

PRESS CUTTING

CLIENT Counterpoint
DATE 21 December 2011

Managing Partner

Global village

International law firms should look beyond internal risks and assess local cultural and social dynamics, says Catherine Fieschi

Law firms – like many other businesses – tend to see culture as an internal challenge: as the hidden thread that weaves habits, conventions and practices together across an organisation. Culture in this sense may represent assets or liabilities: they are about cohesion but sometimes also about inertia; about resilience and professionalism, but also about rigidity and groupthink. So, in this respect, firm culture can represent both a resource and a risk.

But this kind of conception of cultural risk needs to be updated by a deeper, more thorough-going analysis that goes beyond internal issues and looks outwards towards the complex cultural and social dynamics that increasingly inform all aspects of our world and work. Firms dealing with fast-moving, high-stakes partnerships and deals in culturally diverse global environments should take heed.

It may have become a cliché, but it is nevertheless true that we are living a far more interdependent, connected and, consequentially, more uncertain world. Not only has the quantity of contacts with others increased, but so has the variety, pace and, often, transparency or 'publicness' of those contacts.

For law firms, this has meant an internationalisation of contracts, a growing trend toward universalising norms and consequently new demands for compliance (on clients and firms themselves). This trend has created pressures to cater to difference, context and specificity.

To live in the global village, you need to know your villagers. In the words of a senior partner of a large US law firm, "it doesn't matter how big, international or good you are, you need more than ever to know about local regulations, mindsets and habits".

This is not about abiding by superficial mores, like how to slurp noodles in Japan or kissing thrice in the Netherlands. This is about much more. It is about taking into account the hidden wiring that lies behind preferences, choices and interests. In other words, it is about learning what makes people and societies tick, but isn't necessarily immediately visible to the naked eye.

This is the 'dark matter' of risk. Finding it out allows you to know how goals are set, standards agreed upon, and, above all, risks perceived and circulated. Culture shapes all of these and is thus a crucial lens onto business relationships and how the priorities and choices of others

group as they recognise themselves. It can encompass anything from language and clichés to legal frameworks, from architecture to political traditions. It works on all levels, through individuals, families, organisations and states.

The paradox of culture is that, when you're in it, it is very difficult to evaluate and understand – like the weather. But when you're on the outside, it may be outright invisible or incomprehensible.

Cultural risk analysis can bring to the fore what might seem incomprehensible or invisible. This translates into stronger partnerships and more satisfying and successful client relationships (see box: Case study).

"This is not just about having local knowledge – it is about drawing conclusions from active comparison and through this exercise determining what will work in one situation with some clients and not in another"

are derived. It is particularly relevant in assessing and covenanting potential risks and compensation.

The law itself is a cultural form that reacts to and is shaped by cultural context; a context itself shaped by legal norms. Laws and culture are intrinsically related; the relationship between the two is what turns people living together randomly into the societies we choose to live in.

Culture is often thought of as something quite nebulous, but essentially it is the shared practices and values, collective stories, arts and institutions that characterise a particular place or

Long-term benefits

Cultural risk analysis is crucial in building on local knowledge and taking it further to much more long-term, profitable ends. As scholars have consistently argued, risks and interests cannot be taken as a simple matter of fact; both are laden with values and perceptions, as are one's interests.

This is no longer just about having local knowledge – it is about drawing conclusions from active comparison and through this exercise determining what will work in one situation with some clients and not in another. It is an enormous strategic advantage in a world in which:

1. compliance regimes require firms to answer to universal norms in local contexts; and
2. law firms are increasingly brokering deals between a variety of partners.

The global economy doesn't just require legal practitioners to understand local contexts – it demands that they be fluent in several contexts at once.

The pervasive importance of a cultural risk analysis can be illustrated even through what, at first glance, might seem like a purely technical matter – tax law for instance.

Tax regimes and incentives are, at their core, an enshrining of cultural norms: the uses of the marital couple as a taxable unit in the US, for instance, reveals something about cultural preferences in the US, as well as about the role of religion and the purpose of taxation.

In addition, comparative studies about the application of the general anti-avoidance rule (GAAR) in different countries reveal completely different and persistent societal attitudes to tax avoidance across Asia.

Firms involved in deals with China or India should take on board comparative studies on progressive taxation that reveal significant cultural differences between the two countries in terms of upcoming revisions to tax regimes (rooted in communal rather than individual welfare preferences in China, and a historic ambivalence toward utilitarianism in India).

These are just a few obvious examples, but tax is an interesting area because, despite its technical nature, it is a reliable gauge of what counts as valuable or, in fact, illegitimate in different contexts. These are not universals – they are certainly not universally expressed – and they shape people's perceptions of risk and their subsequent behaviour. Knowing these things means a better capacity to anticipate future behaviours and obstacles.

Understanding these issues becomes crucial when it comes to being able to identify the right pressure points for a negotiation. Appeals to fairness, equity and indeed the very definition of the risks that lawyers attempt to codify will vary and have inordinate consequences on how to negotiate.

While local knowledge is important, it is the capacity to evaluate how it plays

CASE STUDY

A cultural risk assessment is about taking into account the myriad interests and experiences that shape preferences and reactions in any given political, social or legal situation – and then factoring them in adequately and subtly.

Take for example a sticky situation developing between competing interest groups in a seaside community in South Africa. The area is traditionally deprived, having experienced the brunt of apartheid era underdevelopment.

Recently, large amounts of titanium and other valuable heavy minerals have been found in sand dunes there and have become the target of an Australian-based mining corporation. The government sees the potential for significant direct investment and the creation of much-needed jobs in the area.

But the region is also one of outstanding natural beauty and a biodiversity hotspot. Environmentalists are campaigning against the mining house's bid. Many see the best avenue for economic development to be a community-run ecotourism venture. The stakes and tensions run high.

In recent years, there have been accusations of bribery and intimidatory violence as factions compete to impose their interests. The work of international legal teams has become immensely complicated as the situation has become increasingly complex and opaque.

It is not that these interests are necessarily irreconcilable, or that they cannot be aligned. What is crucial is how each perceives the path to agreement to be paved, how the process will work and, actually, what each party understands to be at stake. The whole context needs to be taken into account.

The way that some community members have mobilised in resistance is only understandable through a historical and social prism that requires local and international knowledge and a deep understanding of actors and networks.

In objecting to government intervention and what they perceive to be the buying-off of their leaders, many explicitly recall the region's long and bitter struggle against top-down development initiatives. Since the 1960s, when the state imposed hated agricultural reforms, the area has been a potential hotbed for peasant revolts.

With regard to the mining proposals, young men and women in the community explicitly recall the struggles of their grandparents and, through this deep, loaded cultural memory, their sense of what is taking place around them shifts, as do their goals and ways in which they strive to reach them.

This kind of detailed, granular knowledge of history, local institutions, stories and symbolism is crucial to making good strategic decisions for all parties involved. It could change the way approaches are made, saving a lot of time and resources.

Looking behind the surface of things, past the traditional power brokers, headlines and statistics is the work of cultural risk assessment. It is about understanding the past and the heritage, about being able to have the right conversation with the right actors, using the right words. It is all about local knowledge.

Legal practitioners who interpret the law in order to mitigate the risks of others by bringing them into covenant stand to benefit from this kind of insight. While translating the law of the land, they are also involved in gauging interests and risks. If these are complex and multiple, composed of hidden narratives, perceptions and tacit agendas, they can be overlooked and sidelined.

Missing them may mean missing something vital for a client, or emphasising something the client may see as incidental. This applies to working with new partners too.

a role – which is often not identifiable by the local – that makes the difference in business terms.

Cultural risk is a new approach to risk analysis – it does not sideline the old, but it gets rid of blindspots that are making the old risk analysis increasingly useless without it.

Law firms operating in international business environments, where the risks of misunderstandings and disconnects is high, should take seriously the role of culture as it shapes the very needs and risks they are seeking to codify. mp

CATHERINE.FIESCHI@COUNTERPOINT.UK.COM