



State of Play, Future Challenges and Opportunities in Cross Border Trade in Legal Services - Examining the Emerging Formations and Structures for Collaboration

Kofo Dosekun

Managing Partner, Aluko & Oyebode

#NBA2019AGC

State of Play



- The Nigerian legal profession is protectionist in nature.
- Lawyers with foreign bar admissions are excluded, under the LPA and RPC, unless they become admitted in Nigeria or receive exemption.
- Nigerian lawyers are forbidden from entering into law partnerships or sharing fees with persons not admitted to practice law in Nigeria.
- Globalization and Technology are challenging the existing state of play.

Challenges



- Globalization facilitates the free cross-border movement of goods and services. It has created opportunities for businesses to enter new markets across national borders.
- Impact of the Agreement Establishing the African Continental Free Trade Area, which is meant to facilitate free movement of goods and services in Africa. Still to be seen how that will affect provision of legal services across borders.
- As clients move into new markets, their traditional legal advisers usually move into these new markets with them to support them.

Challenges (Cont'd)



- Conflicts arise where the rules in these new markets forbid foreign qualified lawyers from providing legal services locally.
- Technology / Artificial Intelligence (AI) currently “encroaching” on our turfs.
- Certain legal processes are now being automated such that machines now assist with due diligence/ discovery processes, adapting templates. Etc.
- Time consuming exercises like documents’ reviews now being automated to save time and costs.

Challenges (Cont'd)



- Smart Contracts and online dispute resolution also a threat to traditional disputes resolution.
- Smart Contracts are self-executing contracts which have the terms of the agreement between the buyer and seller written in code. It works on an (if-then” basis. The contract is activated automatically only when certain conditions are met.
- Used by insurance companies. Customer pays insurance premium (e.g.: against airline delays) using cryptocurrency. If a default occurs (e.g.: airline is delayed), the information is digitally transmitted to all parties and insurance company’s account is automatically debited and insured person is immediately credited without need to report default or file claims.

Impact of these Challenges



- Some legal jobs will be eliminated – research, documents’ drafting and review tasks are at most risk.
- At the same time, new jobs may be created in producing and reviewing work products delivered by AI systems.
- **Question:** Would the jobs created be enough to take the place of all the jobs lost? Would lawyers develop the skills needed to work in these new areas quickly enough to be able to take advantage of the opportunities?
- Lawyers will be freed up to focus on value creation activities i.e. advising clients, strategy creation while the more tedious tasks will be delivered by AI.

Impact of these Challenges (Cont'd)



- There are legal and ethical issues (e.g.: who regulates these digital service providers).
- Globalization will lead to greater collaboration with offshore firms which could lead to “win-win” situations.
- In effect, what some consider Challenges could actually be Opportunities.

Opportunities



- The increasing intersection and convergence between Law and Technology create opportunities for lawyers to develop expertise/ knowledge in emerging technologies.
- Opportunities to contribute to policy making and legal reform.
- We also have an opportunity to ramp up on the introduction of technology into courtrooms – witnesses delivering testimony via video, lawyers presenting cases on built-in monitors, using cameras and other technology to review evidence, e-filing systems.

Opportunities (Cont'd)



- Lawyers can also leverage Technology for better practice administration which will lead to better time management and alternative billing structures at a time when Clients want more for less.
- Globalization means that Collaboration with Offshore Law Firms is now inevitable. Several structures already exist:
 - Collaboration between Nigerian / Offshore Firm on specific transactions.
 - Formal networks (e.g.: ALN).
 - Alliance (loose association or “tie-up” which results in knowledge sharing, referrals, etc.)
 - Best friends' model (where there is no formal “tie-up” but Firms agree to give preferences to each other).

What other Jurisdictions are doing



- The International Bar published a Report on Global Regulation and Trade in Legal Services in 2014.
- The report covers legal practice in 90 countries or over 160 jurisdictions in all of Europe and North America and part of the Middle-East, Central and South America, Africa and the Asia Pacific Region.
- From the published Report, it is shown that 56 per cent of jurisdictions now allow partnership or association between foreign and domestic lawyers; that 77 per cent of the jurisdictions do not impose a nationality restriction on foreign lawyers requalifying as local lawyers; in 47 per cent of jurisdictions, foreign law firms are present facilitating cross-border trade and investment; in about 80 per cent of the countries, foreign law firms are allowed to open offices (with some restrictions).

What other Jurisdictions are doing

- In some countries in the North Africa region, foreign law firms operate branch offices independently or in association with local firms.



What other Jurisdictions are doing



QUESTION: IS IT TIME TO REVIEW OUR RULES?

#NBA2019AGC