





ITALY

Survival of the fittest

With the global downturn cutting several international and local law firms in Italy down to size, its top legal practices have undergone drastic restructuring. *LB* asks what the future holds for foreign firms in Italy and assesses which firms are capitalising on the difficult times

JULIAN MATTEUCCI

Italy has been less critically affected by the economic crisis than many countries and its famously conservative banks less exposed to toxic assets. Whereas several international banks verged on bankruptcy or begged for government funds, Italian banks Intesa Sanpaolo and UniCredit rejected state aid through government bonds, preferring their own issues.

Yet with Italy's export-driven economy hurt by a strong euro, the country is by no means without problems. The banks are reluctant to lend, Italy's public finances are dire and unemployment is creeping up. Many believe the worst is yet to come. ►

'The Italian legal market has suffered one of its most negative periods in 30 years.'

Francesco Gianni, Gianni, Origoni, Grippo & Partners



► VICTIMS

'The Italian legal market has suffered one of its most negative periods in 30 years,' says Gianni, Origoni, Grippo & Partners (GOGP) Rome-based senior partner, Francesco Gianni. Indeed, M&A activity is scarce, international capital markets battered and private equity funds preparing for a tough 2010.

The consequences have been brutal. 'Many firms have panicked and either downsized or signed up to defensive mergers,' says Studio

Legale Sutti Milan-based managing partner Stefano Sutti. Redundancies have taken place at partner level, and several foreign and local firms have frozen salaries and bonuses. The maths is simple: the number of lawyers in Italy exceeds current demand and serious re-structuring has been required. 'It's a sad moment for the international firms,' says Gianfranco Puopolo, a

corporate partner at Puopolo Geffers Iacobelli & Partners (PGIP). 'They've been punished by their huge overheads and the need to be all over the world.'

Clients knocking down fees and taking control of the overall cost of professional services hardly helps. 'It's a buyers' market,' says TLS - Associazione Professionale di Avvocati e Commercialisti (TLS) managing partner Fabrizio Acerbis, 'and we do not expect this to change soon.' Clients are

ALL IS FORGIVEN

Italy has the largest public debt of any EU member and, in line with a global clampdown, the Italian tax authorities are getting tough on tax evaders. At the end of October, Italy's financial police raided a series of Swiss banks to ensure that they were providing the correct information to the tax authorities.

Yet the government has simultaneously introduced a tax amnesty (*scudo fiscale*) for Italian citizens holding undisclosed money abroad, the third such amnesty effected by a Berlusconi administration. The 2001 amnesty brought around €80bn back into the country and this time officials are hoping for the repatriation of up to €100bn, producing a tax income of around €5bn and fuelling investment within the Italian economy.

Many accuse prime minister Silvio Berlusconi's government of condoning criminality, as the amnesty includes immunity from prosecution for false accounting. It has also been criticised for the low tariff of 5% payable on the assets' value, compared with the 44% levied under the UK scheme, although some say a higher tariff might not have brought any money back in. Others believe that using the *scudo* as a vehicle to fight tax havens is wrong, because it deals with the past rather than tackling future tax evasion. Indeed, many ask what will happen to the Italian tax evader after the amnesty and whether large sanctions will be imposed in accordance with the general G20 spirit. 'The *scudo* is also discriminatory,' says Di Tanno e Associati tax guru Professor Di Tanno, 'because it grants special status to tax evaders with the means to act through counterparts abroad.'

There's also the question of how much money will actually make it back into Italy, many believing that this will be a legal repatriation rather than a physical influx. Repatriation of assets held abroad

is the only route available for those held in non-EU countries that do not effectively exchange information with Italy, but taxpayers are allowed to retain the assets abroad where they are held in EU member states or in non-EU countries that do effectively exchange tax information. Back in 2001, Di Tanno looked after around €1.2bn of the €80bn generated, but his firm is now seeing modest amounts of around €1 to €2m. Even if the money does come into Italy, it can be immediately reinvested abroad through the Italian financial intermediary used for the amnesty - who is under no obligation to communicate with the authorities about their client.

But what if the money stays in Italy? Some observers are still cynical as to the benefits the amnesty is likely to bring to Italy's economy, expecting the money to end up in the hands of private bankers who will invest in property funds. As for the real estate market, it is in such a bad state that the influx of *scudo* money is unlikely to regenerate investment.

On the bright side, even if the money is not used to reinvest in companies, banks will benefit as they will have more money to manage and lend. At TLS - Associazione Professionale di Avvocati e Commercialisti, tax partner Giorgio De Pace expects the repatriated capital to finance local companies currently short of cash. Neither are the lawyers complaining. The amnesty only lasts until 15 December and Italian tax lawyers have been flooded with calls. TLS has established a dedicated amnesty team that has been providing a great deal of advice to insurance companies and Pedersoli e Associati tax partner Giovanni Bandera is seeing an unexpected flow of work. Other practices with strong tax departments and solid relationships with private banks likewise welcome the opportunities for lawyers.

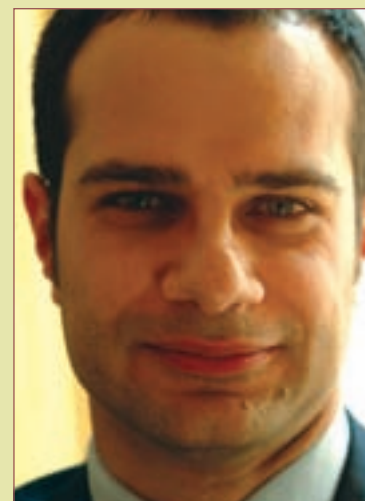
also delaying payments. 'Foreign clients are stricter about paying within 30 days,' says Mattia Colonnelli de Gasperis of start-up Colonnelli de Gasperis, but 'sometimes you have to chase domestic clients for payment'. New, small firms like Colonnelli with low overheads, and who are focused on building long-term client relationships, can be flexible, but large, international firms have huge monthly outgoings that need paying.

The obvious victims are the Anglo-Saxon practices already struggling in their home markets, whether large Magic Circle firms or niche corporate finance boutiques. For years these outfits focused on high-billing practice areas to justify their continued presence to London and New York, paying less attention to dispute resolution, intellectual property and mid-market corporate law – areas they considered less profitable.

Furthermore, whereas some lawyers at international firms are unwilling to relocate to other practice areas, Italian lawyers are notoriously versatile. Italian practitioners start off as litigators and, even if they later specialise in M&A, they can switch to dispute resolution, restructuring or insolvency work in dark times. Anglo-Saxon lawyers tend to specialise earlier on, but pay the price when their specialism falls out of vogue. 'In London, they used to look at me like I was brain-dead when I said I worked both as a corporate lawyer and a litigator,' one Italian lawyer tells *LB*.

PERSONALITIES

The debate also rages on about whether lockstep systems suit ►



Portolano: clients want value for money



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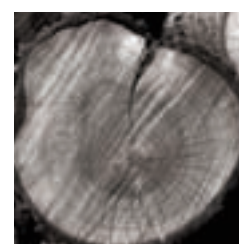
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‘Firms are still cash-rich, but are worried about their survival if they don’t get rid of under-performing partners.’

Stefano Sutti,
Studio Legale Sutti

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NCTM has grown in the last 10 years to become one of the leading law firms in Italy. Our strengths are the over 300 professionals including the 43 active and dynamic equity partners who drive the firm, offices in Milan, Rome, Verona, London and Brussels, a vocation for innovation and independence and a great client base.

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► the personality of the Italian lawyer and the problems thrown up when international firms try to manage Italian superstars. Many advocate organic growth as part of a successful long-term strategy, rather than the lateral hiring of lawyers who may not fit into the firm's culture. 'When the international practices first arrived there was a hiring frenzy of people you would never expect to see working in international firms,' says Domenico Fanuele, a partner in US firm Shearman & Sterling's Rome office. 'They were great lawyers, but not used to being managed, sharing clients or pricing rules.' On balance, Michael Immordino, a corporate partner at US firm Latham & Watkins, believes that a modified lockstep structure whereby partners are compensated for being members of the firm, and for their contribution, best suits Italian practitioners.

THE WORK

Foreign and local firms that invested in real economy areas, such as litigation, restructuring, employment and tax, have been compensated for the demise of international financing, IPOs and

big-ticket M&A. PGIP saw lucrative work in the Russian yachts arena disappear, but witnessed increased energy work. As for 2009, restructuring was the flavour of the year, including the debt and equity capital markets side. In October, Latham & Watkins advised on Enel's issuance of \$4.5bn of fixed-rate bonds. Even M&A is not completely dead in the water. Some firms are seeing a slight return of transactions, including cross-border M&A deals around the €100m to €200m mark.

Although real estate transactions are few and far between, local firms like Cernelutti Studio Legale Associato are busy on the administrative, tax and distressed asset sale side. Unsurprisingly, litigation is buoyant and expected to grow further over the next three to five years. Minority shareholder disputes have replaced large deals, yet 'the expected wave of large litigation between banks and corporations is still to come', says Labruna Mazziotti Segni partner Enrico Zattoni. Instead, the crisis caused heated discussions within family companies over whether to reinvest in their businesses, distribute dividends, or exit the market.

Fortunately, the growth of technology, media and telecommunications is unrelated to M&A activity, and with all the regulatory changes coming out, solid representation is crucial. 'Clients want more value for their buck,' says Francesco Portolano, a partner at media-focused Portolano Colella Cavallo, 'but people are still watching TV, going to the cinema and playing on their PlayStations.'

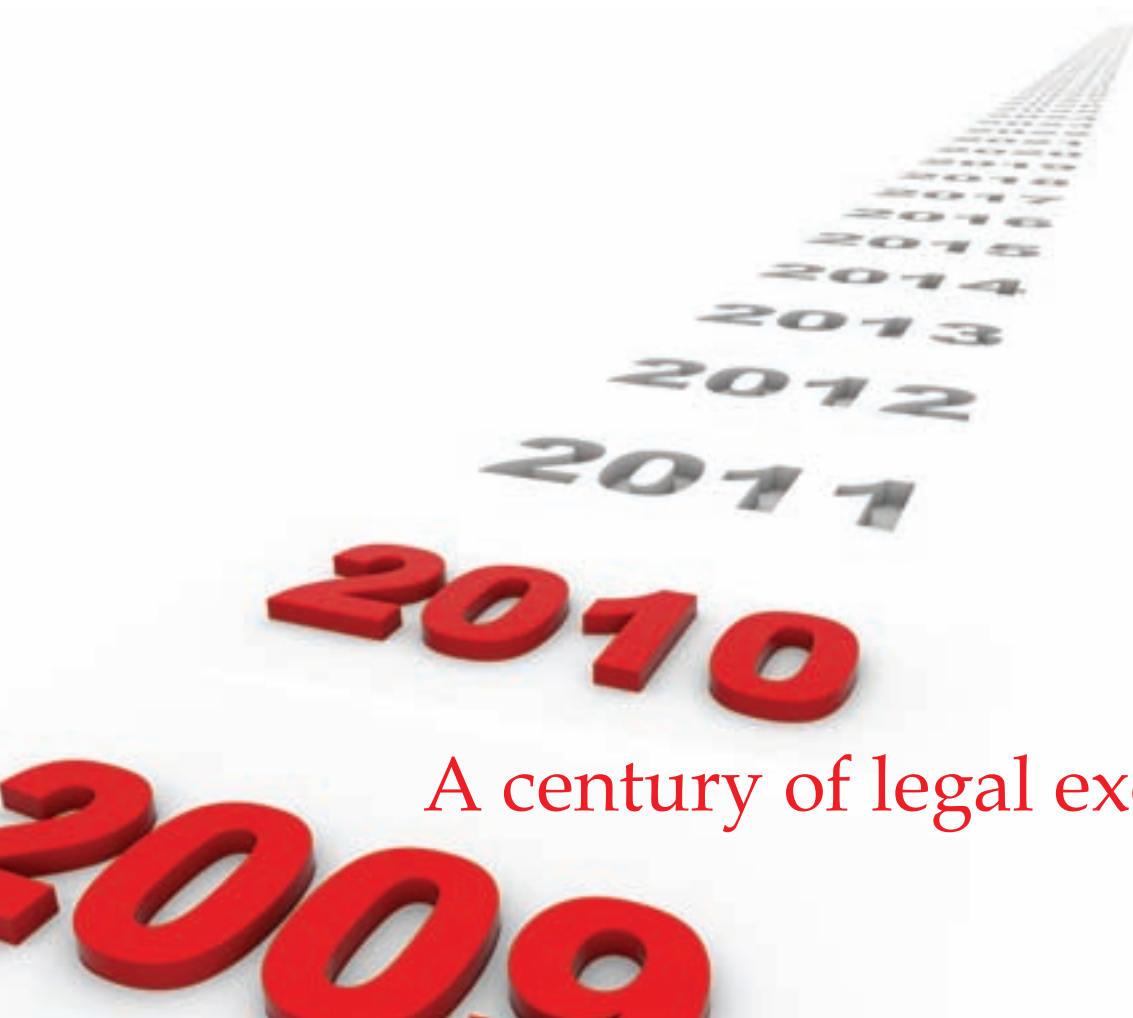
Interestingly, many Italian firms report glowing results. Traditionally, only 5% of Cernelutti's work came from financing and the practice had one of its best revenue years ever, with a significant chunk coming from energy and real estate. On the international side, DLA Piper fared better than some foreign firms, its reduced workload in M&A, banking and real estate balanced by increases in litigation, employment and infrastructure. NCTM Studio Legale Associato also turned in a solid performance. NCTM's senior

partner Paolo Montironi believes part of its success lies in having a diversified client base of around 3,500 clients. 'Our top ten clients provide no more than 10% of revenue,' Montironi says. Legance Studio Legale Associato managing partner Giovanni Nardulli tells *LB* that good relationships with domestic mid-market companies and large Italian corporations helped the firm, stressing the importance of partners making themselves more available to clients over spending time managing the firm.

Yet Italian law firms have been affected by the crisis. Major Italian firms are said to have made lawyer cuts, disguising redundancies as unsuccessful performance ►



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COME TOGETHER

After two years of debate, Italy's new class action legislation became law on 15 August. The legislation is modelled on the US system and permits individual members of a relevant class to bring actions as of 1 January 2010. Eligibility was previously restricted to specific associations. The law also provides for disclosure of the relevant action so that other individuals entitled to participate have the possibility of opting in, rather than the American-style opting-out method. Additional features include the judge assessing the promoter's capacity to represent the interests of the class and deciding who can join the action. Plus, quicker decisions are anticipated, which will be enforceable 180 days after publication. But this is unlikely to become fast-track litigation. A first-instance case can take up to eight years to be processed, and class actions are likely to take even longer.

The legislation itself has been widely criticised for being badly written and the result of too many compromises. Labruna Mazziotti Segni litigation partner Enrico Zattoni finds it strange that the law actually became more left wing during Berlusconi's administration. 'In the original draft, only certain institutions could represent plaintiffs,' he says. 'Now almost anybody can start an action.' And many thought class actions would be a panacea for Italy's recent insolvencies, such as Parmalat, Cirio and Giacomelli, but the law is not retrospective. Nonetheless, sectors such as financial services, public services and product liability are expected to attract interest.

Shearman & Sterling partner Domenico Fanuele says he would welcome a strong class action law that ties in existing securities law. Others believe that although class action legislation was necessary in the US to protect individuals against multinationals abusing their

power, it is a big mistake for an economy like Italy, where the historical and cultural context is completely different. 'We already have the *litisconsorzio*, whereby collective actions can be brought,' says Cernelutti Studio Legale Associato senior partner Luca Arnaboldi. 'Class actions will in no way change the landscape of Italian litigation.'

Firms like Gianni, Origoni, Grippo & Partners (GOGP), Pedersoli e Associati, NCTM Studio Legale Associato and Cernelutti are likely to remain on the defence side. In preparation, Puopolo Geffers Iacobelli & Partners is already expanding relations with US and UK firms. Certainly, class actions will present an interesting challenge to Italy's legal system and for plaintiff law firms organising claimants into a class. 'Italy simply doesn't have this experience,' says Pedersoli e Associati partner Andrea Magliani. Although some law firms are trying to position themselves as plaintiff lawyers, others say that consumer law isn't that important in Italy. Indeed, punitive damages don't exist (generally thought of as unfair in Italy) and substantive amounts are unavailable for personal injury. But if medium and large companies are compelled to defend sizeable claims, more practices may invest in this area. The introduction of contingency fees in 2006 could also make class actions interesting, although discussions are ongoing about removing them. Many Italian lawyers see contingency fees as unethical, believing that practitioners should remain independent of their clients' interests.

In any event, the legislation's success will depend on how it is implemented by the courts and lawyers. In addition, the class action legislation is still undergoing debate. 'The law has been passed, but we cannot exclude a further review of it,' says Filippo Modulo, a partner at Chiomenti Studio Legale.

► reviews. 'One major Italian practice is even rumoured to have offered multimillion-euro packages to certain equity partners to leave,' Stefano Sutti says. 'It shows they are still cash-rich, but that they are worried about their

survival if they don't get rid of the under-performing partners.'

Domestic legal giants Chiomenti Studio Legale and GOGP maintain that they have not made redundancies and continue to grow. 'The crisis presents

opportunities and we have taken around 40 lawyers this year from top-tier firms,' GOGP's Gianni says. Italian independent Bonelli Erede Pappalardo Studio Legale (BEP) says that, as always, its associates and trainees were assessed at the start of the year, but some of them were judged not good enough to stay, while pointing out that half of its

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associates received their bonuses as usual. At the other end of the spectrum, Portolano says that his firm froze only billing rates, not salaries. 'And we're still 30% up on turnover this year, which is incredible in this market.'

MOVING ON

Of the international firms with reduced lawyer numbers in Italy, Clifford Chance and Allen & Overy (A&O) are the most high-profile examples. Whether because lawyers have been pushed out or have freely jumped ship, Italian firms are receiving a blizzard of CVs at partner and senior associate level. 'One headhunter told us we wouldn't have to worry about his fee, as the candidate would pay it himself,' Stefano Sutti tells *LB*.

For the lawyers left behind at international firms, many are disappointed with their experiences. Because the international

practices have taken more drastic measures than the Italian firms, their reduced investment in Italy has created tensions among their lawyers, who are again thinking about their long-term careers. In the past, many were attracted by the large remuneration packages offered by the foreign firms, but because Italian practices are more flexible and offer more traditional training, they are more attractive to candidates right now, believes Pedersoli e Associati partner Andrea Magliani.

Indeed, whole teams are upping and leaving. A&O's Italian employment practice, including team head Piergiorgio Mandrizzato, joined Italian



Fanuele: global hiring frenzy a mistake

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CLASH OF THE TITANS

Prime Minister and media tycoon Silvio Berlusconi has long been criticised for the conflict of interests surrounding his control of commercial broadcaster Mediaset, which together with RAI (over which Berlusconi's government has *de facto* control) pull in most of Italy's terrestrial TV audiences. In October, media watchdog Reporters Without Borders ranked Italy 49th out of 173 countries in terms of media freedom.

News Corporation's satellite pay-TV branch, Sky Italia, belongs to another media tycoon, Rupert Murdoch. For some time the two moguls have been at commercial, political and personal loggerheads. Last year, the government doubled VAT on satellite TV. Ironically, this also hurt Mediaset, but not as much as Sky Italia's eating away at Mediaset's revenue did. Mediaset also refused to carry Sky Italia's advertising and through encryption RAI made it impossible to view certain programmes (even its own RAI content) via Sky's set-top box. Italy's media regulator is investigating the dispute.

Sky responded by suing RTI (the company that operates Mediaset's TV channels) and Publitalia (Mediaset's advertising arm) for blocking Sky's purchase of advertising on certain commercial networks. Sky claimed this breached the antitrust rules and constituted unfair competition. On 26 October, US firm Cleary Gottlieb Steen &

Hamilton won an important victory for Sky Italia against Publitalia before the Milan Court, which upheld Sky Italia's request for interim measures and ordered that Publitalia refrain from arbitrarily refusing to accept Sky Italia's advertising campaigns. Cleary Gottlieb's Rome-based C Ferdinando Emanuele acted for Sky Italia, Chiomenti Studio Legale's Stefania Bariatti was on RTI's legal team and Roberti & Associati's Gian Michele Roberti represented Publitalia.

The case's importance cannot be underestimated and should be seen in the context of the digital television revolution sweeping Italy, which also impacts on the pay-TV business. 'As far as we know, this was the first time that Italy's two main private broadcasters appeared before a court for antitrust and unfair competition claims,' Emanuele says.

Third parties hope to benefit from the fight, as both sides will be forced to compete on their products, although Bianchi Rubino-Sammartano e Associati partner Ruggero Rubino Sammartano believes it unlikely that consumers will benefit from these clashes. Because Mediaset intends to expand its pay-TV sector presence and RAI is looking to strengthen its digital terrestrial market position, further tussles are likely. Sky Italia is also hunting for a bigger slice of TV advertising. The war continues, but for the moment Sky Italia has won a crucial battle.

► boutique LABLAW in October, three real estate lawyers and litigation head Alberto Nanni left for GOGP, while corporate partners Davide D'Angelo and Lorenzo Parola joined MBL & Partners and Dewey & LeBoeuf respectively. Speaking of the LABLAW move, founding partner Luca Failla says: 'Integrating Mandruzzato and his colleagues was exceptionally straightforward.

Professionally, we've known each other for many years, and because LABLAW is an Italian practice with a strong international edge, the fit was perfect.'

Latham & Watkins shocked the market when it took UK outfit Ashurst's Milan managing partner Riccardo Agostinelli. Plus, Ashurst lost Milan office head Daniele Raynaud and corporate partner Stefano Roncoroni, who

departed to establish boutique firm Raynaud and Partners. This fledgling practice has already made its first lateral hire, with tax counsel Gianluigi Strambi arriving from CBA Studio Legale e Tributario. As for Latham & Watkins, it is a young firm in Italy, but it has been on the prowl for a couple of years. In 2007, it took a five-lawyer team from BEP, including finance expert Andrea Novarese.

Like Raynaud, other exiting lawyers have braved it on their own. Clifford Chance's leading capital markets team left to found

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Riolo Calderaro Crisostomo e Associati. In a difficult market, it has already won the main role on a €1.5bn banking deal (the Intesa Sanpaolo Bank bonds issue).

Italian and foreign practices are also jumping into bed together. In October, DLA took over Italian litigation boutique Giuffrè Scorcelli Rosa & Partners. 'Of the international law firms, we will have the largest litigation department', DLA regional managing partner Federico Sutti confirms, 'with three partners and 21 fee-earners.' All of this happened just a month after DLA launched a public finance practice in Rome, after taking a team from Simmons & Simmons.

US v UK


Notwithstanding US firm White & Case's departure from Italy in 2008, many believe that the US firms have been less affected than

'Our corporate governance is very attractive to lawyers because of its transparency.'

Paolo Montironi, NCTM Studio Legale Associato

the UK practices. Client bases and types of work dictated how the international firms fared during the downturn, but although some UK firms tried to become full-service, they lacked the Italian clients to sustain a consistent work flow, Nardulli believes, 'whereas US firms like Cleary Gottlieb Steen & Hamilton and Latham & Watkins, more focused on corporate work than international finance, managed to build up an Italian client

base'. Cleary Gottlieb is frequently cited as an example of a US firm doing well in a tough market and its supreme competition law practice (see box, 'Clash of the Titans,' opposite) assures the firm an excellent deal flow. 'We have focused on organic growth,' says Cleary Gottlieb partner Marco D'Ostuni. 'Unlike other firms, we have not expanded by merging or acquiring local firms. This ensures that our lawyers share the same professional values and high

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‘We have not expanded by merging or acquiring local firms. This ensures our lawyers share professional values.’

Marco D'Ostuni, Cleary
Gottlieb Steen & Hamilton



► work standards, while remaining focused on helping clients meet and exceed their goals.’ As far as Latham & Watkins is concerned, it is part of its European strategy to build deals locally, rather than to rely upon work from London or New York.

Shearman & Sterling is also expanding, and will be opening a Milan office in January 2010. Until recently, the practice worked on the international side, but now boasts dual capabilities. Referring to the firm’s representation of Mediobanca on UniCredit’s huge capital raising, Fanuele says: ‘This year we had a breakthrough.’

US firms also seem to know how to cherry-pick the best Italian partners.

Dewey & LeBoeuf took employment law star Angelo Zambelli from LABLAW last year, and M&A partner Marco Nicolini and co-founding partner Riccardo Troiano left Italian firm Tonucci & Partners to join Orrick, Herrington & Sutcliffe’s Italian practice. Last year, Orrick raided five partners from Vita Samory, Fabbrini e Associati, including name partner Luca Fabbrini Boccetti.

It’s too early, though, to sound the death of the UK firm in Italy and the rise of its US brother. Some say that because US firms have historically had a smaller presence in Italy, they were less vulnerable to

the crisis. In any event, UK firms are known for their resilience, and in a difficult environment with few deals around, you can’t use it as a basis to determine that US firms have been more successful, Immordino believes.

OPPORTUNITY KNOCKS

Some foreign and local firms have openly embraced the opportunities thrown up by the crisis. Whether expansion or defensive consolidation, mergers among the mid-sized practices have begun and look set to continue. Of the Italian law firms, NCTM is most obviously bucking the trend, having absorbed both 30-lawyer boutique Janni, Fauda e Associati and leading property practice Delli Santi & Partners.

Some wonder what NCTM’s secret is. ‘Our corporate governance is very attractive to lawyers because of its transparency,’ Montironi says, ‘and we are extremely efficient and democratic.’ Add to this NCTM’s aversity to big-shot lawyers dominating teams and its absence of debt, and the firm’s appeal is understandable.

Market sources have responded positively to developments at NCTM. Many believe that the firm has defied the logic of a difficult market by growing during a crisis,

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focuses primarily on mergers and acquisitions, corporate, insolvency and restructuring, capital markets, private equity, banking and finance, and litigation and arbitration.

but that the real challenge will be successfully digesting the mergers made. In any event, NCTM's mergers confirm an increasing trend for consolidation. The spin-offs in recent years from Italy's largest firms have helped create a fragmented legal market overloaded with competition. For many firms, consolidation has been the obvious response. 'We will see more mergers in the future,' says CBA Studio Legale e Tributario partner Alessandro Varrenti, whose firm Camozzi Bonisconi Varrenti & Associati joined up with Padua-based LCA in January to form CBA. Other high-profile examples include DLA's takeover of real estate boutique Apollo & Associati, and corporate practice Agnoli Bernardi's joining up with tax firm Pirola Pennuto Zei.

THE SHAPE OF THINGS TO COME

With the market increasingly polarised, some commentators believe that certain international firms might reconsider their presence in Italy. Federico Sutti expects further changes over the next 12 to 15 months, with major law firms possibly further reducing numbers.

But most market observers do not expect the foreign firms to disappear. Italy is a key European economy, costs are lower than in many other jurisdictions and the country can still be profitable for the international law firms. Certain foreign and Italian practices will become leaner and more focused, while others try to leverage volumes. NCTM's Montironi envisages three scenarios: 'Some large firms will get bigger as they absorb mid-size firms, certain mid-size practices will merge to become larger, and other mid-size firms will scale down to niche boutiques.'

Others believe that within the next five years Italy will start to resemble other legal markets, such as France, where a handful of law firms dominate. 'But those firms might not necessarily be the largest,' Nardulli says. 'Look at Slaughter and May in the UK or Cravath, Swaine & Moore in the US, which have excellent clients, lawyers and profits, but are not the biggest practices.'

Whatever the future holds for legal advisers in Italy, its legal market will continue to entice new entrants. As the English writer Samuel Johnson said: 'A man who has not been in Italy, is always conscious of an inferiority, from his not having seen what it is expected a man should see.' **LB**

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