



5 Tips For Coaching Clients To A Successful Saudi Debut

By Kelly Rizzetta

Law360, New York (October 09, 2012, 10:02 PM ET) -- Saudi Arabia's GDP grew by more than 6 percent last year — more than four times the rate of the U.S. — yet the kingdom's complex and often inscrutable legal system makes American companies and private investors wary of setting up shop in the cash-flush Middle Eastern powerhouse. But with careful planning and the right resources, experts say, corporate attorneys can help their clients work the system in a way that is profitable for both the corporation and the host country.

"Here's what CEOs are thinking: 'We don't have a clue what the Middle East is all about, nor do we have someone we can send over there to spend the time figuring it out,'" said Peter Classen, a managing partner with the Washington-based consultancy Grahampton & Co.

"Having a good lawyer by your side is not an extra; it's not a bonus — it's an imperative," he told the crowd gathered at last week's "Doing Business in the Gulf: An Economic and Regulatory Overview," a briefing Crowell & Moring LLP presented in conjunction with the Arab Bankers Association of North America.

A "good lawyer" means a resourceful attorney who is willing to do meticulous research and track down the right local contacts to help his client, Saudi business specialists say. Several corporate law experts recommend a few steps both general and outside counsel can follow to help their clients break into one of the Middle East's strongest markets.

1. Strike While the Iron Is Hot

Saudi Arabia is in a sweet spot, according to Brad Bourland, founder of Bourland Associates, a Washington-based business advisory firm for Saudi Arabia and the broader Middle East.

Thanks to years of go-go oil development, the Saudi government is sitting on a pile of cash and a very strong financial outlook.

In recent decades, the government has used this cash cushion to heavily subsidize energy usage, turning Saudis into big-time energy consumers, Bourland said.

While this makes Saudi Arabia a fantastic place to do business for companies that eat up a lot of energy, it also signals the gradual depletion of the kingdom's oil cushion.

Luckily, the Saudi government is aware of this trend, and is looking to take corrective action while it still has oil money to spend, according to Morris F. DeFeo Jr., who heads up Crowell's Middle East and North Africa practice. This opens up a huge window for Western companies looking to get a piece of the action.

“There is a true interest in the Saudi Arabian government ... for diversification of the economy,” DeFeo said.

The government has embarked on a massive infrastructure campaign, pledging \$60 billion to build four new “economic cities” from scratch, according to the Saudi Arabian General Investment Authority.

“There is a strong interest in all things American,” DeFeo said, noting Saudi Arabia has a preference for companies willing to bring Western know-how to the kingdom.

2. Do Your Homework

With the majority of the kingdom's wealth controlled by the government, it is critical for clients to work with advisers who understand the Saudi procurement rules and environment, experts say.

“Saudi Arabia's legal system does not promote certainty,” said Crowell counsel John Beaumont, who works out of the Riyadh office of Crowell's Saudi Arabian partner, Al-Enizy Associates.

Shariah is the law of the land. Any legislation, government policy or contract that disagrees with the Islamic code will not be enforced, according to Beaumont.

However, Islamic law is not codified in Saudi Arabia. The kingdom's general courts are governed by four schools of Islamic jurisprudence, and none are bound by the doctrine of precedent, according to Beaumont.

The result is that the general courts, which handle most criminal and civil disputes, have wide discretion and can be very flexible, Beaumont has found. The downside is a degree of uncertainty that makes it extremely difficult for lawyers and their clients to strategize.

Complicating matters further is a sweeping legal reform movement that has been under way for the last decade, overhauling the kingdom's entire legal and regulatory framework in support of its modern economy.

New regulations are cropping up every day, and they are not always made available to the public, Beaumont noted.

But the Saudi Arabian legal system is navigable, Beaumont said, touting Crowell's practice of partnering with Saudi firms.

For general or outside counsel leading clients into Saudi Arabia, the answer is to “get the books, and read, and study them carefully,” Classen said, paraphrasing a quote from President Abraham Lincoln. “Work, work, work is the main thing.”

3. Tread Lightly Around International Anti-Corruption Laws

Part of that homework should involve boning up on international trade laws governing corruption and bribery, Middle Eastern law experts say.

The U.S. is the chief agent policing foreign businesses operating in Saudi Arabia, with the Foreign Corrupt Practices Act as its primary tool.

However, the U.K.'s Serious Fraud Office has recently stepped up enforcement of the Bribery Act of 2010, according to Crowell white collar and regulatory enforcement partner Kelly Currie.

Like the FCPA, the Bribery Act applies not just to companies based or incorporated in the country that made the law, but also to firms “doing business in” the U.S. or Britain.

Bribery isn't limited to trading cash and gifts, Currie emphasized, but is defined as exchanging anything of value with a foreign official in order to gain a business advantage.

Identifying a foreign official can be tricky in Saudi Arabia, Currie said. The royal family encompasses thousands of princes and princesses, and with the government employing more than a third of the population of some 28 million, just about anybody could be deemed a government official.

Legal teams need to do an incredibly thorough job investigating the parties they deal with and monitoring their interactions with clients in order to ensure compliance, according to Dalal Hasan, a Crowell associate in the firm's Washington office

“Know who you're dealing with,” Hasan said. “Investing in that stuff up front is hard, I know, but it pays off in the end.”

4. Pick Partners Wisely

The same vetting is needed when deciding whether to take on a Saudi business partner.

While forming a joint venture or alliance with a Saudi business might offer a Western company insight into the kingdom's complex legal system, insufficient prep work can mask problems that could emerge down the road. Virtually all experts agreed prep needs to be conducted on the ground in Saudi Arabia.

Classen cited the example of an international hospitality brand owner that signed on with a Saudi distributor largely on the strength of a presentation the Saudi firm made to the Western company and its responses to a questionnaire the owner put out. The venture failed miserably because, unbeknownst to the owner, the distributor had contracts with 40 other brands and was stretched impossibly thin.

“Get your materials out there to potential partners and see how they react,” DeFeo said. “Then go from there.”

Most experts recommend simply talking to people currently operating in Saudi Arabia to learn about potential partners' reputations. Executives of failed Saudi ventures are excellent sources, Classen noted.

References are also key.

“Ask the potential partner to identify recent ventures or partnerships with non-Saudi businesses aimed at entering the Saudi marketplace, and speak with the foreign partners to understand how things went,” Classen stated. “If none are available, proceed cautiously, if at all.”

5. Hang in There if Things Don't Go According to Plan — Because They Won't

Perhaps most important for lawyers looking to help companies break into the Saudi Arabian market is managing client expectations, according to Beaumont.

The simple fact is that projects and legal processes take longer and cost more to complete in Saudi Arabia than they do in Western countries, the Crowell counsel said.

Advisers should help companies complete a self-assessment before entering Saudi Arabian ventures, Classen advised. Doing business in Saudi Arabia requires a certain appetite for risk.

“If it's not right for you, don't come,” Classen said simply.

For those who think they're up to it, the business opportunities are tremendous.

The politically stable kingdom's debt-to-GDP ratio is one of the lowest in the developed world at 9 to 9.5 percent, depending on the source. The U.S.', by contrast, is well over 100 percent, while over-leveraged European nations are faring even worse.

Plenty of Western companies have found success in the kingdom, which the International Finance Corp. consistently ranks in or near the top 10 for countries in which to do business worldwide.

Solutions are there for firms willing to devote the time, money and resources to finding them, experts say.

“Don't be scared off,” Beaumont advised.

--Editing by John Quinn and Jeremy Barker.

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