

InternationalCounsel – 2009 Annual Review

What Have We Been Doing and Where are We Headed?

This report is meant to better update our friends, clients and contacts on what we have been doing as a cross-border and domestic law practice and where we are headed. We thought that such an update would be the best way to keep you advised of the kind of relationships and projects that have been part of our past and that we hope to become part of our future, whether from your organization or from your contacts elsewhere.

In short, continue to think of us as a global law firm alternative

- In 2009, InternationalCounsel expanded its team and continued to focus on strengths that have served the firm well since our founding in the late 1990's, and which appear to be even more strongly resonating in the new and more cost-conscious legal services economy.
- We have sought to be a cost-effective alternative to the global law firm, and we believe our low-overhead approach to providing sophisticated legal services is well-positioned at a time when large traditional law firms are under pressure from increasingly cost-sensitive companies and in-house counsel.
- Companies want to be sure that they are paying for the right level of services for the project – there is no need for overkill outside of the largest projects.
- A key aspect of our model has been to gather the kind of members that have been at the forefront of a more cost-effective and efficient delivery of legal services – former in-house counsel to major companies.
- No, we will not be boasting of stellar 2009 revenues and magic solutions – but we are left standing and ready to apply lessons learned after a dozen years.

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New Team Members in 2009

- InternationalCounsel has been expanding its team with outstanding former in-house lawyers and expects to continue to add members in 2010. We seek to draw on each others' hard-won international experience, foreign local counsel relationships and money-saving insights to deliver the collected wisdom of the team even to projects that may be lead by only one of us. We welcomed additional team members in 2009:

- **Jan Kooi** was formerly with the Omnicom Group, the US\$13 billion global advertising and communications group, as Europe, Middle East, Africa and Asia Tax Counsel. Before that he was a tax partner with the largest Dutch firm, headed the firm's Asia offices while based in Tokyo and opened its Paris office.



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While Jan brings us additional depth in corporate and commercial matters, including M&A, he is especially strong in international tax matters, including market entry strategies and structures. He is fluent in French, German, Dutch and English, and can also help us with his Spanish, Italian, Swedish and Norwegian language capabilities. His experience in Japan also adds depth for Japan-related matters. Jan shares with David Laverty a leadership role with the Inter-Pacific Bar Association (IPBA) – he is the IPBA's Coordinator for Europe, the Middle East and Africa and a Council Member.

- **Patricia Gill** also began to work with our team in 2009, and was formerly with Motorola, Inc., the US\$30 billion global telecommunications equipment and infrastructure company. During Pat's 16 years in house with Motorola, she supported network infrastructure equipment sales in Latin America. Though Pat's corporate and commercial experience extends across many countries, she is fluent in Spanish and is able to negotiate deals and draft agreements in Spanish
- We also wanted to thank **Therese Vande Hey**, formerly Motorola's Director and Senior Counsel in the areas of product safety and environmental health, for her support and input to our team in 2009. Therese will be joining a not-for-profit organization.

- Note that these team members share longstanding ties to InternationalCounsel, Jan Kooi through 15 years of shared IPBA collaboration and Pat through Motorola, which had been a significant InternationalCounsel client and then the source of a past team member (a former head of international legal affairs who returned to another in-house role).

2009 Client Activities

- Overall, while a very high percentage of US transactional lawyers saw a downturn in cross-border M&A and other equity investment matters, we found that clients continued to expand through agency and distribution relationships, technical assistance and technology agreements, and also turned to us for challenging high-level input on business structures and disputes with a cross-border dimension.
- Our ability to attract such projects, often from substantial companies, is consistent with our model of providing sophisticated and cost-effective legal advice on cross-border agreements and market entry matters (with simple, focused solutions where possible and without lengthy memos). We expect to continue to see growth in such projects from companies that may leave the “mega projects” to large traditional law firms yet turn to us for projects that need some hard-won experience but can be handled far more efficiently through us.
- Nonetheless, we also saw some modest increase in interest in acquisitions and sales, where we are most effective for transactions of up to US\$50 million or so, such as 2009 projects for an Indian company re-visiting a US target, advice to a US public company on the acquisition of a business in India, the purchase of a minority interest in a Mideast company and the sale of mining interests to Singapore investors (a sale that involved us in a larger US\$300 million transaction).
- While we have consistently handled tax aspects of our matters, we have found that Jan Kooi’s tax depth has opened additional opportunities for us, and Pat Gill’s Latin and Central America background and Spanish fluency has also expanded opportunities for our clients entering this region. Note also the pattern below in working with India as well as countries such as China and Korea – we have substantial experience with such markets and on behalf of their companies entering the US.

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- As another pattern in the **2009 project examples** below, we have a particular strength in handling the local law aspects of projects in multiple countries, whether for distributor agreements that need to be tailored for use in several countries (the example below required us to adapt agreements and obtain limited local counsel input in 8 countries) or due diligence matters in several countries (the US\$300 million project required us to engage counsel in 37 countries, also for very targeted input). Our back-up support from our web of local counsel relationships throughout the world exceeds that of virtually any "law firm network" and is likely without precedent for a team of our size and fee range.
- Revised and tailored **distribution agreements** for **China, the Middle East (including Iraq), Latin America, Central America** and **the Caribbean** for one of the largest US privately-held companies
- Modified **turn-key contracts** for the production of infrastructure products in **India, China** and the **Middle East**
- Advised on and revised documents in connection with the **purchase of a minority interest** in a **Middle East** company
- Structured **tax and payment systems** for a large US franchising company in the **EU, Egypt, Korea, Taiwan, Latin America, Vietnam, Korea, Lebanon, Dubai, Jordan,** and **Ghana** (including advice on banking regulations, tax aspects of a direct debit system, labor law, registration of franchise agreements, and cross-border royalty payments)
- Performed **due diligence** and provided **closing assistance** for the **sale of a South African business** to a Singaporean investing group
- Performed a **US litigation evaluation** for a **Chinese investor** in a high-technology Chinese company in a high-profile California trade secrets matter
- Counseled an **Indian company** facing potentially **unfair competitive challenges** from a US multinational's Indian subsidiary
- Revised and provided advice in connection with **agency and representation agreements** in countries such as **Brunei** and **Lebanon** for other US companies
- Evaluated **market entry and subsidiary establishment issues** in countries such as **Japan, Taiwan, China** and **India**, as well as **investments** by Asia-based companies into the **EU**
- Advised a publicly-traded US company on the detailed requirements for **acquiring its existing Indian outsourced software provider**, including entity establishment and employee transfer issues.
- Advised on and modified a **guarantee** for payments arising out of a lease arrangement in **Korea**
- Provided preliminary advice on the import of cosmetic **products of Mid-East origin** into North America, including **regulatory issues and customs procedures**
- Advised on the potential **structuring of US lending operations** through off-shore entities, including on US Federal and State regulation and US law jurisdiction over offshore entities
- **Advised the Dutch and Japanese governments on treaty negotiations**, ultimately leading to a new tax treaty between both countries, along with supporting advice to the Japanese Ministry of Economic affairs (METI) in connection with an amendment of the Japanese Anti Tax Haven Legislation
- Advised a multi-country association of investors in **South Africa** partly in connection with the World Cup
- Counseled an **Indian** company seeking **US acquisitions**
- Used **India-based legal process outsourcing** back-up support for contracts, research and other projects to further increase efficiency for basic legal input, including through the establishment of a relationship with a leading legal process outsourcing firm in India



2009 Leadership Activities

We believe that time invested in outside leadership roles can give something back to our networks and also help our legal practice, even if indirectly. In 2009:

- David Laverty was asked to extend his role as an officer and council member with the Inter-Pacific Bar Association, the Tokyo-based leading lawyers' organization with membership throughout the Asia-Pacific.
- David had also extended his officer and board member roles with the Association for Corporate Growth, including as co-chair of ACG Chicago's international committee (he remains a board member and international committee member).
- Jan Kooi became European, Middle East and Africa coordinator for the IPBA.
- Jan, as special counsel to the Dutch Japanese Trade Federation, shared in a Japan-Netherlands award by the Japanese Ministry of Foreign Affairs and has been nominated for a special commendation by the Dutch government for his role in achieving a reduction of the controlled foreign corporation rate in Japan.
- Pat has given back to the legal community through teaching a law school international negotiations class.

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2009 Conferences, Seminars and Gatherings

As with our leadership roles, we invest time in organizing and presenting at conferences and other gatherings.

- In Manila in the Spring of 2009, David attended Inter-Pacific Bar Association officer and council meetings and Jan presented on dispute resolution in tax matters and was session chairman and a panel member in two other Asia-Pacific tax sessions in Manila.
- In Amsterdam in the Fall of 2009, Jan organized an IPBA seminar on the takeover of EU companies by Asian investors. Panelists included lawyers from several EU countries as well as from Singapore and Japan, and participants included lawyers from several prominent law firms and companies.
- In Chicago in June, 2009, David was co-chair of an international business conference at the Palmer House Hilton sponsored by Chicago's Association for Corporate Growth and including support from the Chicago Council on Global Affairs, World Business Chicago and other organizations. "Beyond Global Turmoil – Cross-Border Strategies for Surviving and Thriving" featured Tom Friedman, New York Times columnist and author of "The World is Flat," several panel discussions and a US-inbound capital road show.
- In the Netherlands, Jan continued his lecturing role for EuroFinance (part of the Economist Group) and Licent-Academy of the Netherlands on various international tax and legal subjects related to financial instruments and intellectual property.

- In Chicago in November, 2009, David was asked to be the sole presenter on the topic of International Agreements at the 9th Annual Negotiating and Drafting Major Business Agreements Conference. The 2-day conference featured 14 sessions lead by attorneys from firms such as Mayer Brown, McDermott Will, McGuire Woods, Foley & Lardner and Ungaretti & Harris.
- In October, 2009, David presented on whether there has been a “de-globalization” among US midmarket companies at an international roundtable held at the University of Chicago Booth School of Business Roundtable, with a co-presenter from Grant Thornton.
- Jan also contributed presentations on the status of treaty negotiations between the Netherlands and the Far East (Japan in particular), and David helped to organize a roundtable presentation on Turkey as a follow-up to ACG Chicago’s 2008’s roundtables on India and international business development.

2009 Articles, Blog Entries and Newsletters

We continued our dialogue on topics such as US-India investment and M&A, starting 2009 with a paper published in Halsbury’s Law Monthly (a leading Indian legal magazine published jointly with Lexis-Nexis) entitled “Capturing Opportunity and Controlling Legal Risk: India’s US-Bound Deals in Challenging Times.” Jan Kooi also contributed the 2009 Netherlands section to the well-known series published in London, “Getting the Deal Through, Tax on Inbound Investment in 40 Jurisdictions Worldwide,” and has submitted the 2010 version which will be published in early 2010.



Re-Launched Website

Our website was established in 1997 and 2009 brought a full re-launch of the site to focus on InternationalCounsel’s role as a “cost-effective alternative to the global law firm.” We encourage you to have a look at www.internationalcounsel.com and welcome your feedback and participation though links to our blog.

