ECONOMIC GLOBALIZATION AND THE NEED FOR LEGAL INNOVATION

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ABSTRACT

The legal framework is shifting with the era of globalization. With the expansion of business, there has been an increased need for international legal services. The late 1990s saw the outsourcing of manufacturing industries. Today, we see the same with the services industry. Not only are U.S. firms facing this service revolution, but they are also facing key emerging countries protecting their legal markets, making it illegal for foreign lawyers to practice or to advise on their laws. This paper will first address the services revolution, describing the current changes within the law services industry. It will then take a look at how key emerging countries are responding to the globalization of law services, particularly focusing on the BRIC countries (Brazil, Russia, India, China). The paper will then shift focus to how the American legal market, the ABA specifically, is responding to the increase in international practice. Lastly, the paper will conclude on how the legal industry will need to change in order to capture the economic benefits of the increased demand for international legal services.

Today mankind is entering a new phase of history made distinct by globalization, which is cutting across all previous barriers and boundaries.
– Dr. Adimola O. Popoola

INTRODUCTION: THE FLATTENING OF THE WORLD AND THE LEGAL MARKET

Globalization allows jurisdictional lines to be crossed every day. Whether globalization carries positive or negative connotations, the reality is that nations face increasing interdependence and integration at a worldwide scale. This global integration has challenged the traditional notion of state sovereignty, where states have had to adjust their economic, political, and social structures to obtain the advantages of globalization while mitigating the risks. Businesses too must effectively manage the opportunities and appropriately address the threats to create a viable, sustainable business in a world that is highly integrated. Although globalization is not a new phenomenon, the speed at which it is occurring has rapidly accelerated and its impact has been magnified since the turn of the century.¹

Technological developments have allowed the rapid spread of goods and information across traditional country borders, creating linkages between countries and businesses.Digitization of service activities further reduces the transaction costs of trade, increasing the amount of business that is carried overseas. With increased capabilities to interact at an international level, developing markets have experienced great economic expansion. These emerging markets provide a financial opportunity for the United States’ economy and are a major source of growth for the world economy. However, the success or failure of these rapidly developing economies has potential measurable impacts on the U.S. and other economies around the world. Specifically, the BRIC countries have become an increasingly large component of the global economy. In the last ten years, the BRIC countries have accounted for more than one-third of global GDP growth and have grown from one-sixth of the world’s economy to almost one-fourth. By 2020, the BRIC countries are expected to account for a third of the global economy and contribute about 49 percent of global GDP growth. The high economic growth, rising populations, and increasing GDP of these emerging countries are shifting business operations to these attractive new markets, offering vast growth opportunities.

As a result, legal services have followed businesses into the globalized market. Greater economic interactions among businesses, financial institutions, individuals, governments, non-governmental organizations, and inter-governmental groups have stimulated the growing international market for legal services. As businesses have become international, clients expect law firms to be well-versed and able to advise on foreign laws. With the expansion of economic activity and movement of individuals, lawyers need to expand the scope of their practices, gaining international legal expertise.

2. Freidman coined this new period as “Globalization 3.0.” He argues that although many forces of globalization have been around for years, the twenty-first century saw added power to see these forces, increasing the speed at which globalization occurred, encountering new challenges and benefits. THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY, 205 (2007).

3. BRIC refers to the grouping of Brazil, Russia, India, and China. These countries are grouped together under the acronym of “BRIC” because they are deemed to be in a similar stage of advanced economic development that will have a great impact on the world economy. See generally GOLDMAN SACHS, DREAMING WITH THE BRICS: THE PATH TO 2050, Global Economics Paper 99 (Oct. 1, 2003), available at http://www.goldmansachs.com/our-thinking/brics/brics-dream.html.


5. Id. at 2.


However, as developing economies continue to expand, so does the competition in many industries. The legal services industry is no exception. Unfortunately, American lawyers have recently attempted to open offices and offer legal services abroad, only to be met with strong resistance from foreign countries, particularly the BRIC countries. In the face of foreign competition, these important economic countries have restricted foreign lawyers from accessing to their legal system. As a result, American lawyers have been limited in their ability to deliver legal services abroad, impeding their ability to meet the international needs of their clients. As the BRIC countries continue to grow into important global economic players, there will be a rising demand for legal services in these nations that foreign lawyers will not have access to. There is great economic benefit to be gained by liberalizing restrictions against foreign lawyers; however, the current restrictions do not provide access to these benefits.

This Note will first provide a brief background to the services industry, describing the economic trends of the U.S. economy. The Note will then look at how key emerging markets, the BRIC countries, and their legal services industry are responding to the increased demand of international practice. The Note will then shift focus to describe the U.S. legal industry and how it is responding to the increase in foreign lawyers and clients' international needs. To conclude, the Note will offer suggestions regarding how the transnational legal system can transform to meet the needs of globalization and how the American law firms can remain competitive in light of the increase in foreign competition and client demand for lower legal costs.

I. SERVICES REVOLUTION

Technological developments and market integration at a global scale have been influential in driving change in the United States economy. The Industrial Revolution transitioned the economy to become dominantly manufacturing in the twentieth century, replacing the agricultural industry. Globalization then gradually moved both the agricultural and manufacturing sectors overseas in search of cheaper labor, transitioning the U.S. market into a services-oriented economy following World War II. The vast technological changes in the last few decades have not only accelerated globalization, but also, the overseas movement of employment, reflecting an explosive rise of services. The service sector is now experiencing a similar economic transformation with the advent of rapid development and

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8. Services are "activities, benefits or satisfactions which are offered for sale, or are provided in connection with the sale of goods." William J. Regan, The Service Revolution, 27 THE J. OF MARKETING 57, 57 (1963).
widespread deployment of information technologies. As a result of technological development and globalization, the service sector is expanding overseas at a much faster pace than the manufacturing and agricultural industry saw. This section will examine how the services industry is experiencing the same economic shifts previous U.S. economies experienced. It will also examine the economic implications it has for U.S. services, particularly the legal industry.

The American economy has undergone fundamental shifts in the last century. In the early 1800s, the American economy was heavily based on agriculture. Through new technologies, such as the cotton gin, farming became more efficient, increasing the productivity of farming commodities. In fact, in 1900, farms employed close to half of the U.S. workforce. However, with the advent of new technological innovations, the Industrial Revolution began to transition the U.S. from an agricultural economy to an industrial economy throughout the twentieth century. As U.S. agriculture became increasingly more efficient and less labor intensive, the American economy began to focus on manufacturing, producing goods at an unprecedented scale. By 1900, manufacturing constituted about one-fourth of the national product and by 1950, it constituted about one-third. From 1900 to 2005, the number of farms in the U.S. fell by 63 percent. By 1950, manufacturing employed 48 percent of all workers in the United States, while agriculture employed roughly 15 percent. The Industrial Revolution allowed goods to be mass-produced as machinery automated the manufacturing process, just as agricultural innovations allowed farming to increase productivity. Throughout the first half of the twentieth century,

9. "Once limited to manufacturing, the globalization of information technology (IT) has given rise to a new offshoring phenomenon. Forced to lower costs in the face of fierce global competition, a number of U.S. firms are now moving services work abroad." OFFICE OF SENATOR JOSEPH LIEBERMAN, OFFSHORE OUTSOURCING AND AMERICA'S COMPETITIVE EDGE: LOSING OUT IN THE HIGH TECHNOLOGY R&D AND SERVICE SECTORS, 7 (May 11, 2004), available at http://lieberman.senate.gov/assets/pdf/off_shoring.pdf.

10. Throughout the 1800s there was more land available for farming as government policies, such as the Louisiana Purchase in 1803, the annexation of Texas in 1845, or the Homestead Act of 1862, helped promote land settlement. JAMES OLSON, ENCYCLOPEDIA OF THE INDUSTRIAL REVOLUTION IN AMERICA, 1 (2002).

11. Id. at 2.


17. Id.
the United States economy relied heavily on its trade in the manufacturing sector, moving away from agriculture. 18

The increase in technological developments throughout the 1900s also impacted international trade. With the development of the railroad and cars, transportation costs fell, allowing for the increase in the trading of goods. 19

New technological developments, such as the telegraph and the telephone, further decreased transaction costs, paving the way for international trade. 20

As a result, other countries were able to mimic the technological developments of the U.S. and produce goods cheaply, which in turn increased global competition. Today, fewer than two percent of Americans are employed in the agricultural sector today. 21 In 2003, only 12 percent of jobs were manufacturing jobs. 22 In fact, from 2000 to 2003, more than two million U.S. manufacturing jobs were lost due to global competition. 23 By 2003, approximately 84 percent of U.S. jobs, approximately 95 million jobs, were in the service sector, accounting for about four-fifths of U.S. GDP. 24

Manufacturing jobs were outsourced to developing countries for cheaper labor, leaving the U.S. largely a knowledge-based economy. 25 The U.S. manufacturing market saw consumer demand changes, a maturing home market, and low-cost rivals overseas. As a result, U.S. manufacturers were largely unable to compete with foreign competitors. This in turn led to an outcry of the loss of American jobs to overseas competitors. 26

Manufacturing and agriculture were once the dominant sectors of the U.S. economy; today, services now represent the majority of the market.

Countries facing increased competition often erect trade barriers to protect their domestic markets. 27 Many Americans wanted protection as
their jobs were being moved overseas in response to cheaper labor. 28 However, consumers and businesses benefit from competition. Although free trade reduces the profit of domestic firms in their home market, domestic firms have the opportunity to earn more profit abroad. 29 Furthermore, when firms compete, consumers get the best price and quality of goods and services, in addition to more choices. 30 Competition ensures the most efficient practices prevail, benefiting everyone. Firms must differentiate themselves, spurring the invention of new or better products, or more efficient processes. 31 Innovation, in turn, benefits consumers, helps drive economic growth, and increases standards of living. 32 The increase in competition in the manufacturing industry has arguably led to leaner and more competitive operations, as businesses have focused on the research, design, and processes for improving their products. 33 Furthermore, offshoring certain tasks allow businesses to focus on their core competencies, freeing up labor and resources that can be applied to other sectors. 34 Restrictions placed on trade only compound the loss of economic efficiency, limiting the opportunities to realize the benefits of trade.

In industrialized countries, at least two-thirds of the labor force is employed in the services industry, accounting for the majority of their GDPs. 35 For a while, the concerns with globalization related to the manufacturing industry, not the services sector. 36 Many believed that the services were “non-tradables”; service providers and their customers

Such anti-competitive behavior can be in many different forms, including: horizontal agreements, tacit collusion, vertical restraints, tariffs, etc. Roderick Meiklejohn, An International Competition Policy: Do We Need It? Is It Feasible?, 22 THE WORLD ECON. 1233, 1237 (Dec. 17, 2002).


29. Martin, supra note 27, at 895. “[G]lobal competition is a two-way street. United States-based companies gain opportunities to win global business, particularly as developing nations improve their own domestic markets.” Mehlman, supra note 28, at 3.


31. Martin, supra note 27, at 899.

32. Morrissey, supra note 25.

33. Mehlman, supra note 28, at 3.

34. LIEBERMAN, supra note 9 at 23.


36. Trade in services was so small from 1960 to 2005 that it was not separately estimated in the percentage of world trade. Today, it is more than one quarter of trade, growing rapidly. Krueger, supra note 19.
required close geographic and relational proximity. However, as a result of globalization and rapid technological development, this is no longer necessary. Workers are able to telecommute and transmit resources globally. In fact, cross-border trade in services has increased dramatically from $77.5 billion in 1986 to $530.3 billion in 2010. The services sector has faced an increase in global competitors as well; "some service sectors are being invaded by foreign firms and new entrants." Services are being industrialized, as technology has transformed the service sector, making services possible to offshore. The U.S. service industry is undergoing a similar revolution to overseas competitors as the manufacturing and agricultural sectors experienced. Global competition is on the rise for the services industry, and as history has demonstrated "protectionism raises its ugly, if discredited, head whenever economies undergo a major transformation."

For some, the legal profession is not a "service" subject to the commercial competition of industry. However, the legal industry competes by selling its judgment, experience, and legal research. Reputation for quality is among the most important assets of any law firm, similar to any successful business. U.S. law firms compete on similar aspects as any business: cost, reputation, clients, client loyalty, etc. Furthermore, U.S. legal services are facing increased competition nationally. The law services market has changed significantly following the 2008 economic recession;

38. Id.
41. Id. However, the increase in technology can provide a competitive advantage and innovative practices. "The arrival of new information technologies does not render obsolete all previous assumptions and insights about how to do business, but it does open up new opportunities." Andrew McAfee and Erik Brynjolfsson, Investing in the IT That Makes a Competitive Difference, HAR. BUS. REV. (July-Aug. 2008); see infra The Future of the Legal Industry section.
45. Id.
law firms for the first time engaged in widespread layoffs of attorneys.\textsuperscript{46} With large volumes of students graduating from law school each year, competition for job openings continues to be keen.\textsuperscript{47} This strain has already made the U.S. legal industry the subject of many news articles.\textsuperscript{48} Despite the economic downturn, a decrease in consumer demand, and complaints of high legal fees, the structure of U.S. law firms remains the same.\textsuperscript{49} Over the past decade, there have been substantial increases in legal fees; between 2002 and 2007, total receipts in law firms rose 32 percent in nominal terms.\textsuperscript{50} This has led to an outdated service model, increasing the window for foreign competition.

Instead of restructuring or innovating its business model, U.S. law firms cut costs by cutting staff and limiting the number of new hires.\textsuperscript{51} By contrast, corporations are continuously seeking ways to cut costs and during an economic downturn is no exception. One area of significant focus is legal fees; corporate clients are refusing to pay large attorney fees to fund the "learning curve for neophyte attorneys."\textsuperscript{52} However, in light of the 2008 recession, law firms are realizing that clients have the upper hand and are demanding great financial concessions from their attorneys:

\begin{quote}
[C]lients’ loyalty to the conventional firms will be limited if new legal businesses emerge that offer quicker, more convenient, lower cost alternatives to low- and high-value work that seem to be more geared to the interest of clients and are more business-like in their constitution.\textsuperscript{53}
\end{quote}

Law firms cannot stand idle; they must look for ways to innovate to be competitive and survive to meet client demands. The services revolution will only increase global competition further within the legal community.

\textsuperscript{46} Gillian K. Hadfield, \textit{Legal Infrastructure and the New Economy}, 8 ISJLP I, 34 (Summer 2012).
\textsuperscript{48} See id.
\textsuperscript{51} See Bureau of Labor Statistics \textit{supra} note 47.
\textsuperscript{53} Richard Susskind, \textit{Outside Investors Will Demand a Very Different Type of Law Firm}, TIMES ONLINE (Nov. 12, 2007), http://business.timesonline.co.uk/tol/buisness/law/article2840923.ece.
With the advent of globalization in the services sector, law firms must compete not only at a national level but also at a global level. "[C]ompanies can increasingly compete everywhere. And when you can compete everywhere, in many businesses you must compete everywhere." 54 Following the same trend as the manufacturing sector, services are seeing changes in consumer demands, a mature domestic market, and low-cost alternatives abroad. Law firms have already responded to the opportunities of globalization, outsourcing legal services to save money and capture time efficiencies of the time change between the outsourcer's location and the recipient of the outsourcing assignment. 55 Businesses have done the same for their legal counsel. For example, DuPont offshore sourced its document work to the Philippines, saving approximately six million dollars from its annual $200 million-plus budget. 56 Today, clients live their lives at internet speed, expecting services to be as quick and efficient as possible. 57 However, the pace and cost of traditional lawyering does not satisfy customer demand. U.S. law firms need to recognize that not only their client base, but also their competitors, now come from around the world.

It took the manufacturing and agricultural industries years to transition and move overseas. However, in the last decade, services, including legal services, have moved overseas at an accelerated rate due to enhanced technology. The movement of people, goods, services, money, and information has shaped a globally interdependent world. Massive change has occurred as a result of available information technology; the digital and physical infrastructures of the world are converging. Protectionist policies cannot be afforded for fear of job loss; rather, "[j]obs can be created by focusing on the right industries, providing incentives for research to drive the development and growth of those industries." 58 Unfortunately, this is how the BRIC countries have responded to the increase in global business, and consequently the legal sector within those countries. Such restrictive foreign legal systems make it difficult, if not impossible, to advise clients on their international needs. As business is conducted on the global stage,

54. Thomas Freidman, As Companies Bulk Up, Our Democracies are Vulnerable, OREGONIAN, at D3 (Feb. 6, 2000).
55. Daly, supra note 44, at 404-07. See also SDD Global Advantage, SDD GLOBAL SOLUTIONS (last visited 04/15/2012), http://www.sddglobal.com/index.htm. SDD Global Solutions helps U.S. law firms outsource around the world.
56. Pete Engardio, Let's Offshore The Lawyers, BLOOMBERG BUSINESSWEEK (Sept. 18, 2006), http://www.businessweek.com/magazine/content/06_38/b4001061.htm.
consumer demands for lawyers also reflect a global need for conducting business abroad.

II. BRIC MARKETS LEGAL MONOPOLIES

The BRIC countries are the fastest growing and largest economic markets, accounting for just under half of the world’s population. It is predicted that by 2020, the BRIC countries will be within the top ten largest economies in the world. From 2000 to 2008, the BRIC countries accounted for 30 percent of the increase in global output. Currently, the BRIC countries are some of the United States’ largest trading partners, having a great economic significance on the United States. In fact, the BRIC countries are considered key for retailers’ short-term international growth plans. Further, the BRIC countries have a relative degree of political and social stability compared to other emerging markets, making them an even greater target for investments. These countries provide numerous advantages as they mature economically and experience increasingly mobile populations.

As a result of the economic growth, the increase in the middle class population in the BRIC countries is expected to more than double the middle class population of the G7 countries by 2020. In addition, the number of people with incomes between $6,000 and $30,000 has increased

59. David Wilkins, Globalization, Lawyers, and the Rule of Law: Private Practice and Public Values in the Global Market for Corporate Legal Services, WORLD JUSTICE FORUM (June 21, 2011) at 2; see also The BRIC Countries: Brazil, Russia, India, China, ECONOMICWATCH.COM (June 30 2010), http://www.economywatch.com/international-organizations/bric.html.

60. Wilkins, supra note 59; Goldman Sachs forecasted that by 2050 China and India would become the first and third largest economy, with Brazil and Russia the fifth and sixth largest. BRIC Countries Background, Latest News, Statistics, and Original Articles, GLOBAL SHERPA (February 2012), http://www.globalsherpa.org/bric-countries-brics.

61. BRIC Countries Background, supra note 60.


63. In fact, on a survey of 60 global retail executives, 80 percent stated they considered the BRIC countries key to expanding their businesses. Andria Cheng, Retailers’ Growth Goes Beyond ‘BRIC’ Countries, WALL ST. J. (June 21, 2010), available at http://articles.marketwatch.com/2010-06-21/industries/30767961_1_bric-countries-retail-practice-retail-expansion.


65. BRIC Countries Background, supra note 60.
greatly in the last decade, and will continue to rise for the next ten years. With a growing middle class, demand for higher value added goods, such as cars and technology, will rise. Such demand growth from these emerging markets is said to be one of the driving factors that will lead global recovery from the financial crisis. This economic convergence, more people with higher incomes, indicates that there is a lot more economic growth to come. The BRIC countries have seen increases in global growth and their share of global trade, creating great implications for the future of global economic development.

The BRIC countries are capturing a large amount of international business because of their economic growth and large populations. With these economies becoming a larger force in global business, legal actions will naturally follow. Within the BRIC countries emerges a corporate law culture, raising a new class of local lawyers that can advise on corporate needs. This culture emerged in the 1990s, as China, Brazil, and India liberalized their economies and directed significant amounts of public and private resources into the development of a corporate sector, which consequentially fueled the growth of the corporate legal sector. With an expanding corporate sector, these countries saw the need to develop a sound legal infrastructure providing greater "predictability, transparency, and stability in economic transactions, both in order to encourage foreign investment and to make domestic companies feel comfortable expanding their activities." The legal professional industry has developed as a direct result of increased business in these key emerging markets.

Law practice tends to follow business. The threat of competition and protectionism surfaces as developing countries economies strengthen. Even though a U.S. lawyer may never have to directly compete with a BRIC country's law firm, he or she still might be influenced by the increased

66. Wilson, supra note 4, at 1.
67. Id.
70. Spence, supra note 69, at 187-206.
71. Wilkins, supra note 59, at 2.
72. Id. at 4.
growth in the BRIC country. For example, as clients merge, consolidate, and downsize their legal needs, there is the potential that the changes could result in a change of legal needs and the hiring of a Brazilian or Chinese rather than U.S. firm to do a substantial amount of the legal work.\textsuperscript{73} This is especially true as the BRIC countries have tightened the restrictions for foreign lawyers’ ability to advise and practice law within their countries.

Lucrative and rewarding opportunities exist for American lawyers who travel abroad on an \textit{ad hoc} basis\textsuperscript{74} or work in overseas offices. However, American attorneys face numerous barriers, particularly in the BRIC countries that have a large economic significance in the world market. While it may not be feasible to advise on local law, the restrictions are much more prohibitive than a ban on practicing local law. Within the BRIC countries, local attorneys have been "granted a monopoly" over legal services by their government.\textsuperscript{75} Such protective interests make it difficult, if not impossible, for American lawyers to practice law internationally. The following section of this Note will address the restrictiveness of American lawyers practicing law in each of the BRIC countries. Each country subsection will address the important economic status of the country, the legal framework of the country, and the laws governing foreign lawyers within its country.

A. Brazil

Brazil is one of the fastest-growing major economies in the world. There are 206 million individuals living in Brazil, four-fifths of whom live within cities.\textsuperscript{76} This urbanization encourages economic growth, as the population has greater access to educational and health facilities.\textsuperscript{77} As a result, poverty has reduced as Brazil’s middle class consists of 35 million consumers.\textsuperscript{78} Furthermore, Brazil has experienced political and economic stability over the past 16 years, strengthening the democratic institutions within Brazil.\textsuperscript{79}


\textsuperscript{74} The term "ad hoc" refers to a lawyer without a foreign office who travels to his client’s country to render legal assistance. \textit{Lund, Problems and Developments in Foreign Practice}, 49 A.B.A. J. 1154, 1155 (1973).

\textsuperscript{75} Kelly Crabb, Providing Legal Services in Foreign Countries: Making Room for the American Attorney, 83 COLUM. L. REV. 1767, 1770 (Nov. 1983).

\textsuperscript{76} \textit{Four Reasons To Believe in Brazil}, ECONOMIST (July 26, 2010), available at http://www.economist.com/blogs/newsbook/2010/07/brazils_prospects.

\textsuperscript{77} \textit{Id}.

\textsuperscript{78} Patti Domm, \textit{Growing Middle Class Fuels Brazil’s Economy}, CNBC (Apr. 28, 2011), http://www.cnbc.com/id/42785493/Growing_Middle_Class_Fuels_Brazil_s_Economy.

Brazil’s democratic institutions have enabled international and domestic markets to maintain their confidence in Brazil’s political system further attracting investment and expanding business within Brazil.\(^\text{80}\)

Brazil’s economic stability has also made it a favorable business opportunity and a key player in the global economy. In fact, the World Economic Forum ranked Brazil first for its upward evolution in competitiveness.\(^\text{81}\) The Report recognized Brazil’s competitive strengths: its extensive and growing domestic market, being one of the most developed financial markets in the region, and having a diversified and sophisticated business sector.\(^\text{82}\) Brazil has improved its macroeconomic stability in the last few years by building foreign reserves, reducing debt, keeping inflation rates under control and committing to fiscal responsibilities.\(^\text{83}\) Over the last year, Brazil has improved its credit information system by allowing private credit bureaus to collect and share positive information.\(^\text{84}\) As a result, in 2010, Brazil experienced a 7.49 percent growth in GDP.\(^\text{85}\) Brazil is known for its large agricultural industry, but also sits on one of the world’s most promising oil finds, which could make Brazil one of the world’s largest oil producers by 2020.\(^\text{86}\) In addition, Brazil has been at the forefront of the *multilatinas* phenomenon, where local companies have turned global due to superior technology and organization.\(^\text{87}\) Embraer, Natura Cosmeticos, Petrobras, and Vale are just some of the examples of Brazilian-based companies that have expanded globally and are continuing to grow at an international level.\(^\text{88}\) Thus, the Brazilian nation has become the world’s

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\(^{80}\) Id.

\(^{81}\) Id.

\(^{82}\) Id.

\(^{83}\) Id.

\(^{84}\) Id.

\(^{85}\) Id.

\(^{86}\) Id.

\(^{87}\) Harold L. Sirkin, *Enter the ‘Multilatinas’*, BLOOMBERG BUSINESSWEEK (Dec. 28, 2010), http://www.businessweek.com/managing/content/dec2010/ca20101213_949366.htm. *Multilatinas* are firms that leveraged domestic positions to expand their operations throughout Latin America and are now pursuing expansion strategies at a global scale.

\(^{88}\) Id. Embraer is an aircraft manufacturer with revenues of roughly $4 billion, 93 percent of which are generated from outside the Brazilian market. Natura sells eco-friendly cosmetics and has generated profits of roughly $1.3 billion. Petrobras, an oil-producing company, was the 65th largest corporation in 2007 in the world. Lastly, Vale is the second largest mining company in the world. It recently purchased the Canadian company Inco,
With a large population and rapidly growing middle class, Brazil serves as a large consumer market for future business. Between 2003 and 2009, an estimated 35 million people joined the middle class in Brazil, with an expected growth of 20 million more by 2014. With such a large, advancing middle class, Brazil is a target for global expansion strategies. Brazilian shoppers are the target customer of every retailer at the moment; "[a]rmed with a strong currency, easier access to credit and abundant enthusiasm for shopping, Brazilians have quietly ousted richer nations, such as the U.K., as the biggest overseas spenders in key U.S. markets like New York City and Florida." However, Brazil has a relatively closed economy that could hinder its long-term growth.

Although Brazil’s economy is expanding rapidly, it continues to erect trade barriers to protect its domestic industry. For example, due to increased competition in Chinese cars in Brazil, a 30 percent "industrial products tax" on cars with less than 65 percent local content went into effect. As a result, some imports have a punitive 55 percent tax on top of import tariffs. The Brazilian government continues to take steps to protect local firms, cutting taxes for local businesses. Furthermore, Brazilians must pay a six percent tax on overseas credit-card purchases. In 2012, Brazil imposed quotas on auto imports from Mexico, increasing its protectionist measures. President Dilma Rouseff argued that by protecting the Brazilian economy, the making it the largest foreign takeover by a Latin American company. INTERNATIONAL DEVELOPMENT BANK, supra note 87, at 49-51.

90. Throssell, supra note 79.
91. Domm, supra note 78.
95. Seeking Protection, supra note 94.
consumer market and Brazilian industries would continue to grow. These protectionist policies have carried over into Brazil’s legal structure as well, hindering the growth of the international legal sector. As global business growth continues to expand into Brazil, its legal structure has important implications for the future of business in Brazil.

The Brazilian Constitution organizes Brazil under a federal republic formed by the union of states, municipalities, and the Federal District. Similar to the U.S., the Brazilian Constitution establishes the legislative, executive, and judiciary branches that form the Brazilian government. The judiciary consists of the “Federal Supreme Court; the National Council of Justice; the Superior Tribunal of Justice; the Federal Justice; Labor Justice; Electoral Justice; Military Justice, and State Justice.” However, the Brazilian judiciary has yet to be reformed; Brazil’s judiciary is “agonizingly slow, beset with frivolous cases designed to evade justice and enmeshed useless procedure.” In fact, it is predicted that if Brazil’s judiciary were up to first-world standards, GDP growth would be a fifth higher than it is now in Brazil. Currently, parties have nearly endless rights of appeals and one court’s rulings are not binding on another, resulting in a single case being tried many times. However, the Brazilian Constitution was recently amended to include the concept of Sumula Vinculante, allowing in special situations, the Supreme Court to issue binding decisions. Thus, the Brazilian legal system is evolving to become more efficient and better serve the citizens of its country to match the continued growth and expansion of its business sector.

In order to practice law within Brazil an attorney must be registered with Orderm dos Advogados de Brazil (OAB). The Brazilian Bar Association, like the ABA, regulates the legal profession with a Federal Council, composed of a president and three representatives from each state. Each state has its own regional Board of Directors and Councils, the

101. Id.
102. Id.
104. Id.
105. Id.
107. The Association of Brazilian Lawyers.
108. Brazil Law Digest 18.01.
equivalent to state bars, to oversee licensing and ethics within each state. Further requirements include: "civil capacity, law degree from a local university, successful completion of [the] bar exam, good conduct, no activities incompatible with [the] legal profession, registered to vote, discharged from military service . . . [and] accept his duties before Conselho Federal da Ordem dos Advogados do Brazil." However, the most important requirement to practice law within Brazil is that the attorney must be Brazilian. "Brazilian lawyers argue that their firms are not yet ready to compete on a level playing field with international rivals given that Brazil has only in recent years fully emerged from a period of prolonged economic instability." Therefore, foreign lawyers cannot offer any advice on Brazilian law, even if it is based on advice from a Brazilian lawyer. Foreign lawyers are also not allowed to employ local lawyers in their local offices. Recently, the Brazilian Bar Association ruled that formal alliances between foreign trained and local lawyers violated its rules. If approved by the Federal Council, this would effectively ban all multi-jurisdictional law firms within Brazil. Thus, foreign lawyers may only work as foreign consultants following an authorization granted by the OAB.

With a booming economy that is greatly expanding, there is a great deal of legal work involved. Brazil has shut its doors to capture that industry for themselves; "it's blatant protectionism." Foreign lawyers cannot partner with Brazilian lawyers; if they do, the Brazilian lawyer is considered a foreign lawyer.

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110. The OAB Regional Councils punish violators and the Federal Council hears appeals of Regional council decisions. Id.


112. Id.


115. Id.


117. Brazilian Lawyers Don’t Want Pesky Foreigners, supra note 114.

118. However, Portuguese lawyers have an exception to the rule. Once Portuguese lawyers are admitted to the Ordem dos Advogados Portugueses (Portuguese Bar Association), direct admission to the Brazilian Bar is assured on a reciprocal basis. Gazzaneo, supra note 111.

119. Brazilian Lawyers Don’t Want Pesky Foreigners, supra note 114.
foreign lawyer and not able to use his or her Brazilian title to advise on Brazilian law.\textsuperscript{120} As a result, clients must seek legal advice from separate Brazilian and foreign firms, making it harder to give the legal advice they need.\textsuperscript{121} With a judiciary system that is slowly improving, clients need reassurance through a lawyer they can trust, a lawyer of their choosing. It is inconvenient for a client to go to a local firm for advice on Brazilian law and then go to a foreign firm on non-Brazilian law. Banning the multi-jurisdictional practice of law will hinder business and increase the costs of obtaining legal advice, in light of demand for lower legal costs, by forcing clients to go to multiple law firms. Global markets are opening up, increasing business opportunities in countries like Brazil. However, the legal environment is increasingly protectionist, making it difficult to meet clients’ international needs.

B. Russia

Russia provides another attractive opportunity for international economic expansion. Since the fall of the Soviet empire, Russia has transitioned into a more market-based and globally integrated economy.\textsuperscript{122} Despite the 2009 recession, Russia has had an average annual growth rate of 5 percent since 2000.\textsuperscript{123} In 2010, Russia experienced a GDP growth rate of 3.955 percent.\textsuperscript{124} Russia has made vast economic improvements over the last decade with a decline of more than 10 percent in inflation and greater fiscal management used to repay external debt.\textsuperscript{125} Although Russia’s economy is largely dependent on oil and gas, Russia’s leaders are promoting innovation as key to economic modernization.\textsuperscript{126} In fact, Russia is expected to capture five percent of offshore service revenue, providing a less costly option for certain services.\textsuperscript{127} In addition, Russia accounts for one-eighth of the world’s landmass, providing abundant natural resources; it has “some of the largest forests and richest mineral reserves in the world, plus an abundance of fresh water contained in its many lakes.”\textsuperscript{128} Over the last decade, Russia

\begin{footnotesize}
\begin{itemize}
\item[121.] \textit{Brazilian Lawyers Don’t Want Pesky Foreigners}, supra note 114.
\item[123.] \textit{Id.}
\item[125.] \textit{Russia’s Economy}, supra note 121.
\item[126.] \textit{Id.}
\item[127.] Francis Karamouzis, \textit{Going Offshore to Globally Source IT Services}, Gartner Symposium, 10-13 (Oct. 2002).
\item[128.] \textit{Id.}
\end{itemize}
\end{footnotesize}
has been able to develop a market economy and achieve consistent economic growth.

Russia is becoming an important economic player in the world, attracting business as it advances its economy. Similar to other BRIC countries, Russia has a large consumer base with approximately 142 million people, the world’s ninth-largest population group. The economic prosperity of the Russian economy, combined with the low cost of housing and utility, is widening the middle class. Russia now has a mobile phone subscriber base of 215 million people and is projected to have vehicle sales reach 1.8 million in the next year, both of which are indicators of growing consumerism within Russia. The emergence of a growing Russian middle class provides a profitable opportunity for international business expansion. For example, Pepsi recently took over Wimm-Bill-Dann, Russia’s largest dairy products and juice company. The deal makes Russia Pepsi’s top international market, where Russia will be the hub for production and distribution of nutritional food products worldwide. With large foreign investments capturing the resources and growing consumer class, Russia will continue to grow as a key economic player in the world market.

After 18 years of talks, Russia finally joined the World Trade Organization (WTO) on December 16, 2011. On July 21, 2012 President Vladimir Putin signed legislation that brought Russia’s trading laws into compliance with the international standards set under the WTO. While the membership shows promising signs of economic reform and a favorable investment climate, Russia still maintains a number of barriers that restrict business access and slow global economic growth. Russia has argued that protective tariffs are necessary to allow Russian companies to survive the recession. Russia also frequently uses non-tariff barriers, such as high export duties, to restrict foreign access to their market. Despite the barriers and procedural difficulties in setting up a business, Russia is too big
a market to ignore.\textsuperscript{138} Unfortunately, Russia’s legal structure further hinders the ability for business and the legal sector to grow.

The legal framework inside Russia is the weakest of the BRIC countries. The Russian judiciary consists of three parts: regionally based federal courts of general jurisdiction, court of arbitration assigned to the resolution of economic disputes, and the Constitutional Court with the right of judicial review.\textsuperscript{139} Historically, judicial decisions have had no precedential effect.\textsuperscript{140} However, a system of legal precedent is emerging, as the Constitutional Court indicated that its decisions are to be followed as \textit{stare decisis}.\textsuperscript{141} The result of publishing case decisions has been an “increase of awareness, within the legal profession, of relevant decisional trends, [which] sow[s] ‘precedential’ seeds.”\textsuperscript{142} Despite an independent judiciary branch, the Russian government has interfered with the judiciary system, threatening the overall order in the state.\textsuperscript{143} Additionally, many judges are not impartial arbiters but instead act as government officials protecting state interests.\textsuperscript{144} Furthermore, the laws are often “conflicting, overlapping, and rapidly changing,” which makes business unpredictable and providing legal advice difficult.\textsuperscript{145} As a result, investors face political risks and a weak judicial system operating in Russia.\textsuperscript{146} While the Russian legal system has made efforts to improve its judicial system through the adoption of a precedential system, further improvement is necessary to continue business expansion into Russia.

Under Russia’s law, foreign advocates are able to provide legal assistance on matters regulated by the law of their state.\textsuperscript{147} Foreign lawyers are prohibited from advising on Russian Federation law.\textsuperscript{148} However,
foreign law firms may open offices and hire local Russian lawyers. Unlike in Brazil, these local hires can advise on Russian law without losing their local license. Unfortunately, the Russian legal system is inconsistent despite the precedential effects that are taking place; “[i]t tends to be two steps forward and two steps back sometimes in Russia.” With anti-western sentiment, Russians do not always welcome the western influence within their country and thus, foreign lawyers access is not a guarantee. As a result of the inconsistencies within the Russian legal system, foreign lawyers are cautious in pursuing legal matters within Russian borders.

William Ide III, a past ABA president who now chairs the association’s Central European and Eurasian Law Initiative Council, noted that “[i]f you can negotiate dispute resolution outside the country, you will do it . . . Clients want certainty and reliability, and that’s often hard to get in Russia.” Therefore, at the moment, foreign lawyers may not advise on Russian law, only the jurisdiction in which they are licensed, but the relationship between the local bar and foreign lawyers can be contentious.

Similar to the other BRIC countries, Russia’s legal practice creates much uncertainty for the foreign lawyer. To further improve its business climate, Russia will need to open up to foreign investment, moving away from its protectionist policies. Acceptance to the WTO was a major reform for Russia, but to really integrate into the global economic system, it will need a sounder legal structure; one that is consistent and can allow certainty in foreign lawyers’ scope of practice. With an uncertain regulatory framework, it will be hard to continue to attract business. Justice Minister Alexander Konovalov believes that an establishment of commercial courts that allow foreign lawyers can help create an established legal structure and boost foreign investments in Russia. While Russia is not necessarily moving against the tide of liberalizing its legal policies, there remains much uncertainty to the structure and reliability of its legal profession.

C. India

Since 2003 India has become one of the fastest-growing major economies, leading to rapid increases in per capita income, demand, and
integration with the global economy. In 2010, India had a growth rate of 10.365 percent.\footnote{Brazil Economy, supra note 83.} Overall, the rate of growth in India has been astonishing; in 2000, India was nowhere in the top ten economies of the world, but in 2011, it was the tenth largest economy in the world in terms of GDP.\footnote{2011 Ten Largest Economies, CNN Money (2011), http://money.cnn.com/news/economy/world_economies_gdp/} India is arguably the “better placed” BRIC nation, as Brazil faces slowing growth, the Russian economy is not well diversified, and the Chinese model is being “challenged.”\footnote{Kartik Goyal, India “Better Placed” Than Other BRIC Nations, Bloomberg (Jan. 11, 2012), available at http://www.bloomberg.com/news/2012-01-11/india-better-placed-than-other-bric-nations-roubini-says.html; see also Indian Economy Shows Strong Positive Momentum, OECD says, Econ. Times (Mar. 13, 2012), available at http://economictimes.indiatimes.com/news/economy/policy/indian-economy-shows-strong-positive-momentum-says-oecd/articleshow/12237052.cms.} As a diverse economy, India offers investors a wide variety of opportunities.\footnote{Investing in India Worth Looking At, The Econ. Of India (2012), http://www.indianeconomics.org/investing-in-india-worth-looking-at.htm.} The services sector represents approximately 50 percent of its economy.\footnote{Id.} India has developed a reputation for high quality work at a low cost with a large population of English speakers, making it a popular destination for service jobs.\footnote{Lieberman, supra note 9, at 21.} With the second largest work force in the world in 2011, business will continue to migrate to India.\footnote{India, CIA World Factbook (last updated Apr. 30, 2012), https://www.cia.gov/library/publications/the-world-factbook/geos/in.html} The enormous economic growth has had important implications for India’s population as well. In 1985, 93 percent of the population lived in desperate poverty; in 2007, that number had dropped to 54 percent.\footnote{Diana Farrell and Eric Beinhocker, Next Big Spenders: India’s Middle Class, McKinsey Global Institute (May 19, 2007), available at http://www.mckinsey.com/Insights/MGI/In_the_news/Next_big_spenders_Indian_middle_class.} As income growth continues to grow in India, the consumer consumption of the Indian population will continue to increase as well. The consumer class will also continue to increase as more Indians gain access to mobile phones and the Internet, becoming more inter-connected with the global market.\footnote{Id.} Following the same trend as other BRIC countries, India’s middle class is growing exponentially. In 2007, the Indian middle class was approximately 150 million.\footnote{Id.} By 2030, the number is expected to reach nearly 300 million.\footnote{Id.} This rising middle class is well-educated, as India hosts some of the best universities in the world.\footnote{Id.} With the second largest population in
the world economy and a growing middle class sector, India continues to strengthen its position in the world economy.

One of the most interesting features of the Indian legal system is it has a single integrated judiciary system of courts that administers both federal and state laws.\(^{168}\) The judiciary system contains different types of courts with varying levels of power granted to each level with the Supreme Court as the highest court.\(^{169}\) The Supreme Court interprets the Constitution and is the appellate court for decisions of lower courts.\(^{170}\) Below the Supreme Court are the State High Courts, followed by a hierarchy of Subordinate Courts.\(^{171}\) Unlike in other BRIC countries’ legal systems, the concept of *stare decisis* has been around for years due to the British common law legacy within India, creating consistency within Indian courts.\(^{172}\) The Indian legal system, although not entirely efficient,\(^ {173}\) is a functioning independent judiciary, unlike in Russia and China.\(^{174}\) While the Indian legal system maintains the challenge of improving infrastructure and providing faster justice, the legal system is much more developed than other emerging markets as a result of the colonial British influence.\(^ {175}\)

In India, the Advocates Act of 1961 governs all matters regarding attorneys practicing within India.\(^ {176}\) The Bar Association of India seeks to develop the administration of justice, while upholding the rights and dignity of the profession, thereby enforcing the Advocates Act.\(^ {177}\) To become a practicing attorney, a student must obtain a law degree from any university in India and then apply to a State Bar Council.\(^ {178}\) In 2010, the Bar Council introduced the All India Bar Examination (AIBE) to test advocates on their ability to practice law in India.\(^ {179}\) Any law graduates after 2010 must pass

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*


175. *Id.*


178. The Advocates Act, supra note 176, at ch. 3, § 24(c).

179. Bansal, supra note 177.
the AIBE in order to practice law within India.180 Once admitted to any State Bar Council, the attorney is entitled to practice law throughout the country.181 The Act states that it is not necessary to be an Indian citizen to practice in India.182 However, the foreign lawyer must be from a country that permits Indian citizens to practice in its courts.183 Furthermore, under the Advocates Act, the Bar Council of India may dictate the conditions, such as the fulfillment of minimum aptitude tests, which the foreign lawyer must meet to practice within India.184 While the Advocates Act appears to allow foreign lawyers flexibility to practice within India, the legal environment remains quite restrictive to foreign lawyers.

Although the U.S. legal system allows Indian citizens to practice in the United States, the Bar Council of India has not reciprocated to allow U.S. lawyers to practice in India.185 In addition, many U.S. law firms have capitalized on outsourcing legal work to India to capture cost savings to meet client demands.186 Despite the increase in legal outsourcing to India and the reciprocity of Indian citizens being able to practice in the U.S., India fears the competition of U.S. and other countries' law firms working within their country.187 As a result, foreign law firms are not allowed to open liaison offices within India.188 In 1994, the Reserve Bank of India granted three foreign law firms permission to open a liaison office in India.189 The firms were granted restricted permission to serve “as official representatives of the foreign firms to the Indian government and to Indian businesses and [promote] relationships with others involved in such cooperative initiatives.”190 In 1995, the Lawyers Collective, an Indian NGO, complained

180. Id. at § 2.3.
181. Id.
182. 1 India Law Digest 18.01.
183. Id.
186. See supra notes 1, 9.
187. “The consensus among those reluctant to open up the market is that the best talent will be swallowed up by foreign firms . . . . This will then have disastrous consequences on domestic firms who simply do not have the financial muscle to compete.” John Spano, Global Forces Shaking Indian Legal Protectionism, LAW FORWARD (Aug. 23, 2010) (quoting Mark Ross, an expert in offshoring), http://lawforward.legalzoom.com/unauthorized-practice-of-law/global-forces-shaking-indian-legal-protectionism/.
189. Id.
190. Id.
that the law firms were acting outside their restrictions. The Bombay High Court held in 2009 that practicing the "profession of law" includes litigious, as well as non-litigious matters and was restricted to Indian lawyers. In other words, foreign lawyers could not appear in any Indian court nor draft any legal document in India. The Court reasoned that the "liaison offices were a backdoor entry for foreign firms and a convenient way to circumvent the strict rules governing the 'practice of law' enumerated in the Advocates Act, 1961." As a result, India does not allow foreign law firms to set up offices within its borders.

The general consensus in India is to protect the legal industry from foreign law firms. Veerappa Moily, President of the Bar Council of India, stated in an interview that the legal protections were necessary to allow Indian lawyers to become competitive to capture the global legal market: "[India] will become world leaders in the legal field, like [they] are in IT." Moily argues that once Indian lawyers become competitive, issues such as the entry of foreign lawyers in India will be irrelevant. However, the President's rationale is counter-intuitive; by restricting foreign lawyers from participating in negotiations or arbitrations, it will be difficult for India to become the hub of the global legal profession, as it has for IT services. The Bar Council of India eventually expects foreign nationals will have a limited ability to practice law in India; however, there is no established timeframe for this. Thus, the prospect of opening the legal sector for foreign lawyers in India is grim.

D. China

The rapid growth of the Chinese economy has allowed it to emerge as a global player on multiple fronts in the world economy. China is the world's second largest economy, with a robust GDP growth of 8.1 percent in the first months of 2012. Although the economy has slowed in light of the 2009 recession, China is sustaining steady and robust economic growth; it is predicted that China will overtake the United States as the world's largest economic power by 2032 due to its rapid annual growth and strengthening

191. Id. at 299-300.
192. Id. at 300.
193. Id.
194. Shankar & Kak, supra note 188, at 300.
196. Id.
197. Id.
currency.\textsuperscript{199} In 2010, China became the main driver of global growth, contributing 33 percent to the world economy.\textsuperscript{200} By 2009, China became the largest exporter and the world’s biggest trading power.\textsuperscript{201} It also became the world’s largest energy consumer in 2009.\textsuperscript{202} China is one of the largest emerging-market economies resulting in rapid urbanization and consequently, a growing consumer class.\textsuperscript{203}

China is home to about one-fifth of the world’s total population, creating a large consumer class for business expansion.\textsuperscript{204} Over the last 25 years, over 600 million people emerged from poverty in China.\textsuperscript{205} A recent World Bank report testified that between 1981 and 2004, the fraction of China’s population consuming $1 a day in today’s purchasing power fell from 65 percent to 10 percent; as a consequence, 500 million people were lifted out of poverty.\textsuperscript{206} This emergence of a solid Chinese middle class will continue to transform the Chinese market, increasing consumer spending. In fact, the number of Chinese visitors to the U.S. has quadrupled since 2003 to more than 800,000, where studies show that individual spending by Chinese visitors is outpacing that of many Europeans.\textsuperscript{207} While global sales fell 8 percent across the globe during 2009, China recorded an estimated growth of 12 percent.\textsuperscript{208} By 2025, urban Chinese households will comprise one of the world’s largest consumer markets, spending about $2.5 trillion annually.\textsuperscript{209} With a large population and growing consumer class, China will continue to be an important force in the global economy. With a strong education system and a government committed to becoming a global technology leader, China has become a major competitor to the United States.\textsuperscript{210} As a result, China’s regional and global economic prominence has made it a key source of investment and business expansion.

\textsuperscript{199} Id. at 1,10.
\textsuperscript{200} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Id. at 27.
\textsuperscript{204} LIEBERMAN, supra note 9, at 21.
\textsuperscript{205} DADUSH, supra note 69, at 16.
\textsuperscript{207} John Lyons & Paulo Trevisani, Brazilians, the Real Spenders, WALL ST. J., Dec. 21, 2011.
\textsuperscript{209} New Report Urges Global Companies to Turn Attention to China’s Surging Consumer Class, WORLD WATCH INSTITUTE (last updated Mar. 14, 2013), http://www.world watch.org/node/4402.
\textsuperscript{210} LIEBERMAN, supra note 9, at 21.
China does not have an independent judiciary that operates outside the influence of the ruling Chinese Communist Party. Instead, the court system is a pliable tool to reinforce government power; "the government, not a court, is the final arbiter of law." There exist four levels in the court structure with the Supreme People’s Court at the top, followed by the Higher People’s Courts, the Intermediate People’s Courts, and the Grassroots People’s Courts. Judges are appointed by their people’s congresses, while the courts receive their budget from local governments. This allows the Communist Party to apply pressure and exert influence on a court behind the scenes. Judicial precedents are not enforceable in China; however, the Supreme People’s Court bears the authority to issue sifa jieshi, judicial interpretations, as guidelines to trials. However, to continue to attract business and foster economic growth, China will need to modernize their system and allow the court system to become more autonomous to eliminate the corruption in the system.

In light of the corruption in the Chinese legal system, foreign law firms can open office within the Chinese borders, which is a step further than other BRIC countries. China made specific commitments to open up its market to foreign law firms as part of its accession to the WTO. On December 19, 2001, the State Council passed the Administrative Regulations on Representative Office of Foreign Law Firms in China. The Administrative Regulations state that foreign firms cannot advise on Chinese law—they must affiliate with a Chinese firm. However, in order for a Chinese lawyer to assist a foreign law firm, the Chinese lawyer must relinquish his or her license temporarily. As a result, Chinese lawyers do not choose to work at foreign law firms, making it difficult to continuously find Chinese lawyers to do business with. Despite the size of the country and economy, the number of lawyers in China is low, further making it

212. Id.
214. Yardley, supra note 211.
215. Id.
217. Persky, supra note 120.
219. Id. at 137.
220. Persky, supra note 120.
221. Id.
222. Id.
difficult to collaborate with local Chinese lawyers.\textsuperscript{223} The Administrative Regulations were supplemented in July 2002, further restricting the relationship between foreign law firms and local law firms.\textsuperscript{224} These new provisions made it clear that Chinese law firms must remain independent of foreign law firms—partnerships between the two were forbidden.\textsuperscript{225}

Although China appeared willing to engage in significant liberalization of the legal services sector when it joined the WTO, it has regulated foreign lawyer practice with a cautious approach to foreign competition. The vast economic expansion requires the development of the legal services market within China. The restrictions on foreign law firms are “harsh for Chinese lawyers since they cannot be employed as lawyers in foreign law firms and must therefore weigh up the benefits against their indeterminate status when employed by foreign firms.”\textsuperscript{226} Thus, the restrictions are not in the interest of Chinese lawyers or the Chinese legal system. However, China feels the need to preserve its state sovereignty and limit the scope of foreign law firm practice within its country.\textsuperscript{227} Although foreign law firms can open up offices in China, it is difficult to attract Chinese professionals to assist in advising in Chinese legal matters due to the local resentment of foreign influence.\textsuperscript{228} Furthermore, the close relationship between the Communist Party and the judicial organs further discourages business operations within China. By liberalizing the legal system in China through increasing collaboration between foreign and local lawyers, the standards of the legal profession can be improved, strengthening the legal profession.\textsuperscript{229} The large influx of business and foreign investment in China requires a new regulatory scheme to continue to foster the economic growth for not only China, but also the world economy.

These shifts in economic power to the BRIC countries will have great implications for global economic governance, as well as for relationships among countries and among geographic regions.\textsuperscript{230} With continued growth


\textsuperscript{224.} “Representative offices and the law firms to which they belong must not engage in any of the following conduct: (1) directly or indirectly investing in Chinese law firms; (2) forming practice associations with Chinese law firms or Chinese lawyers to share profits or jointly undertake risks; (3) establishing joint offices or seconding personnel to Chinese law firms to undertake legal services; (4) managing, operating, controlling or enjoying equity interest to Chinese law firms.” Godwin, supra note 218, at 140.

\textsuperscript{225.} \textit{id.}

\textsuperscript{226.} \textit{id. at 152.}

\textsuperscript{227.} “'China regards the lawyer system as a part of a country's sovereignty and, before reform and opening up, treated lawyers as state personnel . . . Since undertaking Chinese legal services is considered to be within the scope of China's sovereignty, foreign firms have been prohibited from this business.'” \textit{id.} at 151-52 (citation omitted).

\textsuperscript{228.} \textit{id.}

\textsuperscript{229.} \textit{id.}

\textsuperscript{230.} DADUSH, supra note 69, at 2.
in the global population, particularly in the BRIC countries, the labor force and consumer class will continue to rise in these emerging markets. In addition, technology will continue to expand at rapid rates to developing countries, further connecting developing countries to the world market. Thus, the BRIC countries provide ample opportunity for global business. Business will continue to expand internationally, capturing the advantages of these lucrative markets. However, there are still risks and uncertainties with conducting business in these emerging economies, particularly with restrictive policies. Protectionism is a familiar motive for the BRIC countries; however, the legal profession will not benefit from such protectionism. The emphasis should not be on excluding foreign law firms from the BRIC markets; instead, the emphasis should be on creating an environment in which law firms, whether domestic or international, can compete effectively in their respective markets. The legal restrictions within the BRIC countries make it difficult to follow client interests and needs. Such restrictions will have negative implications for not only the local economies of each country, but the global economy as well.

Other nations allow lawyers from other jurisdictions to practice within their boundaries with relative ease. For example, in Australia, foreign lawyers are allowed to practice on a “fly-in, fly-out” basis; they are entitled to come to Australia with his or her client and act for them on a temporary basis. Foreign lawyers can become registered to practice within Australia on a permanent basis with certain limitations. While foreign lawyers cannot advise on Australian law, they can hire an Australian legal practitioner to advise on Australian law. Thus, the Australian legal system fosters collaboration between local and foreign lawyers to best meet clients’ needs and maintain the high standards of their legal profession. Canada is another example of a more liberal legal system that allows foreign lawyers to practice within their country. Foreign lawyers can become foreign legal consultants within a province or territory in Canada. To apply, foreign lawyers only need to submit an application and the permit fee to the

231. Id. at 3.
232. Id.
233. “A relapse into protectionism may represent the single most important risk to this forecast, since the projections are grounded in assumptions about technological catch-up and increased efficiency which depend crucially on open international markets.” Id. at 18.
235. Id. at 8.
236. Foreign lawyers can advise on foreign law when the giving of such advice is “necessarily incidental to the practice of foreign law” and the “advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.” Id. at 8.
provincial province they wish to practice in. The provincial law society then will determine the lawyer's qualifications based on certain criteria outlined in the Foreign Legal Consultant Rules. The permit allows the foreign lawyer to practice within Canada for a year, which can be renewed at the year's end. Similarly, foreign lawyers may only advise on foreign law. The United States falls in between the BRIC countries restrictions and the more liberal legal environments like Canada and Australia. The next section will examine the United States' movement to allow foreign lawyers to practice at least on a temporary basis within the United States to best meet client needs in the twenty-first century.

III. THE U.S. LEADS THE WAY

With increasing globalization and change, greater collaboration is needed to meet the global demands of clients. U.S. lawyers increasingly seek to represent clients in other countries, just as foreign lawyers seek to provide legal services in the U.S. The United States has been the leader of many global initiatives; however, American law remains restrictive towards foreign lawyers as well. Recently, the American Bar Association (ABA) has begun initiatives to open up its legal industry to foreign lawyers. The Commission on Ethics 20/20 and Commission on Multijurisdictional Practice recognized that "the geographic scope of a lawyer's practice must be adequate to enable the lawyer to serve the legal needs of clients in a national and global economy." This section will examine how the U.S. is responding to the increase in foreign lawyers practicing abroad and how the U.S. response can pave the way for the liberalization of the legal services industry.

Before 1973, a foreign lawyer was denied admission to the bar of almost every state in the U.S. In 1973, the United States Supreme Court held that citizenship could no longer be a requirement for admission to the bar. The

238. Id. at § 5.
239. Id. § 4.
240. Id.
241. Id.
243. ABA COMMISSION ON MULTIJURISDICTIONAL PRACTICE, CLIENT REPRESENTATION IN THE 21ST CENTURY 3 (2002).
244. As of December 1972, 38 states plus the District of Columbia completely excluded foreigners from bar admission, and 12 states allowed admission only if the alien manifested a good-faith intention to become a United States Citizen. None of the 50 states allowed admission to foreigners who did not intend to become a United States citizen. Volker Knopke-Wetzal, Employment and Restrictions and the Practice of Law by Aliens in the United States and Abroad, DUKE L.J. 871, 890-91 (1974).
245. A citizen of the Netherlands married a citizen of the United States and became a resident of Connecticut. The Connecticut Bar Association denied her permission to take the
Connecticut Bar Committee argued that an alien citizen had a “conflict of loyalties,” where the alien may favor the interest of a foreign power before their responsibilities as a lawyer in Connecticut. However, the Supreme Court held that there was no “relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients.” If there was such a rare circumstance, the Court held that the “honorable lawyer” would decline representation to avoid any conflict of interests. Therefore, the United States held that resident aliens are just as capable of maintaining the high standards of the legal profession. However, foreign lawyers could not practice law of any kind within the United States if they were not licensed within a state of the United States. In 1993, the ABA Model Rule for Licensing of Legal Consultants permitted foreign lawyers to perform limited work in American jurisdictions. For example, the foreign lawyer could come to the U.S. to meet with other parties of a negotiation that was taking place in the lawyer’s own country or to meet witnesses to litigation that was occurring in the lawyer’s own country. If the foreign lawyer was admitted to the bar within the U.S., the foreign legal consultant’s license would be superseded by their membership to the U.S. bar.

The current rule governing foreign lawyers identifies five circumstances in which foreign lawyers may provide legal services in the United States. However, these restrictions greatly restrain the work that foreign lawyers can undertake within the United States. Furthermore, the ABA does not have a policy on permitting pro hac vice admission to foreign lawyers; pro hac admission applies only to “out-of-state” lawyers admitted in

Connecticut bar exam, even after she graduated from an American law school because she was not a citizen of the United States. In re Griffiths, 413 U.S. 717, 719 (1973).

246. Id. at 724.
247. Id.
248. Id. at 72.
249. Crabb, supra note 75, at 1785-85.
251. Id.
253. The five circumstances are: if foreign lawyers provide legal services in association with a lawyer admitted to practice in that jurisdiction and is actively involved; if the services the foreign lawyer is providing are reasonably related to a pending litigation in the foreign lawyer’s jurisdiction; if the services are related to a pending alternative dispute resolution as long as the work has nexus to the lawyer’s jurisdiction of admission; if the services are for a client who resides in the foreign lawyer’s jurisdiction; and, if the services the foreign lawyer is providing are governed primarily by international law or a foreign law jurisdiction. MODEL RULE FOR TEMPORARY PRACTICE, supra note 250, at §§ (a)(1) –(5).
254. Translated, pro hac vice means “for this occasion.” BLACK’S LAW DICTIONARY (9th ed. 2009). It refers to a lawyer who has not been admitted to practice in a certain jurisdiction but has been allowed to participate in a particular case within that jurisdiction. Id.
another state or territory of the United States. Model Rule of Professional Conduct 5.5 also excludes foreign lawyers from its definition. Rule 5.5 allows the provision of legal services by U.S. in-house counsel to practice in another jurisdiction other than the one they are admitted to. Because the employer is able to assess the lawyer’s qualifications and is the lawyer’s sole client, the risk to the public is minimal. Although not as restrictive as the BRIC countries regulations, the ability to practice as a foreign lawyer is limited. However, the U.S. has recognized that the internationalization of the legal services industry is vital to meet the changing needs of the global environment.

Recently, the ABA drafted recommendations relating to foreign lawyers to make it easier for non-U.S. lawyers to practice within the U.S. temporarily. The ABA is seeking to strike a balance between the demands of a global economy and the protection of clients and the general public. The first proposed change seeks to extend the ABA Model Rule for Registration of In-House Counsel to include foreign counsel. The amended rule would require all lawyers to register under the Rule and pay an annual client protection fund assessment. An additional requirement for foreign lawyers would be to translate all documents to English. However, in-house counsel would be prohibited from appearing in court.


256. MODEL RULES OF PROF’L CONDUCT R. 5.5. (Unauthorized Practice of Law; Multijurisdictional Practice of Law) (2004) [hereinafter MODEL RULES OF PROF’L CONDUCT R. 5.5].

257. Only six states permit foreign in-house counsel to work for their employer in the U.S. Memorandum from Jamie S. Gorelick & Michael Traynor, Co-Chairs of ABA Commission on Ethics 20/20 to ABA Entities, Courts, Bar Associations, Law Schools, Individuals and Entities, Memoranda and Templates for Comment – Inbound Foreign Lawyer Issues, June 1, 2010.

258. Id.

259. ABA Comm. on Ethics 20/20 (2010) (discussing Incorporation of Model Rule for Temporary Practice by Foreign Lawyers into Model Rule of Professional Conduct 5.5 or Freestanding Rule 5.5A ) [hereinafter ABA Comm. on Ethics 20/20]. The ABA Comm. on Ethics 20/20 was formed in August 2009 to examine the effect of technology and globalization on the legal profession. However, the views expressed in the proposed changes should not be construed as representing the policy of the ABA; the recommendations have not been approved by the House of Delegates or Board of Governors. ABA Comm. on Ethics 20/20, supra note 259.

260. “‘We want to acknowledge that, in light of a global economy, foreign clients want to have the benefit of their foreign counsel. We acknowledge that clients have the freedom to choose the lawyers they want to help them,’ Perlman says. ‘But we want to make sure that foreign lawyers who are performing work in the U.S. are subject to appropriate limitations that protect both clients and the public.’” Persky, supra note 120, at 40 (quoting Andrew M. Perlman, professor at Suffolk University Law School).


262. Id.

263. Id. at 3.
unless they are admitted *pro hac vice.*\(^{264}\) The risk to the public of foreign lawyers would similarly be *de minimus,* as their employers, the corporations that employ the foreign lawyers, possess strong incentive to investigate the lawyer’s character, fitness, and background.\(^{265}\) By amending the in-house counsel rule to include foreign lawyers, the U.S. legal industry is better serving its multinational client needs by allowing them to choose the legal counsel of their choice.

The second recommendation by the ABA is to extend the ABA Model Rule on Pro Hac Admission to lawyers from foreign jurisdictions.\(^{266}\) The ABA has recognized that foreign “lawyers have intimate knowledge of their clients’ businesses and the international laws that govern them. By allowing a foreign lawyer to participate in a U.S. commercial proceeding pro hac vice, along with local counsel, the client is assured the full panoply of legal expertise provided by counsel of its choice.”\(^{267}\) Furthermore, the judge presiding over the case and the local counsel involved bear responsibility to ensure that the public is protected.\(^{268}\) Thus, foreign counsel will be supervised to ensure the public is not harmed and the high standards of the legal profession are upheld. The ABA Model Rules already extend the same authorization to lawyers admitted in another U.S. jurisdiction. The proposed amendments recognize that foreign lawyers and their employers are not in a materially different position. Furthermore, the regulations in place allow for sufficient oversight to ensure that clients are protected and the legal profession maintains high practicing standards.

The ABA Commission has also proposed revising the Comments to Model Rules of Professional Conduct Rules 1.1, 5.3, and 5.5 to identify considerations to take into account when retaining outside counsel, whether they are from the United States or a foreign jurisdiction. Model Rule 1.1 suggests factors to consider when seeking to contract with lawyers outside their firm: “the education, experience and reputation of nonfarm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed.”\(^{269}\) Rule 5.3 has been amended to include the considerations outlined in Rule 1.1 when working with nonlawyers outside the firm, addressing the increase in outsourcing of certain services.\(^{270}\) Both amended rules also state lawyers should obtain informed client consent before obtaining services outside their law firm, and

\(^{264}\) Id. at 3.

\(^{265}\) Id. at 4.

\(^{266}\) Id.

\(^{267}\) Gorelick *supra* note 257, at 5.

\(^{268}\) Id.


\(^{270}\) Id. at 3-4.
highlight the ethical responsibility of the lawyer to maintain confidentiality and ethical obligations.271 Similarly, the current Model Rule 5.5 only governs U.S. lawyers.272 The proposed revisions allow foreign lawyers to practice law on a temporary basis, following the same standards as U.S. lawyers that seek to temporarily practice law in another jurisdiction.273 ABA has proposed modifying section (d), by adding: “A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction,” extending the right to serve as in-house counsel or provide other services to foreign lawyers.274 The Commission on Ethics 20/20 also proposes to modify section (f) to include that a foreign lawyer must be in good standing and able to practice in a foreign jurisdiction.275 However, within the comments to the proposed Model Rule 5.5, non-U.S. lawyers are given less ability to do transactional work than out-of-state U.S. lawyers.276 Nevertheless, the ability of foreign lawyers to represent their client needs within the United States is increasingly more flexible in the proposed changes.

States have a substantial interest in determining whether an applicant possesses “the character and general fitness requisite for an attorney and counselor-at-law.”277 However, nothing suggests that foreign lawyers do not have the requisite moral character. The model rules establish appropriate safeguards to ensure that the high standards of the legal profession are

271. Id. at 1-4.
272. MODEL RULE 5.5. supra note 256.
273. ABA Comm. on Ethics 20/20 (2010) (Incorporation of Model Rule for Temporary Practice by Foreign Lawyers into Model Rule of Professional Conduct 5.5 or Freestanding Rule 5.5A).
274. Id.
275. Id.
276. The authority granted to foreign lawyers under paragraph (e)(2), however, is narrower than that afforded to United States lawyers under paragraph (c)(4) because the practice nexus is more demanding. Also, the scope of the work the foreign lawyer may perform under this provision would be limited to the services the lawyer may perform in the authorizing jurisdiction. For example, if a German lawyer came to the United States to negotiate on behalf of a client in Germany, the lawyer would provide only those services the lawyer is authorized to provide for that client in Germany.

277. Law Students Research Council v. Wadmond, 401 U.S. 154, 156 (1971). See also Konigsberg v. State Bar, 366 U.S. 36, 40-41 (1961) (“an applicant for admission to the bar bears the burden of proof of ‘good moral character’. . . . an applicant must initially furnish enough evidence of good character to make a prima facie case.”); Schware v. Bd. of Bar Examiners, 353 U.S. 232, 239 (1957) (“A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant’s fitness or capacity to practice law.”).
upheld. To effectively represent clients, lawyers need to be able to perform their work without jurisdictional limits in this era of globalization. Through the mechanisms outlined in the proposed changes to the ABA Model Rules, the integrity and prestige of the legal profession is upheld to protect its clients. The ABA’s proposed changes essentially allow non-U.S. lawyers to be treated as out-of-state U.S. lawyers. The United States has played a critical role in the development of many global institutions; the transnational legal practice should be no exception. Although the changes are small, the U.S. can lead the developing countries in loosening the restrictions on foreign lawyers in order to serve their clients’ needs. Both lawyers and law firms have new demands placed on them by clients and new technologies. The ABA has recognized these new challenges and is amending the model rules for guidance in assisting states in meeting new regulatory challenges.

IV. THE FUTURE OF THE INTERNATIONAL LEGAL INDUSTRY

Globalization is here to stay. Technology will continuously change the way that lawyers work. When the manufacturing industry was disrupted with globalization, protectionist policies were enacted to promote domestic growth. However, this inhibited economic efficiency, forcing consumers to pay higher prices, stalling economic progress. With the globalization of legal services, the BRIC countries have responded by protecting their legal industries, making it difficult to even advise on foreign law within their countries’ borders. With increased competition, firms can innovate to respond to unmet legal needs and enhance the delivery of legal services to clients. The legal systems of the world need to be liberalized to follow business, best representing the needs of its clients. Cross-jurisdictional and international mobility of lawyers plays a key role in enriching domestic legal practice and promoting a responsive and modern legal profession that can better underpin our economic and social wellbeing. Therefore, this section will look at how the legal profession can be further internationalized to promote the interest of global clientele. The latter portion of the section will address how U.S. law firms can become increasingly competitive in light of competition abroad.

278. The recommendations were filed with the ABA House of Delegates for consideration at the February 2013 ABA midyear meeting. ABA Commission on Ethics 20/20, ABA, http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html (last visited Mar. 12, 2013).

279. “Fully integrated legal services are essential for trade and investment. Their role in supporting and facilitating business forms a critical part of the infrastructure that underpins commercial transactions, providing certainty and assurance required for commercial, trade and investment decisions.” Revised Initial Proposal on Pro Hac Vice Admission, Australia’s International Legal Services Advisory Council and The Law Council of Australia, Comments, 3 (Nov. 30, 2011).
A. The Liberalization of the Legal System

Nations have legitimate interests in maintaining strict control over who may provide legal services within their territory. They seek to "[preserve] the integrity of their laws and the stature of their courts for the benefit of the public."280 In a 1983 law review article, Kelly Crabb identified five basic risks that justified other countries exclusion of American lawyers:

First, they fear that persons from outside the jurisdiction will disrupt administration of justice because they lack loyalty to the political and cultural values of the nation. Second, they fear that American lawyers lack the necessary competence to adequately serve local citizens. Third, they express a concern for the security of local citizens, who lack redress for injury caused by incompetent American lawyers. Fourth, they fear that American lawyers will encroach upon and harm the local legal profession by interfering with the development and ability to compete. Fifth, they resent the likelihood that reciprocal privileges for local lawyers will not be forthcoming in the United States.281

Such fears will need to be addressed in order to move forward to a liberalized international legal system. By addressing these fears, progress can be made to loosen the restrictions to multi-jurisdictional practice to best meet the changes in client demand.

The current ABA committee demonstrates that the United States is in progress of loosening the restrictions on the American legal system.282 With the U.S. leading the way in developing a liberalized transnational legal practice, American lawyers will have leverage to encourage change.283 The United States has one of the most developed legal systems and values the integrity of the legal profession. Through revising their laws, the United States can demonstrate that the integrity of the legal profession can still be upheld and proper repercussions can be in place to dispel the fear that local citizens will be harmed. Furthermore, Australia and Canada prove that it is possible to allow foreign legals to practice on their soil and advise on foreign law. With the U.S. allowing foreign lawyers to practice on a temporary basis, other countries will realize that to best serve global clients needs, the traditional law firm structure will need to change.

Because each nation has its own procedural rules and customs, many of which are bound to cultural values and norms, restrictions on foreign attorneys is warranted. American courts had similar fears that foreign citizens would not be loyal to the American justice system.284 However, the

280. Crabb, supra note 75, at 1770.
281. Id.
282. See III. The U.S. Leads the Way, supra note 38.
283. Crabb, supra note 75, at 1777.
284. See supra notes 244-248.
American courts dispelled that fear; there is no "relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients."\(^{285}\) The court held that there are sufficient mechanisms in place to uphold the moral integrity of the judicial system.\(^{286}\) The American justice system is by no means fully liberalized to allow foreign lawyers to practice openly in the United States. Appropriate safeguards are necessary. The proposed ABA Model Rules contain sufficient protections to ensure foreign attorneys are practicing in good faith. For example, the oversight of a local attorney, who takes responsibility for the foreign lawyers, provides proper protection. Each BRIC country has its own form of a national bar association to oversee the legal profession. While it may not be feasible to allow foreign lawyers to advise on local laws, it is infeasible to restrict foreign lawyers from creating alliance offices with local firms like in Brazil or to forbid them from practicing on local soil like in India. Therefore, the full accord to allow foreign lawyers to practice law is not necessary; rather, restrictions can be loosened to meet the transnational demands of clients.

Each nation and jurisdiction has a vital interest in prescribing the qualifications of persons who offer legal services within its territory. It is not necessary for foreign lawyers to be able to advise on local law; however, restricting access to work with local lawyers or to form alliances, as it is in the BRIC countries, does not serve clients' interests. Through local and foreign law firm partnerships, lawyers can collaborate to meet the transnational needs of clients.

The BRIC countries do not have to worry about direct competition on their own laws. Foreign law firms will more than likely hire and collaborate with local lawyers, well-versed in the local law to best serve client needs. The ability to partner with local lawyers and advise on foreign law is imperative for a global economy. By restricting the legal services sector, the BRIC countries are hindering the growth of the legal services industry. "Law firms face a huge demand to provide multijurisdictional and multidisciplinary advice with a strong element of local knowledge . . . . [and] are expected to off integrated services on all parts of a transaction."\(^{287}\) At the moment, local BRIC firms are ill-equipped to service these multinational clients. Thus, greater benefits can be realized for clients and the legal profession as a whole by allowing lawyers to cross jurisdictional boundaries.

Strict restrictions to practice law within one country worked well until travel became much faster and easier, and telecommunications improved, allowing lawyers to easily deal with the laws and clients in other jurisdictions. "[T]he rules in all jurisdictions governing the practice of law

\(^{285}\) In re Griffiths, supra note 245, at 724.

\(^{286}\) Id.

were developed when the international practice of law was hardly known; these rules, adapted naturally to local practice, often do not fit the requirements of international practice."\(^{288}\) To best meet the needs of the twenty-first century client, the national legal systems of key economic players will need to adapt. With proper regulations and oversight in place, foreign lawyers can collaborate with local lawyers to meet client needs.

**B. U.S. Legal Innovation: Leaner and More Efficient Competition**

Law firms are a business; however, they have not been run that way over the years. In fact, law firms are still run the same way as they were in the seventeenth century.\(^ {289}\) As law firms have continuously made profits every year, U.S. law firms have not focused on innovating their business model; the legal industry is a precedent-based profession.\(^{290}\) However, to survive, most businesses have to evolve over time to meet the changing nature of the market and customer demands. Other service sectors have responded to customer demands for quicker, cheaper, and more personalized service to remain competitive in their industry. The legal services industry needs to better meet customer demands for creative and leaner service offerings to attract and retain clients. To survive, law firms need to have a better understanding of business dynamics to meet the increased competition and changing nature of the law industry. This section will look at basic business initiatives and demonstrate how U.S. law firms can capitalize on opportunities to continue to be competitive not only nationally, but also internationally.

American lawyers already have several competitive advantages that they can offer to clients nationally and internationally:

- they can offer a combination of native fluency in English, which is the international language of commercial negotiations and contracts;
- substantial experience in international business transactions gained during the 1950s and 1960s when American corporations dominated international business; and
- a unique style of commercial-oriented creative lawyering that is particularly suited to the facilitation of transnational business deals.\(^{291}\)

With this quality and experience that U.S. law firms can offer, they can justify charging a higher price for services than foreign competitors. However, corporate clients are still demanding an alternative pay structure

\(^{288}\) Foreign Branches of Law Firms: The Development of Lawyers Equipped to Handle International Practice, 80 HARV. L. REV. 1284, 1285 (1967).


\(^{290}\) Id.

\(^{291}\) Crabb, supra note 75, at 1768.
to help them cut costs in tough economic times. Law firms need to be leaner and more efficient. Corporate clients are treating their legal departments more like a business unit, imposing cost pressures to their attorneys. Gary Buckland, Vice President and Product Group Leader for Law at Kelly Services, believes law firms need to engage in more business planning and forecasting of client needs and talent. Law firms can capitalize on statistics and Enterprise Resource Planning (ERP) systems to help manage their costs and provide alternative billing structures. Information and analytics provide opportunities for businesses to differentiate themselves and guide future decisions.

In order to help meet the client demands for lower cost prices, law firms need to have a deep understanding of their cost structure. The fee figure that lawyers choose is often a guess that is not based on a cost-benefit analysis. By using a central database to track detailed costs of litigation, law firms can provide more accurate cost structures, while still making a profit. For example, Shook, Hardy & Bacon has been able to lower costs for one of its major clients, Tyco. The firm routinely captures and stores case updates in a central database to educate lawyers that join the Tyco team and provides uniform representation across the country. Furthermore, the database itself logs and analyzes all financial and billing data to allow the firm to track detailed expenses, which enables them to forecast expenditures for the upcoming year. Although the 200-plus cases that Tyco encounters a year are not all similar, they do not have to be similar in order to provide

292. See supra notes 50-57.
293. Telephone Interview with Gary Buckland, Vice President and Product Leader for Law, Kelly Services (Mar. 22, 2012) (on file with the author) [hereinafter Buckland Interview].
294. Id. Kelly Services helps companies meet their workforce management needs by helping companies meet their staffing needs and the law division provides all attorney staffing for legal services to corporate law departments. Id. See Background, KELLY SERVICES, http://www.kellyservices.com/Global/About-Us/Company_Background.
295. ERPs allow one comprehensive database to house all corporate information – customer, marketing, sales, production, financial, etc. See generally Thomas H. Davenport, Putting the Enterprise into the Enterprise System, HARV. BUS. REV. (1998).
297. Steve LaValle, Big Data, Analytics and the Path From Insights to Value, SLOAN MGMT. REV. 21, 22 (2011). “Top-performing organizations use analytics five times more than lower performers . . . they put analytics to use in the widest possible range of decisions . . . [and] twice as likely to use analytics to guide future strategies, and twice as likely to use insights to guide day-to-day operations.” Id.
299. Zahorsky, supra note 296.
300. Id.
301. Id.
accurate predictions for projecting costs. Mr. Buckland suggested getting rid of the hourly billable rates that law firms traditionally use, and instead provide an alternative fee arrangement, such as providing certain services for a year for a certain amount of dollars. Of course, there will be an addendum to the agreement for additional expenses that were not foreseen, allowing the law firm to charge for those services and not eat those costs.

Law firms need to better employ available financial and statistical data to develop models that can predict financial costs to develop innovative cost structures. By increasing sophistication in tracking legal expenses, U.S. law firms can meet their clients' cost pressures and build loyalty, ensuring future business. Law firms need to become “true partners” with their corporate clients if they want to continue to receive their work.

While most lawyers do not have strong backgrounds in statistical analysis or IT, their corporate clients do. Law firms can build partnerships with their clients, and in turn, work on restructuring their fee structure to benefit both the client, and the law firm. For example, Otis Elevators worked with Disney to build its information technology system. Otis modeled Disney’s software but tailored it to its own business strategy to provide quicker, more consistent customer service to its customers.

Corporations can demonstrate how they use their ERP systems and forecasting software to generate cost predictions. Because law firms are not in the same industry and not competitors, corporate clients will be more willing to share their technology, allowing law firms to tailor it to their business model. Corporations have further incentive to share their technology to help lower legal fees and seek alternative cost structures. Building this relationship will demonstrate to clients that law firms are serving their client’s needs, creating customer loyalty and ensuring long-term success. By utilizing the existing relationships with their clients, law firms can gain access to technology to innovate and meet customer demands for cheaper legal fees.

302. Id.
303. Buckland Interview, supra note 293.
304. Kelly Services offers another alternative to the traditional fee arrangements as well. Kelly Services noticed a trend towards legal outsourcing. Kelly Services responded by developing “onshoring,” outsourcing work within the United States, providing opportunities for law firms. Kelly Services established project centers and provided attorneys for law firms to use for certain projects. This allowed licensed U.S. attorneys to perform the review work, making it easier to access and increasing transparency in the process. Thus, Kelly Services offered a cost effective solution at a comparable rate to the “outsourcing” trend. Kelly Services developed extensive protocols to ensure quality control and adequate security over personnel and information. This business started in the latter part of 2009 and has increased to a $50 million dollar business for Kelly Services. Buckland Interview, supra note 293.
305. Id.
307. Id.
Instead of thinking in terms of the disadvantages of globalization, U.S. lawyers should think of the possible advantages and opportunities that globalization offers. Globalization is here to stay and technology is radically changing the way we conduct our lives. Information and data are the fuel of this era, but it is also the barrier to success. While it is true that lawyers abroad in BRIC countries can offer cheaper legal services, U.S. law firms can find new ways to compete, innovating the legal service industry. The structure of the legal system will not only need to be innovated at a national level, but also, a global level. Clients demand convenient, cost efficient, and timely legal services. With the restrictions placed within the BRIC countries, these needs are not met, requiring clients to seek multiple lawyers for their international issues. With business continuing to migrate to these emerging markets, legal reform will be essential to meet the demands of the era of economic globalization.

CONCLUSION: A SHIFT IN THE WORLD OF LEGAL SERVICES

The legal services sector has experienced continuous growth because of the rise in international trade. The widening and deepening of international trade and investment links, combined with strong economic growth in the developing BRIC economies, has increased worldwide demand for legal services. Technological advancements are increasingly affecting every aspect of business, including the business of law. Keeping pace with this technology and the demands of clients in an increasingly complex environment takes a different approach to globalization; an approach that recognizes today's realities and treats them as opportunities rather than challenges. The legal industry is now operating on a worldwide landscape, where offices and employees will be located in places determined by the actual needs of clients, rather than the habits of law firms that do not wish to change.

Legal services are part of the infrastructure of the global economy and play a critical role in facilitating the international trade of goods and services. Despite the transition to a globalized economy, lawyers are finding new barriers to practice abroad. In the last few decades, the global market has expanded, increasing global exchange, particularly within the BRIC countries. These changes have transformed the economic demand for law, requiring legal solutions that cross traditional country borders. The regulatory limitations on law have made each BRIC country bar a monopoly, restricting collaboration within the legal profession to meet the integrated needs of clients. The international regulatory structure of law will need to become more flexible to better serve client needs. The quality of the legal profession will not be compromised; rather, lawyers will be more accountable to their clients, meeting their needs, globally and locally. In today's technology driven world, it is not practical to construct physical barriers for the admission of foreign lawyers. To further meet client needs,
national U.S. law firms will need to alter the current structure to reduce costs while meeting the challenges of the increasingly complex legal environment. Liberalization and the competition it brings would invigorate the development of the legal services industry, lower transaction costs, and improve the efficiency of the world economy.