

Convention. One of the key provisions of the Convention provides that in interpreting the Convention, "regard is to be had to its international character and the need to promote uniformity in its application and the observance of good faith in international trade."⁴ Scholars have generally read this to mean that if, for example, an Australian Court was interpreting the meaning of an Article of the Convention, it would be obliged to take into account decisions made in, for example Germany relating to that Article. There is also an open question at this stage as to whether parties subject to the Convention must act in good faith. Good faith is again a cornerstone of civil law but is not a requirement for the parties under traditional common law contracts.

The Convention can apply to contracts

whether or not they are reduced to writing. Most sale contracts simply consist of a purchase order and an invoice and lawyers are mostly likely to be looking at the documentation after something has gone wrong. If lawyers do have the luxury of drafting an international sale contract, it is important to note that the Convention can be entirely or partially excluded from the contract or the application of the Convention may be varied under the contract.⁵ Ironically, this flexibility is also detrimental to the object of the Convention being accepted by States and private parties as the universal "rulebook" for the sale of goods.

The Convention does not cover goods sold for personal or household use, ships or aircraft or stocks and securities. It of course also does not regulate the sale and purchase of

services, which are on the increase worldwide.

For further information, see the website run by Pace University located in upstate New York at www.cisg.law.pace.edu. This site is an extensive resource and contains an annotated commentary on each article of the Convention together with an up to date database with academic articles and foreign case law.

NOTES

- 1 See Article 1(1)(a)
- 2 See Article 1(1)(b)
- 3 See Articles 25, 49 and 64
- 4 See Article 7(1)
- 5 See Article 6

go global!

by Emma Weston, AWB Limited

Going global - everyone seems to be doing it. The globalisation imperative appears unstoppable and is affecting all commercial and community sectors. This article is a brief review of how this trend is changing the delivery of legal services in the new millennium.

Mergers

An obvious global strategy is to increase physical presence and many large multi-national law firms have got even bigger in recent years. Local mergers have also been popular and are often driven also by the threat of being too small in the global marketplace to attract and keep clients. Law firms are seeking to provide a "seamless service" to clients and presumably believe this can be achieved (in part at least) by having an office wherever a client does business. Whether more offices and more lawyers will result in the provision of greater service to clients remains to be seen.

Multidisciplinary Practices (MDPs)

These are essentially practices which combine services offered by different professions. For example: legal and accounting services or legal and financial services. In Australia, there are still tight restrictions on operating MDPs due to concerns about issues such as solicitor/client privilege and integrity of trust accounts. Even in the United States, the American Bar Association recently voted against fee-sharing between lawyers and accountancies and the US Securities and Exchange Commission declared that auditor independence could be compromised if an MDP provided legal advice to an audit client. Despite these limitations, the desire to offer a "one stop shop" for clients may be attractive. There are obvious synergies in combining many sorts of practices. For example, the extensive resources of the large accounting firms will prove handy when it come to supporting the legal services side of the business. The big five accounting firms have already achieved global reach and are arguably well-positioned to diversify their fee base.

The internet

The most pervasive and exciting trend is the use of technology in the race to go global. The mere existence of a website is decidedly passé these days and law firms' existing and prospective clients are looking for value added services as well as information. The use of technology, especially the internet, means that a law firm should be able to deliver services to anyone anywhere.

Some law firms are making their websites interactive by providing information in innovative ways so that their website is used as a resource by clients. The internet is also increasingly used as a means of directly delivering legal services. Many internet legal services are provided by non-lawyers and concentrate on the DIY market. There are many sites which provide pro forma agreements and precedent documents which can be downloaded and manipulated for a price. At sites such as legalmart.com.au a user can create legal documents, access legal

information and get a referral to a lawyer if it all gets too tricky. These DIY sites are pretty user friendly and have an increasingly large set of precedents. They are also very cheap when compared to accessing traditional legal services. There are also a number of subject specific DIY sites, such as websites designed to provide assistance with wills or family law advice.

Also emerging are more complex types of DIY services which are designed to deliver legal expertise in a new manner. For example, many law firms are developing software solutions to deal with the legal side of business such as compliance programs and document management. Some of these services are web-based and general; although many are developed especially for the client. Whether these DIY sites and on-line referral services actually attract clients away from the present "mainstream" legal profession is the burning question (for which there is no present answer).

There are also sites where a virtual legal marketplace has been created. One example is the site firstlaw.co.uk which is a legal work bid site. The basic

idea is that a client can register a job on the site and law firms bid for the work. This form of virtual tendering theoretically allows the client to choose the best firm in the world for the job and opens up opportunities for client and lawyer.

The internet is also being used as a means of dispute resolution: cybersettle.com delivers automated claim settlement. This type of dispute resolution must be easy to use and efficient in order to work in the long-term, but it has at least the potential to bring a new meaning to international dispute resolution.

Other, more novel types of legal services include 'internet exchanges'. These are virtual marketplaces for buying and selling what are known as "knowledge objects", including legal knowledge or commercial rights. For example: at pl-x.com a virtual marketplace for intellectual property has been created; digital knowledge is traded at knexa.com. Buyers and sellers are brought together in a virtual forum to conduct business. This "cutting out of the middle man" is likely to be adapted further in the future as there are obvious cost and

time savings. These types of sites could be seen as a threat to traditional law firm business, especially if legal advice is traded, which happens already at knexa.com.

Conclusion

Globalisation is affecting the way lawyers practice and is an impetus for the development of new services. The needs of clients are driving the changes. The use of the internet means that legal services are beginning to be delivered by non-lawyers. Whilst this may be a threat for law firms, it could be a boon for clients. Globalisation could be seen as a means of introducing competition to what has been a relatively closed market by promoting client choice. Whether the global strategy is physical (by mergers or other similar means) or virtual, the degree to which clients take up these services and their level of satisfaction will decide whether or not the strategy is successful and whether these trends are here to stay.

globalisation

can the law keep up?

by Anna Skarbek

You can sit in your living room watching a documentary about camels in India, you can fly to Prague, you can find imported goods from all over the world in shops in Australia. Trade and travel are global, but living standards and human rights are not crossing borders as readily. Globalisation is being heralded as a creator of growth and opportunity, and for many, this is so. However the 'many' who benefit most are the 20,000 multinational corporations ("MNCs") who account for between one quarter and one third of all global output, and 70% of international trade.

The law is not keeping up with globalisation. To MNCs, globalisation means opening up access to countries where costs of operation are lower. Why are they lower? Usually because the country of 'opportunity' has weaker laws (or none at all) concerning issues like labour conditions and environmental protection. MNCs have realised that by pushing for open access to other nations, they can move into countries without established laws to protect individual rights and environmental standards, thereby taking advantage of cheap manufacturing costs.

Globalisation is creating a playing field in which the absence of legal protection for significant sectors of society is a competitive advantage. It is cheaper to pollute than to become a clean, green manufacturer; it is cheaper to manufacture in jurisdictions that do not require superannuation payments or overtime or sick leave. Developing nations who now find themselves on the same 'level playing field' as the vastly better resourced developed nations have no option but to compete on price. It becomes a "race to the bottom" to attract investment from MNCs. The economic