

# Legal Mind

Carlos Gonzalez and Arti Sangar present a guide to finding the right lawyer

**H**iring an attorney is an important decision. Often, that decision is based on a combination of factors, including reputation, experience, and cost. In vetting potential attorneys, individuals and corporate clients alike can consult a number of valuable sources of information. Obviously, a positive, prior experience with a lawyer or a law firm may resolve the question.

Alternatively, clients and attorneys may find each other through word-of-mouth or reputation. The internet and specialised search engines which profile attorneys and their law firms also provide a useful tool for

researching a lawyer's background and experience.

What happens, however, when you need to hire a lawyer several thousand miles from where you live, in another country, and who speaks a different language? As more and more entrepreneurs, small business owners, and corporations enter the global economy, the need to hire foreign counsel will continue to increase.

A party in Dubai, United Arab Emirates (UAE), who enters into a contract with another party in Miami, Florida may need the assistance of US-based counsel to draft the contract and provide advice on a range of issues including: arbitration clauses; the use of foreign law to resolve disputes; and the enforceability of certain contract

clauses in one jurisdiction, or another.

Likewise, a foreign government sued in a US court will need to retain US counsel to defend the lawsuit. International litigation raises a wide variety of legal issues from the proper service of process, to the adequacy of the US as a proper forum for the litigation. These are issues which are unique to international litigation, and require counsel with experience in this particular field.

When looking for foreign counsel, you should first consider the following:

## How well do I know the foreign jurisdiction?

While there may be some similarities, the law in the UAE and the US is not the same. Foreign clients often naively assume that what works in their country will also work in a foreign jurisdiction. This assumption can be costly. If you are based in Dubai, for example, and are negotiating a contract with a party in the US, it may be essential to hire US counsel to review the contract and ensure that your interests will be protected.

The US party may want to include an arbitration clause requiring that all disputes be resolved in Florida, under Florida law. This may or may not be in your best interests as a foreign national. Likewise, you may want to include an alternative dispute resolution provision which favours a forum in your home country. The feasibility of one option over another may require a



study of the competing jurisdictions' laws. The selection of counsel with on-the-ground knowledge of and experience in the foreign jurisdiction will therefore be critical.

#### **What is my legal problem?**

The law has become very specialised. Unlike other parts of the world, in the US, one lawyer does not typically practice civil and criminal law. Of course, you may find law firms with lawyers that specialise in both areas, but, as a general rule, US lawyers typically focus their practices in the civil or criminal arenas. Accordingly, you will need

their overhead expenses. A small to mid-size law firm, however, is economically leaner. Unlike their larger counterparts, small to mid-size law firms do not employ large numbers of inexperienced attorneys who earn high salaries, but add little value to the representation, nor do they maintain established partners who are collecting large salaries, but are not generating as much business as in the past. As a result, small to mid-size practices are not forced to charge high rates to cover their overhead expenses.

This, however, does not mean that these law firms lack the skill,

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to define, as specifically as possible, the legal issues that you feel require you to hire foreign counsel.

In broad terms, if you have been sued, or are looking to sue another party for breach of contract, you should narrow your search of attorneys to those concentrating their practice in the areas of civil or commercial litigation. Of course, what may appear to be a civil matter at first may also become criminal in nature. A good lawyer will be able to identify additional issues and help you build the right defence team.

#### **How much do I want to spend?**

There is a popular belief that the quality of a lawyer is directly proportional to how much that lawyer charges. Nothing could be further from the truth. Lawyers who work for large law firms, for example, are forced to charge very high rates in order to cover

experience, and know-how to represent clients in sophisticated litigation. In many cases, these law firms are built around former large law firm attorneys whose skills, experience, and know-how help make these practices attractive alternatives.

#### **How well do my lawyers know me?**

Beyond knowledge, confidence, and reputation, clients also consider their ability to relate to their legal representative as an important factor in selecting one lawyer over another. Often, the greatest barrier to the attorney-client relationship, particularly in cross-border disputes, is the lawyer's inability to communicate in the client representative's native language.

Even if the client representative speaks English, for example, the ability to communicate in Arabic, Chinese, Spanish, Portuguese, or any other language can strengthen the relationship

between client and lawyer. In addition, the client should look for a lawyer who knows the particular industry at issue. Knowledge of the client's business will be critical in contract negotiations, mediations, arbitrations, and other legal proceedings. While the law governing contracts, for example, is fairly well defined throughout the US, the reason for drafting a contract one way, and not another, may well turn on the nature of the business at issue.

While there are certainly many other factors that may affect your decision to hire a lawyer, the above factors provide a strong starting point for selecting the right lawyer for your needs. Of course, researching, interviewing, and selecting the right law firm to represent you in foreign litigation can be a time-consuming task in its own right.

Often, corporate and private clients in need of foreign representation will turn to a firm they trust to assist them in locating the right team of lawyers outside their jurisdiction. Many clients, for example, will hire 'umbrella counsel' to coordinate major litigation or transactions with law firms and lawyers across multiple jurisdictions. This method can be very effective from a client's point of view. Regardless of how many jurisdictions are involved, the client will always have a primary point of contact who will then take on the task of vetting law firms, assembling the litigation or deal team, and ensuring that the clients' needs are met, regardless of the jurisdiction involved. ■



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