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Hands across the CIS

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The CIS would seem to provide the perfect opportunity for Russian and Ukrainian firms to open offices across the region. Here James Swift examines the reasons why, with the exception of Magisters, this has not happened

The CIS countries are a dysfunctional family of states. The explosion of violence in Ukraine's parliament in April when the government announced it would extend a lease in the Black Sea to the Russian navy shows just how tenuous the link between the nations can be.

But when there are good profits to be made differences tend to be forgotten, and historical animosity cannot explain why - with the exception of Magisters - Russian and Ukrainian law firms have so far failed to take advantage of such a geographically cohesive market as the CIS to create firms that span the region.

A handful of local players do have offices in both Ukraine and Russia; Yust and Liniya Prava, for example. But still, these firms are smaller, more niche and stop short of being true pan-CIS firms. Kazakhstan-based Grata also has offices across the CIS, but sticks to the central Asian and Caspian countries, such as Uzbekistan, Azerbaijan and Kyrgyzstan.

So why has creating a lasting pan-CIS firm proved such a challenge?

Different strokes

One reason why CIS firms have not shown much interest in spreading their wings is the landscape of their respective domestic legal markets which, despite 70 years of shared experience under Soviet control, and 200 years of the Russian Empire before that, have little in common.

"Russia and Ukraine are very different markets - notwithstanding Russia's attempts to make them as similar as possible," says Daniel Bilak a partner in CMS Cameron McKenna's Kiev office. "The first thing to realise is Russia has one economic centre of power and a smaller adjunct - Moscow and St. Petersburg. The other places are usually one-client towns."

The Ukrainian market, on the other hand, developed more evenly over six centres of power - Donetsk, Dnipropetrovsk, Kharkiv, Kiev, Odessa and Lviv - none of which have been as dominant as Moscow.

But neither Ukraine nor Russia's markets have been conducive to encouraging law firms to develop.

Ukraine, being a much smaller market, was of little interest to international law firms. Domestic lawyers often refer to Baker & McKenzie as the only firm that has shown a long-term commitment to developing the region. There is a - contingent of international firms that also have offices in Ukraine, but it is small. At one stage Kiev looked as if it was going to get a little more crowded, with a number of international firms circling the market - most seriously White & Case - but the downturn promptly put a stop to that.

As a consequence of the market, domestic firms have been allowed to flourish in Ukraine. But the market is populated largely by what one partner describes as “artisan law firms” - single-partner operations spawned out of opportunity that lack the structure and ambition to expand.

And because there have been so few international players in Ukraine, there has been little incentive for local firms to change. One partner even went so far as to say that Clifford Chance’s 2007 arrival in Kiev was “a godsend” because firms were getting “sloppy”.

Not that these ‘artisan’ firms have been unsuccessful; quite the opposite. But the firms are led by partners who, although for the most part are just into their 40s, caught the last boom, have already built up a profitable practice and for whom the risk and cost of expanding abroad probably seems like a gratuitous hassle.

“The managing partners have achieved everything they wanted, and they don’t have the enthusiasm - you have to be younger and hungrier,” says Oleh - Malsky, head of corporate at Astapov Lawyers. “But I don’t know why there’s been no initiative from Russian the side.” It is a good question.

Russia hour

“I never understood why national Russian firms never rolled out their regional - coverage to these countries,” says Vienna-based Schoenherr partner Alexander Popp, echoing Malsky. “They would be the first ones who should do it because of their connections in the regions.”

A lot of people share the confusion. At first glance Russian firms would seem like the more ideal candidates for CIS expansion, if for no other reason than because Moscow is a more mature jurisdiction and, logically, a better one from which to base a CIS empire.

But unlike any city in Ukraine, Moscow experienced a free-for-all of international firms coming in to stake their claim, taking advantage of the country’s lack of regulation. The entire magic circle is in Moscow, as is the cream of the US.

For many domestic firms, scratching a living in Russia is a big enough task without the distraction of expansion.

“The local Russian firms have had to fight to get to the upper echelons [of the market] because this is taken by international firms and so maybe they were so focused on getting through and becoming full service that they didn’t have the extra focus, resources or time to do this,” says Irina Paliashvili, president and senior counsel at the RULG-Ukrainian Legal Group. “Their priority was to become fully competitive in their own market.

To compound domestic firms’ woes, a lot of transaction work done in Moscow is done using UK law, giving the internationals a further edge over the local competition.

The effect of UK Law

“There are a lot of transactions in Russia governed by UK law because Russian law is not sophisticated enough,” says Dimitry Afanasiev, chairman of Egorov Puginsky Afanasiev & Partners, “so it’s difficult for Russian firms because if the laws are in English, then it makes sense for a client to use a UK player.”

Another senior partner at a Russian firm goes further: “I can’t think of any other BRIC [Brazil Russian India China] country that has such low regard for its own law,” says the source. “But the situation may soon change because enforcement rules are getting better and the law is becoming more sophisticated. Also, because of the global financial crisis, some of the power

has shifted to state-owned banks, which often insist on Russian law being used in contracts.”

Of course, it may just be that the other CIS countries are not that interesting to Moscow firms, and that to paint a picture of firms that are desperate to break into Kiev but cannot manage it is wrong.

According to one partner at a Ukraine firm, lawyers in Moscow are more pragmatic than their Ukrainian counterparts and are only likely to expand at the behest of clients: “I don’t think Russian firms will open just to be present and then look for work. Ukrainians will do that just for the challenge, but Russians take a more balanced approach.”

It makes sense. After all, plenty of Russian firms have found the resources to open offices in other countries.

“I think Russian firms looked first to go to London before other CIS countries,” says Carol Patterson, CIS managing partner for Baker & McKenzie. “Before they think about other CIS countries they seem to be trying to get a toe-hold in other markets that go with Russian investment, such as London and Cyprus.”

But a strengthening of relations between the CIS countries evidenced by the talks surrounding the Customs Union, and between Ukraine and Russia under the Ukraine’s new president Viktor Yanukovich, may change clients’ priorities.

“Law firms tend to follow clients and because relations between the CIS countries have disintegrated, more work is coming from the West,” says the senior partner source.

“But that’s changing because we are seeing reintegration from satellite republics. The leadership in these countries had been living in a dream, thinking they would join the US overnight, but now they have realised that they are stuck in this land mass together and that the commercial links that existed before have to come back, but this has only started happening recently.”

Magisters’ model

Not that firms are champing at the bit to start opening offices all over the CIS. Even if business ties between the countries increase, many partners are still sceptical about the pan-CIS model adopted by Magisters, which has offices in Ukraine, Moscow, Belarus and Kazakhstan (and London).

Indeed, Magisters’ expansion, which began in 2006, was not down to pure economics and managing partner Andrew Mac admits that the firm is “not just following” clients’ needs.

Rather the firm’s growth was driven by the vision and ambition of one man - co-founding partner Oleg Riabokon, who left in 2009 to pursue a career in politics. He formed his own party and stood for president, coming last with 0.03 per cent of the vote (or 8,334 votes) in the 2010 presidential elections.

Not that Mac gives the impression of a man who has inherited a white elephant from his predecessor. According to him, a spread of offices helped soften the blow dealt by the economic crash, which devastated Ukraine more than any other CIS country.

“In 2009 we disproportionately felt the global financial crisis in Kiev, even by Ukraine standards,” says Mac, “so it helped a lot to have a cushion of offices in different regions, which were all profitable.”

According to Mac, turning a profit in their satellite offices has been relatively painless. Mac says the Moscow office, which opened in the fourth quarter of

2006 was “making serious profits” by mid-2008. In Kazakhstan, he says the firm turned a profit in just nine months.

Mac is keen to develop the regional strategy even further; moving the centre of the firm away from Kiev, opening an office in the US and relocating himself to London after growing “sick and tired” of flying.

Possible problems

But while there are plenty of commentators who admire what Magisters has set out to achieve, others remain skeptical about the reality of running a network of offices in the CIS.

“The strategy chosen by Magisters is not really a bad one and they are generally very good,” says Malskyy. “But the firm may be facing two possible problems.

“First, a large part of work comes from referrals - it may even be as much as 40 per cent in some cases - and a lot of these clients have offices in Kazakhstan and Russia, so you have to be careful. Firms will not give work to a competitor in any market, so if Magisters develops practices that are more international, such as banking and financing in Russia, it could be suicidal for the firm.

“The second challenge is the quality of work. A firm has to make sure the quality it provides in all jurisdictions is consistent and I’m not sure that happens in Magisters because it’s not that integrated. The firm is great in Ukraine, fine in Russia, but the quality is not that high in Belarus, which brings into question whether you really need the network.”

In response to the question of damaging their referral alliances, Magisters is adamant that it is not stepping on any toes by opening offices in Moscow, Kazakhstan or Belarus.

“We are developing in the niche areas overlooked by other firms,” says Mac. “At first [in Moscow] we were regulatory-focused and now it’s PPPs, which is - something we think top-tier firms have not tried to develop on a serious level.

“Our goal is to compete with Salans and CMS, not Freshfields Bruckhaus Deringer or Cleary Gottlieb Steen & Hamilton, because it’s not possible. In Kazakhstan we’re in Astana. There’s already some presence by firms in Almaty, which focus on oil and gas, and so in Kazakhstan we do everything except that: investor work and working with the state and so on.”

The majority of opinion in the market supports Mac’s claim that opening offices in other countries is not fatal to referral relationships. This is a good thing, since Paliashvili corroborates Malskyy’s theory about the importance of referral work for Ukraine firms, confirming that, at the RULG-Ukrainian Legal Group, it accounts for around 30 per cent of work.

A matter of trust

In the end it comes down to trust and the relationships between Magisters and its referral firms.

“I will continue to use them in Moscow for as long as I can rely on them not to use the business that I refer to them to steal my clients away from me in Ukraine,” says one partner at an international firm that refers work to Magisters.

The second problem, namely maintaining a single standard of quality across international offices, is not one unique to Magisters. But it is one exacerbated by the CIS market, and though the consensus seems to be that Magisters’ quality does vary from country to country, the firm takes integration seriously,

with a central administration, firm-wide procedures and templates, and the admission of Moscow partners into the equity.

The problem in the Ukraine and CIS is that more than in most jurisdictions, being local is important.

“CIS markets are smaller but tough,” says one partner at a Moscow law firm. “The rules of the game can be very complicated, and to be successful in CIS jurisdictions you need to be involved in the community and you need to be local leader. It’s very difficult for Russian law firms to be local leaders in Kiev and visa versa.”

For this reason many firms in the CIS prefer to operate solely through alliance networks, such as the Leading CounselNetwork (LCN) which includes as - members Egorov Puginsky Afanasiev & Partners and RULG-Ukrainian Legal Group. Magisters also has a network of alliance firms it refers work to in nine-countries.

Loose associations such as LCN are favoured largely because they are cheaper and because the majority of referral work still comes from outside the CIS.

And though the CIS countries are starting to pull together, it is unlikely that more pan-CIS firms will emerge in the near future. Magisters has been the exception to the rule, driven by its former managing partner’s personal mission. It seems unlikely that the firm would have embarked upon such an expansion without him.

Now that a new, hungrier generation of partners is coming up in firms, expansion might start to become more of a pressing issue for lawyers in the CIS, but it’s easy to forget that these firms only began to develop over the past 20 years.

“Baker & McKenzie probably didn’t go global in the first 20 years but we have to act much more quickly because we are in a globalisation age and we can’t wait 100 years to go global,” says Paliashvili, “So I respect Magisters for what it is doing.”

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