



Home News Publications Authors Directory Jobs Events

Publications

IFC Review



“Published annually, the IFC Review provides the world’s leading international wealth management professionals with the most detailed, authoritative and comprehensive analysis on developments within the Tax, Trust, Banking and Investment sectors across the ...world’s leading international Financial Centres”

0

Due Diligence In The MENA

By L Burke Files, CDDP, President, Financial Examinations & Evaluations, Inc (01/11/2014)

The topic is as fascinating as it is complicated, not just complex. I am sure; at least for me that is why I find the work fascinating.

The first step is to understand the nature of the target of your research. What is the background of the counterparties, the acquisitions, the partners, and the suppliers? I assure all – this is no homogeneity within a country or within a region. A Moroccan businessman, may not be “Moroccan” but is 3rd of 4th generation Lebanese. A bank manager in Abu Dhabi – may not be an Emirati but a Palestinian. A bank manager in Qatar maybe a Syrian or even... French.

To uncover the histories, in your meetings, especially the initial meetings, talk about family, your family and their family. It is part of getting to know each other and part of the social nature of commerce in the region. You must possess this knowledge to move further in your due diligence. If you pay attention, and pay attention you must, you will see this is how these businessmen work with one another. They pick up on regional accents and ask very directly *“From what land do you come?”*.

In a gathering at a conference on Anti Corruption I watched several men gather together and in moments of greeting each other were deep in conversation. Questions flowed back and forth and, slowly they broke out in to smiles and hugs. The gentleman, as I was told later by one of the conversation’s participants, all recognised the Palestinian accent and began to ask about where they were born and where they had grown up, about family members and business connections. It seems all grew up very close to one another, some had even attended the same schools, and a few had heard stories about the others. After the brief and intense conversation they were able to assess each other and their abilities. I asked my host who was part of the discussion the outcome. Were these people good people with which to work? His answer was simple and blunt. Two of the six were men of honor; the other four we should not be seen with even when just drinking coffee.

The people of MENA are very mobile and have been for centuries. The mobility has increased 100 fold or more with the Arab Spring, with the rich emigrating and poor becoming refugees. Place and family are very important, more so than ever with the recent upheavals. Some may refer to these connections as a tribe and that, while semi accurate, it is insufficient. It is as much as where you come from, the reputation of you and your family, and whom you know that become part of the vetting process.

The country and its respective body of law, under which you choose to operate, is similarly important. Some nations have worked very hard to establish free zones and offshore financial sectors. The law in these specially crafted locations can be considered good. The laws drafted typically provided for a regulatory framework of maximum freedom but also accountability. The laws of the individual MENA countries vary widely. Some are Civil Code, some are Sharia Law, a few are Common Law – and some blend all of the contradictory elements of the foundational colonial law and Sharia Law. Those that have a foundation in the Civil Code with Sharia Law reforms are the most difficult in which to operate. I’ll single out Syria and Algeria for specific examples.

In Syria a young couple had rented out a flat to a man, who after paying rent for 6 months chose to stop paying rent. It took them seven months to evict him and

Three Month Free Trial and other subscriptions

Login expand

Archive

search

Jurisdictions

- Antigua
- Austria
- Bahamas
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Cayman Islands
- Curacao
- Cyprus
- Gibraltar
- Guernsey
- Hong Kong
- Ireland
- Isle of Man
- Jersey
- Labuan
- Liechtenstein
- Luxembourg
- Madeira
- Malta
- Marshall Islands
- Mauritius
- Netherlands
- Nevis
- New Zealand
- Panama
- Samoa
- Seychelles
- Singapore
- St Vincent & The Grenadines
- Switzerland
- United Arab Emirates

www.gibraltarlaw.com
Tel: (+350) 200 79000 · Fax: (+350) 200 71966
57/63 Line Wall Road, PO Box 199, Gibraltar

Residence & Domicile under the New Government
25 September 2015
CLICK FOR 15% DISCOUNT

GLOBAL TRANSFER PRICING
19 - 20 October 2015
Hilton Dusseldorf, Germany

WHERE COMMON LAW AND CIVIL LAW CONVERGE

International Trusts & Private Client Forum:
Isle of Man
CLICK FOR 10% DISCOUNT
15 Sept 2015

Technical Articles

[Comment](#)
[Latest Articles](#)
[Trusts & Estate Planning](#)
[Asset Protection](#)
[Citizenship and Residency](#)
[Due Diligence](#)
[International Tax Planning](#)
[Tax Treaties](#)
[Banking](#)
[Foundations](#)
[Funds](#)
[Hedge Funds and Alternative Investments](#)
[Insurance](#)
[Islamic Finance](#)
[Philanthropy](#)
[Regulation](#)
[Technology](#)
[United Kingdom](#)
[United States of America](#)
[Asia](#)
[Europe](#)
[South America](#)

5 months close to stop paying rent. It took them seven months to evict him and four years in court to obtain a judgment in the amount of € 550.00. While at that time (before the civil war) the laws and the judges were generally regarded as honest – the delays make enforcement horribly inefficient and greatly favor defendants.

In Algeria the body of law is difficult and subject to wild changes often with retroactive application. Thus, a contract made today, on law in existence today, could be re-written by laws passed in two month to two decades from the date of the agreement. Algerian judges are very poorly paid and are subject to outside influence. As one judge told me in a candid moment – “I do not receive money from plaintiffs or defendants, someone from my office picks up the money so my hands are clean.” As shocking as this may sound knowing what the Algerian Judges are paid, I have a hard time condemning them. They are not paid enough to even feed themselves. These “customs” may explain the recent spat of large arbitration awards against Algeria for mercurial courtroom rulings.

It is a matter of life and commerce that as an outsider, if you get into a legal battle with a local person or company, it is unlikely you will win. You could be a European, an American, or an Egyptian in a dispute in another MENA country. The odds are you will not win. There is a collective sensibility as their countries are overrun by foreigners, from skilled professionals to labourers, that “*we must protect our own*”.

The sides to the MENA personality are equally fascinating. It is highly unlikely that they will ever steal from you. Your wallets and personal items are safe, maybe not from the imported labour, but from the locals. In business, however, as this is a face-to-face competition, expect ruthless negotiations. If ever commerce was to become a contact sport the businessmen of the MENA are prepared to engage – and enjoy it. Your reputation in deeds large and small will carry you far. So many come and promise great deeds. They see and smell the opportunity and have visions of what can be done and share those visions of grandeur. These are the ones who become the victims of mischief. Those that come and promise small deeds and deliver small+ will do better. They are seen as being true to their word.

You may also get the sense that one is doing business “Chicago Style” as you will hear the equivalent phrase of “*I know a guy*”. In the MENA – the expression will have more to do with a potential partner’s connections to politicians and or members of the ruling family. These connections may or may not be needed for your commercial success, but one should never discount them. While some person’s influential friends very well may have

the power to assist your enterprise negotiate the labyrinth of laws, customs and unwritten expectations, I assure all who have even a modicum of power have the ability to milk your project of money and thwart your success. Deal carefully and authentically with these parties. Western law requires us to avoid all practices that look like corruption. With the US Justice department pursuing US Companies for the practice of hiring an official’s children to achieve influence – it becomes... let us say it provides additional complications.

North American and European abilities and skills will face competition from Asian nations whose laws and enforcement on establishing and maintaining relationships are either silent, or deaf, dumb, and mute. I am reminded of a tale of an old Ilyushin flying from a MENA country to Iraq just after the war was over. One of our experts boarded the aircraft and found it full of Korean businessmen toting computer bags filled with cash. He asked them what they were doing. More or less in unison they all turned around and with a big smile said “biznezz” as they handed out their “biznezz” cards. I am not sure our modern risk managers would allow any of us to a) sign out a bag of cash, or b) allow us to travel on an Ilyushin aircraft.

Locals in the MENA have grown tired of substandard quality goods and services provided by many Asian suppliers. Those with money have been looking to the west for the very top in quality; yet still have a hard time breaking old habits. The gifts and social time and taking people fishing, on trips, or out to lavish dinners is part of the culture of getting to know your business partner / supplier. It is a handicap western business must address.

You will develop your own leads and opportunities in the MENA – proxies will not work. As you develop these leads and it appears you will be investing some time and effort in their commercialisation, do hire a due diligence firm for some background. Discover if the representations of ability, contacts and influence they claim is as described. It is also very wise to discover if they or their affiliates are on any of the 20 plus sanctions lists – a fatal flaw if ever there was one.



Register now to receive the
**Free IFC Review
Email Services**

Register now to receive a free trial and any of our regular email services including;
monthly e-journal,
weekly news mailer,
industry events update
and
workinwealth- our soon to be launched industry Job board.

On a social note, even in those places where a westerner can drink alcohol– choose not to drink. Admit to drinking back home if you do, but do not drink alcohol. Any accident, where you have alcohol in your system (car, pedestrian, etc...) – you will go to jail. There is no legal limit – you go to jail.

Enjoy the people, enjoy the places, but also do your homework. So many professionals and businessmen have come to grief as a result of not understanding the MENA nations and their individual inner workings. They may not have done anything wrong but they may have not done anything right.

You need to be logged in to view this article

You are currently not logged in; to log in please enter your username and password in the login section of this page. If you are already logged in and see this message, please go to Account Settings and purchase a new subscription. Articles which are displayed free for a limited time still require login for print functionality to work

Subscribe now or try our free online trial for three months

To get access to this article, and receive a subscription to our yearly article go to our [secure signup page](#).

To receive a **three month free subscription** to the online site, [sign up here](#).