for Vieira de Almeida, a legal network that provides integrated legal services for both Portuguese and French client segments (also known as Vda Legal Partners) ^[39]. The network spans 300 lawyers across 13 countries who deliver, divided across 13 countries who deliver consistent quality of service and sectorial coverage ^[40]. VDA Lawyers are subject to regular rotation thereby leveraging the proximity and mutual knowledge of uniform and local cultures. Vda has 11 firms within its network with 7 of them ranked by Chambers ^[41].

7. Common Experiences Encountered with Local Law Firms

Zambia is generally considered to be one of the least developed countries, albeit very liberal, with one of the highest rural urban migration rates in Africa despite having a relatively low population ^[42]. This economic situation has had an impact on the general client experience with local law firms. Below are some common experiences.

7.1 Manual Processes

It is not uncommon to find Zambian law firms reeking

²³ Available at <https://www.legal500.com/>

²⁴ Available at <https://www.legal500.com/>

²⁵ Available at <https://www.itrworldtax.com/>

²⁶ The networked Zambian law firm is Musa Dudia and Co that joined in 2007. Available at <https://www.africalegalnetwork.com/about-us/>. Other countries include Algeria, Ethiopia, Guinea, Kenya, Madagascar, Malawi, Mauritius, Morocco, Mozambique, Nigeria, Rwanda, Sudan, Tanzania, Uganda.

²⁷ Available at <https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

²⁸ Available at

<https://chambers.com/guide/global?publicationTypeId=2&practiceAreaId=2431&subsectionTypeId=4&locationId=16083>

²⁹ Available at <https://www.dlapiper.com/en/us/aboutus/>

³⁰ Available at <https://www.dlapiper.com/en/us/focus/africa-offices/>

³¹ Available at <https://www.dlapiper.com/en/us/aboutus/>

³² Available at <https://chambers.com/department/lex-africa-leading-regional-law-firm-networks-global-2:2431:16083:4:245593>

³³ Available at <https://chambers.com/department/lex-africa-leading-regional-law-firm-networks-global-2:2431:16083:4:245593>

³⁴ Available at <https://www.mirandalawfirm.com/en/alliance/overview>

³⁵ Available at <https://chambers.com/department/lex-africa-leading-regional-law-firm-networks-global-2:2431:16083:4:245593>

³⁶ Available at <https://chambers.com/department/lex-africa-leading-regional-law-firm-networks-global-2:2431:16083:4:245593>

³⁷ Available at <https://chambers.com/department/lex-africa-leading-regional-law-firm-networks-global-2:2431:16083:4:245593>

³⁸ See at <https://www.mirandalawfirm.com/en/alliance/numbers>

³⁹ See <https://www.vda.pt/en/vda-legal-partners/>

⁴⁰ Available at <https://www.vda.pt/en/vda-legal-partners/>

⁴¹ See <https://chambers.com/department/vda-legal-partners-leading-regional-law-firm-networks-global-2:2431:16083:4:23093665>

⁴² *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 5

under heaps of paperwork, physical invoices and fee notes, and manual work flows in dealing with mundane tasks like tax returns, registry filings and scanning.

A lack of automated systems in law firms causes unnecessary time delay, non-optimisation of human skill sets, errors and omissions^[43]. The advantage of having an automated system includes the potential to use artificial intelligence tools like robots ('bots') to, for instance, recognize and translate any tax and regulatory documents before extracting predefined key information^[44].

Clearly linked to this is non responsiveness of law firm partners to client queries and follow ups. Due to lack of basic telephone and workflow management systems, law firm partners take on the entire burden of operations, business development, human capital, finance, stakeholder management.

7.2 Technical Skills Gaps

International law firms have a very strong technical ability to deal with the very complex and innovative work. The depth and complexity of work is also often a factor of the economy of a country, and Zambia is no exception. Zambia's economic growth in the recent past has been hampered by a large debt stock, tightening of monetary conditions and droughts.

It has been suggested that smaller firms in Zambia cannot afford to pass over deals because they lack the expertise to handle the matter, and because of the experience by non-repeat clients once their matters are referred to another lawyer^[45]. Most law firms cannot afford the quantity of specialised talent they would need to hire to handle their current legal case portfolio^[46].

In stark contrast, South African large firms are run as full-fledged corporates with large balance sheets, boasting staffing that outstrips an average large corporate within Zambia^[47].

7.3 Poor Strategic Planning

A cursory visit to the few websites available of Zambian law firms reveals that there is no clear law firm future trajectory; the key values and drivers of the firms, 3, 5 and 10 year plans, intended client growth sectors, planned synergies. Atypical, law firms remain one man shows and there is no indication of the ultimate number of partners, associates or staffing required to reach a defined Profit after Tax number, nor a Return on Capital.

7.4 Client Quality

The quality of the client is closely tied to the business development approach of law firms. Partners in Zambian law firms feel that business development and securing clients is an onerous task when first starting their firm, partly because many lawyers are unable to take their client

base with them when leaving their previous firm^[48]. Closely related to this challenge is the difficulty in attracting in-house counsel to leave their current employment and to take the risk of starting up a firm. This has led to many sole proprietorships in Zambia that end up hiring more junior staff than expanding their partnerships.

7.5 Under Capitalisation

According to a poll, the primary challenge for Zambian law firms is insufficient funding. Law firm partners felt that legal services firms of any type are very difficult to secure state or private funding for^[49].

A growing phenomenon across developed markets^[50], is litigation funding, predicted to reach around US\$250 billion in 5 years and close to US\$500 billion in the next ten years^[51]. The basis of litigation funding is drawn from the convergence of law, finance and commerce in providing those who cannot afford legal fees, protect law firms from insolvency and ringfence corporates' profit and loss numbers^[52]. It is not uncommon for corporates to increasingly use litigation funding to hedge cash flow risks associated with high legal bills, legal spend management, keep arbitration costs to protect reported profits and expenses^[53].

Zambia leans towards frowning against litigation funding due to English doctrines of Maintenance and Champerty notwithstanding that debts can be assigned under contract law. Legal practitioners are proscribed from sharing fees with non-legal practitioners^[54], entering into contingency fee arrangements^[55] and 'ambulance chasing'^[56]. Contingency fees are described as:

"...any sum, whether fixed or calculated either as a percentage of the proceeds or otherwise howsoever, payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceeding^[57].

7.6 Restrictive Pricing

By restrictive pricing, the challenge is a 'floor price' for legal services. While the rationale of securing a minimum decent return for legal services, the corollary is that it has potential to outprice law firms from acquiring local work. Undercutting below the prescribed fees to disgorge instructions from the competition is a material risk for law firms in times of a stressed economy.

The Legal Practitioners Act^[58], provides for the regulating of the remuneration of practitioners which are fleshed out in

⁴³ Christophe Diricks, *Five Reasons to Automate Tedious (and Painful) admin tasks*, Technology, 28-01-2020. Available at <https://blog.kpmg.lu/five-reasons-to-automate-tedious-and-painful-admin-tasks/>

⁴⁴ Available at <https://blog.kpmg.lu/five-reasons-to-automate-tedious-and-painful-admin-tasks/>

⁴⁵ Comprehensive Landscape Report Legal Sector, GRMINTELLIGENCE, p 17

⁴⁶ Comprehensive Landscape Report Legal Sector, GRMINTELLIGENCE, p 17

⁴⁷ Bowmans boasts of over 400 specialised lawyers. Available at <https://www.bowmanslaw.com/our-firm/company-profile/>

⁴⁸ Comprehensive Landscape Report Legal Sector, GRMINTELLIGENCE, p 10

⁴⁹ Comprehensive Landscape Report Legal Sector, GRMINTELLIGENCE, p 10

⁵⁰ Also termed as "professional funding", "settlement funding", "third party funding", "legal funding", "legal financing", "lawsuit loans". This is more prevalent in USA, Europe, UK, Asia and Australia. See *Litigation Funding in Africa – Where are the opportunities in this investment vehicle in 2020 and beyond*, GRMIntelligence. Available at www.grmintelligence.com, p 6.

⁵¹ GRMIntelligence, p 6

⁵² GRMIntelligence, p 11

⁵³ GRMIntelligence, p 27

⁵⁴ To the extent that it does not relate to lawyers from other countries that allow such practices. See Legal Practitioners Rules of 2002, Rule 7

⁵⁵ Rule 8, *ibid*

⁵⁶ Rule 9, *ibid*

⁵⁷ Rule 2, *ibid*

⁵⁸ Chapter 27 of The Laws of Zambia

the Legal Practitioners (Costs) Order, Statutory Instrument No. 6 and 7 of 2017 respectively.

7.7 Low Insurance Penetration

Law firms in Zambia do not typically take out insurance cover for negligence. Insurance should ordinarily serve the role of hiving off the risk from law firms and clients alike in the event of a large legal cost’s liability.

South Africa, being a more mature market, has the highest insurance penetration levels in Africa. Conservative estimates place long term Gross Written Premiums (GWPs) at US\$19.3 billion and short term GWPs at US \$ 4.9 billion as at June 2017 ^[59]; Zambia trails with just under US \$ 2 billion ^[60]. Across the rest of Africa is not much different; the sector operates under difficult economic and political conditions. Some observers have insisted that growth will only be spurred by a shift towards new multichannel approaches and product design that spin off cheaper digital technologies, predictive customer consumption habits and deeper customer knowledge ^[61].

8. Increasing Demands of Corporate Clients

Long gone are the days when lawyers had a free reign in determining how their legal services would be provided to a client; the straight jacket approach to legal service provision at times famed for bordering on petulance.

Corporates now operate in a buyers’ market, demanding that its service providers can provide assurance of the existence of basic standards reflecting those of the client. This vetting has also extended to joining of international networks. The experience is at times reflective of a job interview.

Common requirements at on-boarding may include the following:

- a. Law Firm Topology - proof of law firm registration, partnership deed, biodata of partners and employees, law firm structure, departments;
- b. Insurance - liability insurance against professional negligence and employer’s liability of a minimum threshold;
- c. Accreditations and associations – proof of certification;
- d. Compliance Officer - point staff dedicated towards implementing a compliance programme and anti-money laundering (AML) controls;
- e. Data Privacy officer – point staff dedicated to implementing data controls, logical access management, data classification, physical and non-physical information barriers, breach incident management, system testing, business continuity;
- f. Credit Score – proof of solvency [both the partners and the partnership] and capacity to repay debt;
- g. Value Added Services – capacity to provide an end-to-end value proposition by the firm;
- h. Policy posture - existence of standard policies [human capital, code of conduct/ethics, anti-corruption, data privacy, risk management, conflicts of interest];
- i. Client and supplier due diligence - tools to screen clients for adverse information and fulfil statutory AML obligations like suspicious transaction reporting,

- sanctions screening, politically exposed persons (PEP) monitoring;
- j. Physical security - access control, sufficiency of physical security, regular fire drills and fire response capacity, location of physical offices;
- k. Consumer complaint handling - procedures to deal with customer complaints to the law firm, law society and consumer protection regulators;
- l. Staff development - skills gap analysis, performance contracting, personal development planning.

9. Recommendations

9.1 Refocus on Business Development

Business development and fee generation must be at the core of law firm members. The English transnational law firm has a typical structure as regards training and diploma programmes that distinguishes among Trainee/Junior Associate, Senior Associate and Partner ^[62] Some authors have surmised what the principle functions of the four generic categories of law firm members must look like, as per adapted table below ^[63]:

Paralegal	Junior Lawyer	Lawyer	Senior Lawyer
New Client Hunting	Sales Time Management	Successful Public Speaking	Sales Management
Making a BD Plan	Mailshots	Active Referrals	L2L Marketing
Sales Networking	Current Client Satisfaction	Negotiations Excellence	Motivating the Team
Sales Writing	Advertising	Finding Transactional Clients	The Ideal BD Meeting
Reading Body Language	Cross-Selling	Consultative Selling	Legal Services Pricing
Tea Marketing	Pitching	Up-Selling & Raising Prices	Warm & Cold Calls

A quick comment on Warm and Cold Call; this strategy is as effective in any country as it is permissible. In Zambia for instance, Rule 16 ^[64], proscribes the practice in the following words:

- 1. practitioner shall not tout or solicit for legal professional business.
- 2. A practitioner shall not respond to public or private tenders, for legal professional business.
- 3. A practitioner shall not offer services without instructions from a client

With the regulations around marketing law firm and legal practitioners, it is essential to ensure enough digital footprint on the most notable social sites and media outlets. A good search engine optimisation application has been strongly suggested including prodding clients to leave reviews on your social media and website page ^[65].

9.2 Law Society Certifications

⁶² James R Faulconbridge, Daniel Muzio and Andrew Cook, *Learning to be a lawyer in transnational law firms: communities of practice, institution and identity regulation*, Global Networks Journal, Leeds University Business School (2012), p. 42

⁶³ John James McVeigh, *The Nixedonia Pictobook*, Nixedonia Limited (3rd Edition) 24 September 2019 p. xi-xii. “Of Counsel” has also been suggested as a 5th category for lawyers who do not participate in business development but concentrate on legal work with no opportunity for partnership.

⁶⁴ Legal Practitioners’ Practice Rules, 2002. A Cold Call is when you reach out to somebody who does not know you for a meeting pitch; a Warm Call is when you call somebody who knows you.

⁶⁵ *Comprehensive Landscape Report Legal Sector*, GRM-INTELLIGENCE, p 43

⁵⁹ PWC 2019 Zambia Insurance Industry Survey, p 13. Available at file:///C:/Users/luwabelwaw/Documents/Articles/LAZ%20Conference/Zambia-Insurance-Report.pdf

⁶⁰ Ibid, PWC p 13

⁶¹ For in-depth discussion see Ibid PWC p 13

The Law Association of Zambia (LAZ) currently takes an arm's length stance towards responding to requests for names of law firms specialised in particular areas; a practice that inhibits the showcasing of the members' virtuoso legal capabilities. Understandably, the law society does not want to discriminate among its members, avoid potential lawsuits from aggrieved clients or participate in the hustle and bustle of differentiating amongst its members. The downside of this stance however is that it has been filled by international ranking agencies that a the 'holy grail' for large corporates and funders alike; work will not be given to the common mid to lower tier law firm based on non-ranking or belonging to an international network. Digital presence is now the currency for receiving instructions.

It is proposed that LAZ can create an objective and transparent methodology by which requests for information/proposals are distributed to the larger membership, and law firms submit Capability Statements that are then forwarded to potential clients, accompanied by a 'fit and proper' standing statement by the LAZ relating to the submitters. The Client will then be at liberty to select. A similar system for Board appointments is working quite well.

9.3 Alternative Business Models for Law Firms

The law firms are still modelled primarily on the English Partnership Act of 1890 that expressly excludes modelling along corporate vehicles under the Companies Act,^[66] and local rules prohibit engaging in legal practice with non-lawyers^[67]. This is restrictive for participation by non-legal practitioners, passive investors or specialists.

It is recommended that Zambia can take a leaf from Australia and the United Kingdom that have three models: namely the Multi- Disciplinary Practice (MDP), Legal Disciplinary Practice (LDP) and Incorporated Legal Practice (ILP). The MDP is an entity which provides both legal and extra-legal professional services such as audit, insurance, tax, and corporate finance^[68]. The LDP, introduced in the UK in March 2009, is a practice which only provides legal services but it differs from the traditional law firm in that it can be co-owned by non-lawyer members of staff^[69] such as forensic specialists and the participation of external investment.

The ILP on the other hand is a corporation which is either engaging solely in legal practice or engaging in both legal and other professional practices^[70]. The ILP structure has the advantage in that not only can it be a private limited corporation but it can also raise funds from the public as a public limited company, allowing for even broader public ownership and oversight.

9.4 Litigation Funding

⁶⁶ See Section 2

⁶⁷ Rule 3 of the Legal Practitioners' Rules 2002

⁶⁸ For instance, PriceWaterhouseCoopers, Ernst & Young and KPMG in Germany have established MDPs offering multi-disciplinary services including audit, insurance, tax, consulting, advisory, corporate finance and legal.

⁶⁹ Since 31 October 2012, all LDPs under the old regime of the Administrative of Justice Act 1985 (which previously provided that LDPs can only have up to 25% of non-legal investors and managers and they had to be employees of the LDP) have since moved to the new regime, where all kinds of alternative business structures are now allowed.

⁷⁰ See section 134 of the LPA NSW. Available at <http://www.olsc.nsw.gov.au>.

The beneficiation of litigation funding cannot be underestimated. With predictions of US\$ 100 million worth industry in Africa, African law societies would do well to prioritise this growing trend and adapt to local circumstances as required^[71].

Additionally it would be prudent for alternative dispute resolution centres across the African continent to prioritise litigation funding as part of their strategic objectives, and in so doing reach out to associations of financial institutions to draw appropriate Memoranda of Understanding.

9.5 Deliberate Policy at Macro Level

Zambia needs to build capacity and expertise to gain trust and be perceived as capable to handle these deals locally.

A proposal has been mooted that the Zambian Development Agency and The Ministry of Commerce, Trade, and Industry could spur more impetus for Zambian law firms domestically and internationally through advertising^[72]. The current prohibitions in the Legal Practitioners (Publicity) Rules on advertising Apply to legal practitioners, and not necessarily state entities. The provisions state that:

"These Rules apply to every practitioner, whether the practitioner is practising as a sole proprietor, partner, employee, in-house counsel or consultant of a firm^[73].

The move at macro level to create more institutions with legal departments has gone a bit of a way in creating more job opportunities for lawyers, including national institutions like the National Prosecutions Authority^[74]. Additionally, legal centres and paralegals could add impetus to the job market particularly for newly admitted legal practitioners.

The government and mobile operators can also assist democratise the provision of data at an affordable and reliable level. Reliable and consistent connectivity is a must have in today's digital space of lawyer client engagements, as most clients now insist on the concept of 'always on'^[75].

9.6 Unique Value Propositions

As the economies struggle law firms will often innovate and focus on restructuring, foreclosures, insolvency and debt collection work^[76]. Notwithstanding, a law firm will need to put its best foot forward by demonstrating a unique value proposition that will attract clients.

A value proposition is defined as a promise of value to be delivered, communicated, and acknowledged; a belief from the customer about how value (or benefit) will be delivered, experienced and acquired^[77]. This is a typical component of business planning, typical unique value propositions for a law firm may involve a dedicated app, 24/7 hot-line (based on cost benefit analysis), advanced CRM system, or a partner specialising in a niche market like Mandarene for Chinese customers^[78].

An endearing value proposition of international law firms is

⁷¹ PWC 2019 Zambia Insurance Industry Survey, p 35

⁷² *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 43

⁷³ Rule 3, Statutory Instrument 23 of 2017

⁷⁴ See section 5, National Prosecutions Authority Act 34 of 2010

⁷⁵ That is, internet connectivity that is always accessible.

⁷⁶ *Comprehensive Landscape Report Legal Sector*, GRMINTELLIGENCE, p 19

⁷⁷ https://en.wikipedia.org/wiki/Value_proposition

⁷⁸ John James McVeigh, *400 of the best legal sales and marketing concepts in pictographic format*, 2019 (3rd Edition) The Nixedonia Pictobook

the emphasis on “sector groups” or “practice groups”. Zambia law firms that are networked have taken a leaf by creating departments to grow depth of knowledge of subject matter experts and provide a seamless service to large corporates that are themselves modelled on very specialised organisational structures. The mid to smaller law firms will need to create some form of speciality, albeit at a lower scale in line with budget and client pipeline, to be able to attract large ticket instructions at both local and international level.

9.7 Alternative Careers Outside Law

Lawyers will need to begin envisioning themselves as persons selling a legal service, which legal service can be sold in different forms. In house lawyers are now slowly taking on roles that have not traditionally fallen within company secretary, such as risk, human capital, compliance, operations and heads of institutions.

For instance, in the area of Anti Money Laundering and financing of terrorism or proliferation, an entity is required to designate a compliance officer at management level and requires such person to have “more than two years in Regulatory compliance”^[79].

Other careers worth considering by lawyers are law teaching, publishing, blogging and consulting.

9.8 New forms of Law Firm Financing

The concept refers to instances where as a high-return investment, financiers ordinarily provide non-recourse funding to a litigant (natural or corporate) in exchange for a share in the proceeds of a potential judgment or settlement sum. This usually takes the form of a reasonable amount as adjudged by courts or loans repaid at an agreed interest rate^[80].

An atypical process flow for consummating a litigation funding agreement will include the following steps:

- a. Due diligence of the potential case - potential costs, nature of the claim, potential reward, risk spread within portfolio of the funder;
- b. Signing the litigation funding agreement;
- c. Sourcing funding for the claims – either as an out and out payment or contingent on result;
- d. Case management; and
- e. Cost structuring- variable costing, fixed costing or mixed model^[81].

Observers have pegged the average return of litigation funders to between 30% and 50% of proceeds, and naturally cost of funding is a factor of the relative risk and stage of litigation^[82]. More modern forms of litigation funding is for litigation funding firms to leverage third party financing from sources such as commercial banks which is now found predominantly in arbitration cases.

Litigation funding firms are attracted to highly litigious countries (USA), arbitration centres (London, Hong Kong, and Paris) and countries that have a good proportion of civil

matters and mature legal systems^[83]. In Africa currently, litigation funding is recognised in Ghana, Egypt, Kenya, South Africa and Nigeria^[84].

Common cited disadvantages of litigation funding are that the concept compromises attorney-client relationships, exacerbates potential for breaching expected proper attorney conduct, and undue influence of litigation funders on overall case management^[85].

A corollary recommendation is that the profession should reconsider the outright ban of contingency fees. In order for litigation funding - or indeed other alternate forms of law firm financing to be effective - rule 8 of the legal practitioner’s rules may be amended to a form that draws a balance for third party capital injection whilst mitigating the risks of litigation funding cited above. Indirectly, Zambian law firms arguably already participate in off shore contingency fee sharing through international networks where a case emanates from jurisdictions that allow for such fees.

9.9 Streamlining costs for Small Law firms

Particularly for smaller to mid-tier firms, cost containment and focus on process flow efficiencies should be top of mind. This might entail posing questions such as:

9.9.1 Are there alternative office space that still meets the minimum standards

- 10 Do we still need all staff to be on full time/permanent basis;
- 11 What are some of the day to day operational costs that can be scaled down or done away with e.g. daily supply of hard copies of newspapers; and
- 12 Are there services that can be outsourced or pooled, for instance mail delivery, cleaning?

10. Enforcement by Law Society Inspectorate Units

With the proliferation of law firms and increase in legal practitioners, the law society will need to increase capacity of its inspectorate unit. The LAZ Executive comprises the President, Vice-President, Honorary Secretary, Honorary Treasurer and twelve Council members with a current staff of thirteen. Notwithstanding the 17 Committees that assist the Council perform its functions, most of the work is done on a voluntary basis.

Rule 13 (2) of the Legal Practitioners Rules^[86] mandates the association to undertake inspection of legal practitioners’ offices for their suitability. There are currently 273^[87] law firms and such a large number requires a strong strategic focus and resources to uphold best standards, preferably taking a risk-based approach.

The Law Association of Zambia will now need to extend its inspections to elements of compliance beyond physical offices, such as whether the detail being advertised by law firms is within “approved information” as defined^[88]

11. Conclusion

As GRMIntelligence puts it, there are numerous lawyers in

⁷⁹ Section 23 of the Financial Intelligence Centre Act, No. 46 of 2010 (the Act) as read together with the FIC (amendment) Act, No. 4 of 2016

⁸⁰ GRMIntelligence, p 11

⁸¹ GRMIntelligence, p 14

⁸² GRMIntelligence, p 14

⁸³ GRMIntelligence, p 30. Common examples include Brazil, South Africa and Argentina.

⁸⁴ GRMIntelligence, p 36, 41.

⁸⁵ GRMIntelligence, p 13

⁸⁶ Legal Practitioners Rules, SI 51 of 2002

⁸⁷ Last count as of 13 March 2020 following LAZ Secretariat inquiry

⁸⁸ See the Legal Practitioners (Publicity) Rules, 2017

Zambia with enough international exposure in terms of study, work experience and exposure to warrant Zambian legal work being handled within the country¹⁸⁹. International legal networks and ranking agencies are not here for the short term, and whatever exclusionary measures are in existence currently are not preventing work being undertaken by local partner firms. The call is for the law society and policy makers alike to implement deliberate strategies that can allow local law firms partner with international law firms in a more mutually beneficial manner. Ten recommendations have been suggested in this article believed to be critical to in mitigating against the continued shrinking of participation of local law firms on the international stage.

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⁸⁹ GRMIntelligence, p 84