PwC – What to do about it

By LawVision on October 24, 2017

As if the continuing flat market and stagnant growth for U.S. law firms hasn't been enough, a new challenge emerged last month when, for the first time, the legal arm of PwC, one of the big four accounting firms, opened a U.S. office. The move rattled the legal market and lit up social media sites with prognostications of doom, despair and uncertainty.

As you wade through the hype and speculation, this is what you need to be thinking about:

1. It's not as big of a deal as you might think.
2. It's actually a much bigger deal than you think.
3. You can't really do anything about it.
4. You actually can do something about it (and you should.)

It's not as big of a deal as you might think.

PwC's entry into the U.S. market is limited only to the District of Columbia. The reason for this is that the District allows fee sharing with non-lawyers and allows lawyers to register as foreign legal consultants and practice foreign law.

PwC formed a separate entity called ILC Legal, which The New York Times reports will only be handling non-U.S. issues using "foreign legal consultants" rather than fully-licensed U.S. lawyers. PwC's strategy is all about integrating a wide variety of services from different disciplines to serve a client's diverse needs. The new office surely falls short of that model with its narrowly defined and limited market.

The launch of the new firm also raises questions about conflicts and privilege. Even if the new firm were to expand into other areas, there are still troubling unanswered questions about whether a law firm controlled by another entity creates unavoidable conflicts of interest between the controlling entity (the accounting firm) and the law firm representing its clients. Also unanswered is whether clients lose important privacy rights by way of the attorney-client privilege when information is shared with that controlling entity.

Furthermore, U.S. accounting firms are generally precluded from performing consulting and other services for companies where they are already engaged to do audits. With so many restrictions and unanswered questions, PwC's new law firm doesn't seem so formidable.

It's actually a much bigger deal than you think.

Even though the District of Columbia is the only jurisdiction to allow fee sharing, fee sharing rules are not federally mandated. They are set state-by-state based on a set of model rules and opinions of various ethics committees and commissions. There is a growing momentum for changes to those rules. Many see the rules around fee sharing as outdated and originally designed to prevent personal injury "runners" from selling services to unsuspecting injured people. States may begin relaxing those rules over time.

An example of a subtle shift in fee sharing attitudes arose recently in New York. The rules of professional conduct in that state, unlike those in Washington D.C. and many other foreign jurisdictions, do not allow fee sharing. However, a question arose regarding how to deal with a New York law firm splitting fees with a firm that has non-lawyer owners in a jurisdiction where fee-splitting is allowed. The New York Legal Ethics Reporter reported that opinions from the ABA, the NYCBA and the NYSBA rules committee all concluded that such an arrangement should be deemed proper, reasoning that it would pose little risk of impairing the New York lawyers' independent professional judgment.

Of course, despite the opinion of the New York committees, there is a potential risk of a conflict of interest if the non-lawyer at the foreign firm is directing the work. Relaxing the rule to allow for sharing in this way is just one example of how the fee-sharing rules are eroding and may well end soon. The practice is already common in Europe and other countries. The Big 4 have all benefited from new laws in foreign jurisdictions allowing fee-sharing and non-lawyer ownership of law firms.

Of course, if the fee-sharing rules change, there will be many more entries into the market and many more associated implications than just the entry of Big 4 accounting and consulting firms. But, the Big 4 will be perfectly positioned to take advantage of the new rules and stand to benefit from any changes, posing a big threat to law firm business.

In addition to the softening of fee-sharing rules, one only has to look at the stated intentions of ILC to see that a threat exists. The American Lawyer reported last month that PwC's Richard Edmundson, who will be running the new entity, stated that although they are not planning to practice U.S. law, in his opinion, they certainly could if so inclined. Edmundson claims ILC "isn't controlled by the accounting firm, so it can in theory do anything that any independent law firm can do." That statement can't be anything but a clear line in the sand and a challenge to U.S. law firms.

You can't really do anything about it.

Make no mistake about it: "ILC" stands for "I Like your Clients." PwC and the rest of the Big 4 are coming after law firms with both hands swinging.

The new firm will clearly act as a marketing team drawing in U.S. based multinationals. The more relationships that office can create, the better they and the rest of PwC will be positioned as fee-sharing rules soften. Even before any changes in rules, U.S. based firms advising companies on non-U.S. matters are already competing with PwC lawyers who are backed by the more advanced marketing and integrated approaches of the Big 4.

PwC Senior Partner Shirley Brookes shared the firm's strategy recently with Legal Business: "Our Strategy is dead simple. It is to offer to clients a legal service that complements something that PwC is doing. We are not trying to be a standalone law firm, it has got to be that complementary offering – that is our differentiator in the market."

This is the crux of the problem for law firms. The Big 4 have been solving the problem of bringing all necessary resources together to solve the complex and varied problems of clients for a long time. Clients need it, want it and ask for it and the Big 4 have answered that call in many jurisdictions. Law firms have been traditionally very slow to create those same offerings. Partly because of the rules, but, more significantly, due to tradition and an inability to shake old ways and face the market effectively.

The die seems to be cast, and the Big 4 have already won.

You actually can do something about it and you should.

As a good friend of mine likes to say, the first rule when you are in a fight is to know that you are in a fight.

When a company affiliated and working with over 3000 lawyers worldwide opens an office in your firm's backyard, effectively proclaiming it has a marketing office, you are in a fight. PwC is here to stay, and despite existing fee-sharing rules, standards and traditions, they intend to take a large piece of the U.S. large law firm market. The Big 4 are superior at quarterbacking the integrated forces of multiple disciplines to solve a client's messy problems by way of a one-stop-shop. But they are also better at client service, properly incentivized compensation plans, client teams, industry teams, industry facing go-to-market plans, collaborating across offices and practice groups, selling multiple services to the same client, pitching as a cross-disciplinary team, building an internal culture of business development and training and coaching professionals to know how to build new business very early in their careers.

U.S. firms are not just in a fight, they are in a big one. But, they don't have to just sit there. This is the wake-up call, someone just threw the first punch. Big Law is in it, but they don't have to lose it. Law firms can handle this development. In fact, U.S. firms can do better than just handle it; they can actually profit from it. But, firms must get up off the mat, get back in the fight and get serious if they want to keep and build their market share.

This is what you need to do to help your firm compete:

- **First, bullet-proof your top client relationships**. Get back to the basics. Know your client. Conduct meaningful client interviews, get feedback and adjust. Build robust client teams with strict accountability with the right team players. Establish solid long term institutional knowledge that rivals or even bests institutional knowledge retained at the client itself. Make sure other professional service providers are referred through and coordinated by you. Create strong bonds between your lower level staff (associate and income level partners) and lower level staff at the client. Service clients the way they want to be serviced. Create client service standards based on your clients' goals, not the firm's.
- **Approach new clients by considering their business problems as a whole and their legal problems as a subset of those issues**. Create a business development culture based on that holistic approach to client problems. Provide valuable business development training and coaching to your lawyers so they can compete with Big 4 business development practices. Teach them to track opportunities, build pipelines, reach out appropriately and collaborate when they approach new opportunities.
- **Build collaborative teams that include multiple disciplines, including other relevant professional service providers**. Show clients that you can offer the same thing large consulting firms can offer – a multi-disciplinary approach to complex problems. To do this you need to build relationships with referral sources and complementary professionals. That requires finesse and business development training.

This fight is not over. Firms have an opportunity to beat the Big 4 at their own game. There is no reason they can't. Whether or not the Big 4 turn out to be as big a threat as some think, firms that make changes now will profit from their preparation and be a stronger threat to their existing competition. The time to act is now.