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ACCOUNTING SERVICES FOR THE 21ST CENTURY

LIC. PATRICIA HERNÁNDEZ-ESPARZA*

I. INTRODUCTION

Fortunately, this article does not consist of an accountant speculating about what accounting services will be like in the 21st century, nor is it bold enough to attempt to convince lawyers that accountants and accounting firms may and should provide legal services to their clients. Rather, this article is an exploration of a verifiable option for the law firms of the future: multidisciplinary practices (MDPs). In analyzing the potential effectiveness of MDPs, I will focus specifically on one of the Big Five professional service firms, since I am most familiar with its practices.

As the twenty-first century steadfastly approaches, no one can deny the inescapable fact that global companies are now facing an unprecedented dilemma: while globalization has increased the need for complex and sophisticated services, few traditional legal practices have the global reach necessary to adequately meet the needs of rapidly expanding multinational companies. Since such companies require legal help in tandem with a broad range of specialized services, the present context of the global legal profession must adapt accordingly. Additionally, worldwide market forces dictate an increasing complexity of issues that clients must face in order to successfully operate their businesses. The three major forces affecting global competition are as follows:

- globalization of clients
- convergence of industries
- merging of clients

The prospect that lawyers will team up with other professional service firms, including accountants, to form multidisciplinary partnerships (MDPs) is now regarded as an opportunity for growth. Competition is naturally coming from management advisory services, which at this time, is more visible in the Big Five, traditionally identified as “accountancy firms” (Arthur Andersen, Deloitte & Touche, Ernst & Young, KPMG and PricewaterhouseCoopers). While more firms are turning to outside advisors, consultants so far have been used far less by law firms than by companies in other industries. Hence, flexibility is the answer. There are and will continue to be large, global, full-service law firms. However, the true victors will be those who are best at managing high-volume, low-margin work and when practical and beneficial for the client, ‘standardizable work,’ without sacrificing quality.

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It is evident that firms are increasingly aware of the contemporary trend towards globalization and therefore want to stay ahead of the competition by incorporating pertinent adaptations in relation to what is happening in the world marketplace. For example, just a few years ago, it would have seemed impossible that an accounting and consulting firm would ever attempt to form an alliance within the legal realm. Acting on such an alternative gives the necessary international contacts without necessarily meaning loss of independence.

There are many opportunities to transfer new skills and bring specialization into each firm. It allows for servicing clients throughout the world, rather than just locally, and gives access to hundreds of professionals across the world that can give answers to client questions with the click of a mouse. The merging of firms and the network system gives a clear competitive advantage over traditionally structured firms. Many top quality lawyers have and will subscribe to the brave new world. They will be part of well resourced, world consulting megafirms which can be all things to all people and will win some of the flagship type of work.

Many law firms have been slow to build their brands and see the realities of a global environment. Although lawyers have built spectacularly profitable local businesses, some have underestimated the value of marketing and globalization. Many law firms have just realized the fact that globalization will affect them.

II. DEFINITIONS AND HISTORY OF MDP

In order to explain what services firms are doing, it is important to first obtain a grasp of the fact that a multidisciplinary practice (MDP) is an organization that combines different disciplines that includes lawyers and non-lawyers banding together to provide “one-stop shopping” for their clients.¹ An MDP is a place where lawyers work together with non-lawyer professionals, whether in a single firm or in a looser form of business arrangement. At one extreme, an MDP might fully integrate, consisting of a single firm with common ownership and management. At the other extreme, an MDP might consist of different professional organizations linked loosely together in alliance, associations, or networks. They may refer business to one another or engage in joint market activities, but remain separate from an ownership and management standpoint. There are almost an infinite variety of hybrid models between these two extremes.

An MDP may involve sharing ownership interests among persons of different professions, but such joint ownership is not essential, and many MDPs operate successfully without it. The term could include, for example:

- A divorce lawyer who collaborates with a tax planner. A financial advisor and even a psychologist, in providing counseling and other services to clients in domestic relation matters.
- An environmental lawyer who combines his expertise with an environmental engineer, a biologist and a chemist to offer environmental services.
- A real estate lawyer who collaborates with title searchers, a title insurance agent and mortgage brokers in providing real estate services.

1. See *A Roundtable Discussion on Multidisciplinary Practice*, 37 DEC HOUS. LAW. 9, at 9 (1999).

- A patent and trademark attorney who combines his legal knowledge with the knowledge and support given by an engineer and other scientists for the analysis and protection of a client's patent.

In short, an MDP situation arises whenever a lawyer proposes, agrees, or undertakes to provide legal services in any structured way, in combination with services being offered by other non-lawyer professionals.

Affiliations between lawyers and non-lawyers have a long history in many countries. The MDP phenomenon is not really new, it has just become increasingly popular in recent years as a result principally from the changing needs and demands of professional services by clients. MDP structures are not new even to the United States legal profession. In Europe, as well, there is a long history of affiliations between lawyers and non-lawyers in many countries.² Generally speaking (and subject to exceptions for national distinctions), fully integrated MDP arrangements are permitted between lawyers and practitioners in related professions - including notaries, patent agents and tax advisers - in Germany, Italy, the Netherlands, the Slovak Republic, Spain and some cantons in Switzerland.

In some of these aforementioned countries, partnerships between lawyers and auditors are also permitted, though such arrangements are expressly prohibited in the Netherlands and Italy. Norway does not permit fully integrated MDPs, but does allow law firms to become members of multidisciplinary networks that include some mutual financial arrangements. In France, MDPs are prohibited today, however, some forms of de facto MDPs involving persons closely related to the legal profession exist as a result of the 1992 merger of the two primary branches of the profession (the *avocats* and the *conseils juridiques*). Other countries such as Belgium and the UK currently prohibit MDPs with practicing lawyers, but define the legal monopoly so narrowly as to permit MDPs between accounting firms and groups of lawyers performing other types of non-restricted "legal services." For example, in Belgium the legal monopoly extends only to litigation, property conveyance and preparation of wills, while in the UK it applies only to litigation, advocacy before administrative tribunals, conveyance and probate work.

The recent expansion of MDPs has reflected growing client demand for professional advisors who can provide efficient and cost-effective services. These demands are driven by the new realities of the business enterprises and the ongoing need to contain the cost of professional services. A real tangible benefit of MDPs is that from "day one," a client can count on a very significant network that he can gain access to immediately.

2. See generally ABA Comm. On Multidisciplinary Practice, Background Paper on Multidisciplinary Practice: Issues and Developments (visited March 2, 2000) <<http://www.abanet.org/cpi/multicomreport0199.html>>. See generally Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737, 747-48 (1994); David M. Trubek, et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arena*, 44 CASE W. RES. L. REV. 407, 434-435 (1994); Gianluca Morello, *Note, Big Six Accounting Firms Shop worldwide Law Firms: Why Multidiscipline Practices Should Be Permitted in the United States*, 21 FORDHAM INT'L L.J. 190 (1997).

III. MDP MODELS AND PROPOSAL FOR CHANGE

To achieve the above, and given that rules governing the legal professional vary from one country to another, and even from one state or province to another in one single country, it is impossible to have a model rule that would work in all settings. However, there are certain principles which should allow a lawyer to practice law in an MDP organization even if non-lawyers hold ownership or other economic interest in such organization. A lawyer should be permitted to share legal fees with non-lawyers who perform services related to the legal services being provided by the lawyer. Additionally, a lawyer who wishes to practice law in an MDP should be permitted to do so and should be subject to rules and disciplines of the legal profession.

MDPs can vary greatly in form. At one end of the spectrum is the least-integrated model, which includes loose alliances, associations and networks involving little more than joint marketing and referral arrangements. Partially integrated models require more structured coordination of joint activities, perhaps including the use of a common name or brand or sharing of certain facilities. At the other end of the spectrum is the fully integrated model, characterized by single organizations that are jointly owned and managed. MDPs may also take any number of corporate structures, though these are less important than the functional aspects mentioned above. For example, PwC supports the creation of MDPs that are structured to preserve the independence of lawyers' professional judgement, protect client confidence, preserve attorney-client privilege, assure that clients are not misled, protect against conflict of interest and assure that all practicing attorneys are subject to the rules and discipline of the legal profession.

The legal profession should be permitted to hold itself out to the public as providing legal services even within an MDP where other partners are non-lawyers. When practicing law in an MDP, proper management procedures should be implemented to assure independence of the lawyer's professional judgement, not to be compromised because of the MDP structure. A client receiving legal advice from a lawyer in an MDP should be entitled to assert attorney-client privilege as respect to communications with the lawyer and that information may be communicated within the MDP only to such persons who have a need for such information in connection with the delivery of legal services to the client.

For purposes of determining conflict of interest for legal services provided by an MDP organization, that faction providing legal services should be regarded as a single entity along with any other part of the organization that controls or is controlled by legal services. The general rules applicable to the legal profession regarding advertising, reasonableness of fees, solicitation of business and others, should apply to the lawyers practicing in the MDP. If non-lawyers hold ownership or other economic interest in the MDP, each client retaining the legal services should be made knowledgeable of the fact that non-lawyers hold such interest in the MDP.

IV. GLOBAL EXPERIENCE WITH MDP

In European countries there is a multiplicity of regulatory provisions that vary considerably in their treatment of MDPs. Some countries permit MDPs, while others purport to prohibit them entirely. The confusing and conflicting regulations currently in effect in Europe have prevented PwC from pursuing its preferred option - to create a single, fully integrated MDP. Instead, in Europe, PwC has followed a modified course of establishing a network of parallel correspondent legal services firms, to work closely with PwC in serving joint client needs. Each law firm in the network is independently owned and managed by the lawyers and is linked with PwC by a largely overlapping client base. The network enjoys the benefit of joint marketing arrangements and service agreements pursuant to which PwC provides the firms with certain administrative services.

The effectiveness of the parallel firm approach can be measured by the success of PwC's correspondent firm in France. The arrangements have been reviewed extensively by the Paris bar and they have been found to be in full compliance with ethical rules and professional standards. In certain practices, PwC's French correspondent firm exceeds the requirements imposed by the Bar. Where there is no local restriction for lawyers to practice their profession within an MDP structure, there is no reason for PwC not to provide its clients the services required by them; without changes to the duties of lawyers practicing in more traditional arrangements, with regards to the independence of professional judgement, protection of confidential client information and loyalty to clients through avoidance of conflicts of interest. These are the core values of the legal profession and they are essential to the preservation of the client-lawyer relationship and the protection of the public.

V. MDP: GLOBAL VIEWPOINTS

The American Corporate Counsel Association's Board of Directors recently adopted a public stance supporting MDPs in February 1999, stating that the Association supports a broader range of choices from service providers that can address not only the legal aspect of their problems, but various other facets as well. The broader range of choice could include MDPs where lawyers are affiliated with non-lawyers.

The Council of Bars and Law Societies of Europe opposes MDPs, although the organization has not yet passed a formal resolution articulating this opposition, but it will likely take a formal stand against permitting them in the future. The European Court of Justice recently ruled that the profession is subject to competition rules of the European community. The Law Society of England and Wales is in the process of a consultation and likely to approve MDPs. The Society takes this action under active threats from the Government to impose a legislative solution should the Law Society fail to act. The National Bar Council in France is concluding a code of ethics. It is likely to allow MDPs, if conflicts of interest are observed.

In the Netherlands, in January of 1999, Moret Ernst & Young reached a settlement with the Dutch Bar and under the legal professional rules, the firm's tax advisors will be allowed to share profits and losses with the firm's lawyers. The

accountants and lawyers in this case will still not be allowed to work together. The International Bar Association does not oppose MDPs but urges bars and law societies that permit them to do so under a regulatory regime that provides assurance of client confidentiality, avoidance of conflicts of interest, preservation of independence of lawyers' professional judgement and maintenance of the rule of law.

The Canadian Bar Association (CBA) last year recommended rules to the provincial bars that would permit MDPs under restrictive conditions.³ The CBA has appointed a new commission that is likely to recommend permitting MDPs under more relaxed conditions. In Australia, New South Wales permits MDPs in circumstances where lawyers retain a controlling interest, though the MDPs are not limited to providing legal services. In South Australia, there is a proposal to permit MDPs without the control provisions imposed in New South and in Victoria, a statute has been enacted to permit MDPs also without the New South control requirements. The World Trade Organization (WTO) is currently investigating the legal services profession, having just completed a review of the accounting profession. In a September, 1998 speech to the WTO, the secretary to the WTO Council on Trade in Services reported that bans on MDPs would be "unrealistic."

In the United States, the American Bar Association (ABA) created a Commission on multidisciplinary practices dedicated to analyze the implications/risks of lawyers practicing in MDP arrangements. The report issued by the commission recommends that lawyers be able to work in the same firms with accountants, financial planners and other professionals, even if the endeavor's primary purpose is not law practice and lawyers are supervised by non-lawyers or do not own a controlling interest.⁴ The Commission's proposal contained significant precautions and restrictions aimed at client protection including:

- Assurances by MDP practices that they will not interfere with a lawyer's independent professional judgment and that it recognizes a lawyer's role as an officer of the legal system, including the ethical obligation to do pro bono work.
- Forbidding lawyers supervised by non-lawyers to use that as a defense in violation of conduct rules.
- Prohibiting outside investors from owning interest in MDPs practices.
- Requiring lawyers to caution clients that attorney-client privilege may not apply to communications with non-lawyer firm members providing different kinds of services. Failure to adequately explain the difference between legal and non-legal services would result in disciplinary action.
- Treatment of all the practice's clients – legal and non-legal – as the lawyer's own for conflict of interest analysis.

The Commission had concluded that it is possible to satisfy the interests of client and lawyers by providing the option of an MDP practice without compromising the

3. "The case for MDPs: showed multidisciplinary practices be Banned or Embraced" *Law practice Management Vol. 25 No. 5.*

4. *See supra* note 2.

core values of the legal profession that are essential to the protection of clients and proper maintenance.⁵ The proposals to be presented to the House would allow lawyers to join firms and share fees with non-lawyers, even if the firms do not primarily practice law and if lawyers are supervised by non-lawyers or if they do not own a controlling interest. The recommendations represent a 180-degree turn from the ABA's 30-year-old ban on fee sharing with other disciplines. They would allow lawyers to join accountants, financial planners, stockbrokers and others to offer several different services as one firm.⁶

While the effects of the Recommendation, when and "if adopted are potentially far-reaching, the Commission concluded that there was a clear need to adapt the profession's rules of professional conduct to current needs if the core values of the profession are to be preserved in the context of changing realities."⁷ There are certain principles set out in the Recommendation that "are designed to serve as guidelines for the drafting of specific amendments to the ABA Model Rules that would reaffirm the essential principles governing the profession while improving the ability of the profession to deliver legal services, particularly to individual clients, in an effective manner that responds to the current needs."⁸ The outcome at this time is that the vote on the ABA's recommendation on MDPs has been delayed until at least next year, following intense activity by law firms. The ABA was due to vote in mid-August on the working party's proposals, but opposition from lawyers - who see accountancy firms as a threat - has moved the schedule. The ABA's House of Delegates passed a motion which states that "there will be no changes "unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyers independence and the legal profession's tradition of loyalty to clients."⁹

VI. SUPPORT FOR MDPS

While lawyers and lawyers' associations have different views on MDPs and how they could affect lawyer's independence, other lawyers, law professors and businessmen have taken a more positive approach to the legality and ethics of an MDP arrangement for the practice of law. Steve Bennett, former general counsel of BancOne stated before the ABA Commission that "efforts by corporate purchasers of services to obtain optimal comprehensive solutions carry with them the real possibility that, in the absence of change, lawyers practicing in traditional law firms in the coming century might find themselves all dressed up with no place to go."¹⁰

Antonio Garrigues, President of Garrigues and Andersen, a Spanish MDP firm, stated at the Corporate Counsel Association that MDPs were an inevitable result of the globalization of business. He predicted that in three to five years' time there will be 15 global law firms, two or three of which will be MDPs, and that lawyers

5. John Gibeaut, *Share the Wealth*, 85-JUL A.B.A. J. 14, (1999).

6. John Gibeaut, *Practice Debate Heats Up*, 85-AUG A.B.A. J. 14 (1999).

7. Steven C. Nelson, *The Report and Recommendation of the ABA Commission on Multidisciplinary Practice*, International Law News, Section of International Law and Practices, American Bar Association, Vol. 28, No. 3, Summer 1999.

8. *See Id.*

9. *MDPs Hit Fierce Opposition*, WorldLaw Business, August 1999.

10. *See supra* note 2.

will be compelled to play a more active role in globalization. Geoffrey Hazard, law professor from the University of Pennsylvania, believes that the legal profession will not be successful in its attempts to curtail the activities of the Big Five who are broadening their base of service offerings simply because a corporate client wants services packaged in this particular way.

In the summer of 1998, the New York State Bar Association staged a debate on the implications of accountants "encroaching" on law practices. Most bar members vehemently opposed the practice due to their fears of potential loss of market share to accountants because of their perceived ability to make inroads on the business of tax lawyers. In said debate, however, John B. Harris, of Stillman & Friedman stated that legal consumers would potentially benefit from alliances between accounting firms and law firms, which further indicates that these alliances would be possibly subject to regulation as opposed to absolute prohibition. Jim Holden of Steptoe & Johnson also observed that accounting firms continue to attract highly qualified lawyers to practice in them. Such lawyers are no longer solely engaged in legal planning and opinion writing.

Thus, it is only natural that accounting firms aspire to engage these lawyers even more fully in the practice of law. Since they will be supported by their clients, who wish to be able to utilize the services of the lawyers of their choice, the astute lawyer must be able to respond to these changes in the market place.

VII. BUSINESS ADVISORY OR CONSULTING FIRMS INVOLVED IN MDPS

The Big Five are the biggest proponents of MDPs. Their partnering with international law firms and hiring of high profile lawyers to create international legal networks to provide clients with 'one stop shopping' has been compared with recent merger and acquisition frenzy. But there is a reason behind that. The clients are demanding that when they go to one single place, that they receive types of expertise by several different professionals. There is nothing wrong in asking for that by a client. Arthur Andersen has over 1,400 offices in four continents. They have become highly competitive and are actively seeking for partnerships with prominent firms and lawyers. Ernst & Young made a public statement that they intend to recruit 240 lawyers during the next 18 months.

A clear sign of the importance all big accounting firms are placing on legal services. The Miami Herald wrote "[i]n Europe, for example, the accounting firm of Ernst & Young has more lawyers than any law firm. KPMG owns the biggest law firm in France. Arthur Andersen, the accounting/consulting firm, has said it wants to have the world's biggest law firm by 2000."¹¹ It further states that "already the Big Five are informally considered the world's largest firms, Ernst & Young has 3,300 tax lawyers worldwide and 850 lawyers in the United States, nearly double the number a few years ago."¹²

11. *One Firm Fits All*, Miami Herald, Mar. 15, 1999, (visited March 27, 1999) <<http://www.herald.com/newslibrary/>>.

12. *See Id.*

PwC has close to 1200 business lawyers in 38 countries and a substantial number of tax lawyers worldwide. PwC contends that the MDP approach has been client driven, regardless of whether clients carry out their business in local, national or global markets, they more often than not face complex business situations as well as legal issues. PwC's approach is that rules governing lawyers and other professionals are similar because we are all true professionals who share a commitment to provide objective and independent advice, and at the same time preserving client confidentiality. PwC takes the view that it is essential that MDP arrangements are structured so as to:

1. Preserve the lawyer's professional independence.
2. Protect client confidence.
3. Protect against conflicts of interest and ensure the undivided loyalties of practicing lawyers to their clients.
4. Assure that lawyers, when holding themselves out as engaged in the practice of law, are subject to the rules and disciplines of the legal profession.
5. The law firms currently associated with PwC maintain strict independence and ethical standards that are consistent with those of the leading law firms.

VIII. MEXICAN LEGAL FRAMEWORK FOR MDPS

The Political Constitution of the Mexican United States, Article V provides that no person may be prohibited from dedicating himself or herself to the profession, industry, trade or work he or she wishes, if such activities are not illicit.¹³ This right may only be restricted through a court resolution if the rights of third parties are attacked or through a government resolution if the rights of the society are offended. It likewise states that each State will determine what professions need a title to practice, the conditions of such a title and the authorities which may issue same. The Mexican Constitution contains no restriction for the creation of partnerships or other legal structures for the rendering of professional services. The Law of Professions (for the Federal District) defines in Article 1 a professional title: a document issued by the authorities of the State for decentralized institutions or private institutions whose studies have an official acknowledgement of validity, in favor of a person who has finished the corresponding studies or who has evidenced that s/he has the necessary knowledge in accordance with the Law and applicable provisions.¹⁴

Article 2 establishes that the laws which regulate the activities related to a special area of professional specialty, will determine which are those professional services which need a title and a "cédula"¹⁵ for the practice thereof. In order to obtain a "cédula" which allows for the practice of a profession, the issuance and registration of a professional title or equivalent academic degree are required. The practice of a profession is understood as the continuous performance, either with a fee or

13. Art. V, Constitución Política de los Estados Unidos Mexicanos.

14. Ley Reglamentaria del artículo 50 Constitucional relativo al ejercicio de las profesiones en el Distrito Federal.

15. A "license certificate."

without a fee, of acts or performance of services of a profession whether it is for simple counseling or acting as a professional through cards, announcements, or other types of advertising.

There is no restriction in the Law of Professions for the creation of partnerships or other legal structures for the performance of a professional activity. Belonging to a Mexican Bar Association is not compulsory for Mexican lawyers to practice law. Although there is a provision in the Code of Professional Ethics of the Mexican Bar College of Lawyers which states that "the sharing of fees among lawyers is only allowed based on the collaboration for the performance of legal services and sharing of responsibility" and that "a lawyer may only associate with other lawyers to perform the profession."¹⁶ There is no reason why this should be construed as a limitation to a lawyer being a part of an MDP structure and at the same time providing legal services. Similar provisions are contained in the Code of Professional Ethics of the Illustrious and National Mexican College of Lawyers and the National Association of Corporate Lawyers.¹⁷

The North American Free Trade Agreement has some provisions on professional services but there is nothing in NAFTA or its annexes that forbids lawyers, once they are allowed to practice in Mexico or in the United States, that would forbid lawyers from performing legal services in MDPs.

CONCLUSION

Therefore, it is clear that in the not so far future, the legal field will contain a number of boutiques that will continue to be very successful whether locally or in a niche practice. There are firms that already have the reputation of being excellent litigators or patent/trademark/copyright lawyers. However, in the long run, there will not be that many global players, and highly specialized local boutiques might run the risk of not being able to serve big international clients.

In summation, consider this quote made by Mr. Charles Horner of McIntyre Strauder International, "the fact is that the legal and accounting worlds are becoming more and more entwined in each others' futures and this will lead to many of the now existing separate networks coming closer and closer together in the early parts of the next century . . . There is plenty of work for everyone, and as in all things, ultimately it is the clients who will decide."

16. Código de Ética de la Barra Mexicana, Colegio de Abogados, A.C.

17. See generally Código de Ética de la Asociación de Abogados de Empresa, A.C.; Código de Ética Profesional del Ilustre y Nacional Colegio de Abogados de México, A.C.