

Business update:
Infrastructure and Construction
in the Gulf and Beyond

Legal considerations for business in the new environment

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Introduction

- In this paper I make general comments on some of the legal issues confronting entities or persons who are contemplating commencing operations in the Gulf Region or entering into an expansion of their existing operations.
- There are a number of countries in the Gulf Region and some of my general comments apply to a greater or lesser extent to individual countries.
- It is important that you consider the particular country in which you wish to undertake operations and be aware of that country's own particular requirements.

The legal environment

- Most official business with Governments is in Arabic. All proceedings in the Courts are in Arabic. This extends to requiring all documents to be officially translated and notarised – cost and time.
- In most Gulf countries to appear as a lawyer in Court you must be fluent in Arabic and in many instances a citizen of the particular country.
- The legal system is not as sophisticated as in Australia. There may be very little oral evidence, reliance only on documents, lack of cross examination of witnesses, no arrangement for discovery of documents or the issue of subpoena for documents. Generally it is a slower and more haphazard process with many adjournments.
- No doctrine of precedent – identical facts in two cases can be decided differently by different judges in the same Court.

- It is recommended that where ever possible you seek to agree in your commercial dealings a dispute resolution process that should extend to include arbitration as opposed to court process. Arbitration gives the choice of venue, choice of law, choice of arbitrator and choice of language. But at a cost.

Safeguarding your money flow

- Chronic failure to make final payments due under contracts.
- To minimise this consider:
 - Orchestrating a situation so that you hold paperwork or some other item that is reasonably critical to the client's needs and only hand this over in exchange for the final payment.
 - Credit insurance/letters of credit/advance payments.

Choosing a business partner

- What is a partner? Distinguish local shareholder only (post box services) from a business partner from a commercial agent.
- In choosing a business partner:
 - Assess at an early stage whether you need one.
 - Do not rush into a business arrangement with a local partner.
 - Conduct due diligence.
 - Ask for references, ie who does the local partner currently represent? Press for and contact other references, ie other entities that the partner represents.
 - Are there any conflicts of interest on his part?

- Make widespread enquiries about the proposed partner.
- Properly document the arrangement including:
 - Area
 - Time
 - Fees
 - Payment methods
 - Performance related fees
 - Exit/termination arrangements
 - When is a success fee payable.
- Commercial agents – some countries protect these eg UAE. Be careful.
- It can be very hard to escape a commercial agency arrangement.

Insurance arrangements for large projects

- Do not rely merely on what a contract says will be the insurance arrangements. Obtain full copies of the policies and the policy schedules.
- Review:
 - The amount of coverage;
 - Whether you comprise part of the insured;
 - Excesses;
 - Nature of the cover;
 - Relevant exclusions;
 - How the policy responds in the event there is other insurance.

- In the event of any damage or accident on site consult the project insurances first.
- If you are sued in a recovery action by the insurer, check whether you are insured under that relevant policy and if there is a waiver of subrogation rights by the insurer. If so the claim can not proceed.
- In many Gulf countries there will be a local insurance company fronting the policy for a minor percentage – 1%-5% of the risk with remainder reinsured offshore. Seek to identify the reinsurers.

Other things to keep an eye on

- Choice of operating entity, ie general partnership, limited partnership, joint venture, limited liability company, free zone company.
- Protection of intellectual property.
- Having the requisite licence to cover the operations.
- Visas for all relevant employees.
- Red tape – the unusual takes longer.
- Ownership of land.
- Memoranda of understanding (MOU).