

Key notes for Solicitors servicing potential foreign investors (Part 1)

One key role Solicitors play in growing the Nigerian economy is helping a foreign investor navigate the set up of a business in Nigeria. Success at this helps in its own way to encourage foreign direct investment. Every Solicitor acting for such a potential foreign investor would at the point in time be akin to an ambassador -representing Nigeria in the eyes of the foreigner. The solicitors' ability to gain the confidence of the potential investor and proffer creative legal solutions may be a deciding factor for such a potential investor. In the next few weeks we shall be reviewing the legal niceties that confront a solicitor who has the privileged task of playing midwife in the birth of a foreign concern in Nigeria. Issues pertaining to incorporating a foreign subsidiary, permits, and the like would be dealt with in the weeks to come. This article seeks to lay a necessary foundation by highlighting some important points for note in relationship building with the client-potential investor.

1. Make the client comfortable

For many of us in Nigeria, listening is a habit we are yet to culture. We love our own voices and have this erroneous belief that as lawyers the more we can chip in the better impression we create. Wrong! Some one hour meetings may see you listening for 40 minutes, taking out 10 minutes to make intermittent clarifications and using the last 10 minutes to suggest the way forward. Clients are more comfortable to people who make them comfortable. How do I make the client comfortable? By listening attentively with eye to eye contact and positive body language that says "go on, I understand" or "this is interesting" Many times we are present at meetings but not attentive. When we begin to speak, it becomes obvious that we did not get the crux of the matter. Mobiles phones have made it worse. What is most annoying is answering your mobile phone only to scream at the top of your voice "I am busy in a meeting". How disruptive? And some people do this several times during a meeting? Put the phone (or phones for those who carry 2 or more handsets) on silent as soon as you enter the meeting room. Anyone who calls and gets no answer will surely conclude that you are unavailable at that time. Keeping it on silent or switch it off tells the client that you are all his and ready to listen to this all-important brief. What a powerful statement? Another way to make a foreign client comfortable is to spend some time asking about the business and sharing the excitement wherever it is exhibited. It says to him "I am equally excited and I believe your business in Nigeria would thrive". Ideally you should have done ample research on the company and the person(s) with whom you are meeting. That way you can ask specific questions that shows your interest in the organization. Statistics shows that majority of business lawyers that retain their clients do so by simply showing an active interest in the business, not just the legal aspects. Another little way to create comfort is to find out the proper pronunciation of the clients' name(s) and make a duty to honour them with a proper pronunciation.

2. Legal Fees

It goes without saying that course we are in it for the income. However what needs to be said is that one should gauge the expectations of the foreign client on billing modes and quantum of fees. In dealing with a specific company it would help to find out, if they have a fixed approach to dealing with lawyers' fees worldwide or they are flexible and adaptive in each country. There are no hard and fast rules in deciphering how a foreign client views fees, but they are some pointers. Usually small companies that do not have a legal department in the home country tend to be flexible and adaptive with negotiating fees with each country whilst the bigger multinationals have laid down structures for dealing with lawyers fees worldwide. It is not uncommon for foreign companies to benchmark your fees or call for "quotations" from other lawyers, so be careful not to price yourself out. In particular, transactional clients that are not setting up a presence in Nigeria but working on a transaction to transaction basis (usually in financial services sector) are very keen on the bottom line, so they tend to go shopping to benchmark fees. They are often open about the fact that they are talking to several law firms at the same time and one recurring question is – What is your fee structure? It is in your interest to assume that they are shopping even when they have not told you so. Note also that well structured companies may deduct withholding taxes on legal fees where it is applicable in their home country. You may want to state after your fee "net of all taxes" to avoid a shortfall in your expectations which may sometimes be as high as 17.5%. Where your charges are denominated in Naira to be paid in a foreign currency equivalent, do not forget to specify the rate of exchange at the time of invoicing. Using the bank rate for such payments ends of giving you a bonus when you sell. Please remember to state well ahead that your fees are exclusive of expenses because the best practice worldwide keeps the expense bill separate and your foreign client is use to that pattern. Apart from the expectation, your expenses are unpredictable. Be careful to keep all receipts for all payments, registration fees, stamp duties, etc. and remit them to the client as attachments to your invoice. Many lawyers assume that every foreign client would pay an hourly rate in a foreign currency. However the fact that many foreign clients are used to the hourly rate system in their home country does not mean they would readily accept it here. Many have done their homework on Nigeria and are aware that the hourly billing is more the exception than the rule and therefore for good reason they may want to take advantage of the lump sum charges. The rule of thumb is to be flexible. Some will propose an hourly rate with a cap on the number of hours or an hourly rate with a minimum fee. Some will prefer a lump sum negotiated fee, expenses excluded. Be open to all sorts, but be wary of proposals that are wholly based on a contingency. If you must do an hourly billing then maximize it. Firstly negotiate an hourly billing rate in a favourable currency. If you work for a client willing to pay in Euro, Pounds or Dollar, would you not rather charge 100 pounds instead of 100 dollars at today's rates? It is also useful to call a lawyer in the home country to find out the average hourly billing rate so you do not overshoot or short change yourself. Note that hourly billing may either be pegged or be a variable dependent on the level of lawyer working on the matter. If you have the variable option, do not forget to gain miles on the hours a partner or senior lawyer who works on the matter. Do your hourly billing in the manner the client is accustomed to – Time Sheets. Learn how to use Time sheets. If you do not have time sheets or know how to use them ask a colleague in Nigeria or abroad. In billing a new entrant into Nigeria, my opinion is that long term thinking is the best approach. Your goal should be to break the client in gently and culture a long term relationship. Also note that all foreigners are in the habit of

comparing notes. If your fees are greatly exorbitant and the client discovers, you may have converted a potential retainer client to a one time customer.

3. Conflict of Interest is taken seriously

In most other countries particularly in Europe, conflict of interest is something that is taken very seriously. In practice many foreign clients in briefing you would ask upfront whether there is a possible conflict of interest. What is a conflict of interest? It is any event, relationship, or situation that may adversely affect your full loyalty to the client briefing you. A possible conflict situation is where the foreign client is briefing you to represent their interest in negotiating a deal with a Nigerian partner for which you have acted for in the past or are currently acting for. The best approach it may seem is to discuss it with the client. Where you and the client are convinced that the conflict of interest potential is negligible and the client wants you to continue all well and good. Otherwise it is your duty to possibly recommend another lawyer. Tough! Remember that you are a trusted confidant whose behaviour affects what that foreigner would think of Nigeria and Nigerians.

4. Related and allied information

Very often information required by a foreign investor may not be within your professional domain as a Solicitor. It may be that you require an Accountant, Banker or other professional. In such a case be upfront with the fact that you need to consult. It does not take away from your competence. Rather it shows that as a professional you know your limitations and have a quest to provide accurate and up to date information. In consulting another professional, please remember the rules of confidentiality, so unless it is absolutely necessary you will disclose no names and provide only as much information necessary for the purpose. As a lawyer, it is advisable for you to try and understand the feedback from this other professional, pre-empt likely requests for further information from your client so that you can be answer ready when you discuss the data with your client. If you are not certain on anything, do seek a second opinion. You will clearly have stuck your foot in your mouth if the advice from your consultant ends up being wrong.

5. Adopt a user friendly style to reports and legal opinions

The golden rule with all written modes of communication is to practice brevity, provided your brevity does not sacrifice clarity to become a job done scantily. Where you must write a long treatise, then it is wise to be kind enough to attach an executive summary. The typical client has so much to read that all they want to know are the highlights. Also write in simple concise terms that are easy to understand, rather than high sounding legal jargon. Remember what you intend to do is communicate. Therefore knowing your audience is a key issue in writing reports and legal opinions. The choice of words and diction you would use for a letter to the General Counsel of a British Bank is not the same when writing to another foreigner for who English is a distant second or third language. Never forget to conclude your legal opinion, the client has hired you to know what you think, not to be a law library. One area where some law firms stand shoulders above others is in the constant reporting system. It is a joy to the client to be constantly updated without prompting. These updates

should proffer options where the situation dictates taking a decision one way or the other.

6. Do not magnify the graft elements

Many lawyers are quick to give clients the impression that everything is up for sale in Nigeria. Demands for graft to settle one thing or the other in sums often exaggerated for personal gains can and very often does give the impression that the cost of doing business in Nigeria is prohibitive. I had to do a NIL Tax Clearance Certificate (yet to commence business tax certificate) a few weeks ago for a new company 100% foreign owned. It cost just the ink for filling the requisite forms and the logistics of sending someone there. It was a pleasant feeling and even better was the fact that it took less than one week. Next to the obvious infrastructural poverty, the next thing that keeps foreign investors away is the issue of graft. Tread softly!

7. Beware of technological expectations

Many people abroad would rather communicate by email or fax. It is usual for most of them to have their computers on all day with an activated “you’ve got mail” voice prompt whenever an email comes in. That way they respond to mails immediately. Many times they expect the same response level from us. But ours hardly works as clockwork for reasons that are not far fetched. We however make the best of our “good” situation. Check your emails as often as possible (at least once or twice a day). Get a dedicated fax line and possibly an inverter that keeps it running when power fails. Have optional service providers at all times.

8. Candour is nine points over ten

Being honest about several things is in the long run a plus for any Solicitor dealing with a foreigner. Be honest about your capabilities (but stating the possibilities for expansion) and when asked how much time a process takes, do not exaggerate the speed in delivery time, it may back fire. The average educated European or American has been taught by their “find out yourself” educational system to gather and process information in a methodical manner. Therefore be empirical in your opinions and never try to push your guess as the position on a matter. If you are unsure a foreigner operates from the culture of being told “let me come back to you” or “I need to check it out” And if the information you have is second hand information – say so.

9. Be efficient and timely

One great stigma any lawyer can have is when you tell a client he would get an email tomorrow and he never believes because the antecedents show that a deadline or promised delivery is never kept. If for any reason you are unable to deliver as promised be courteous enough to request a postponement. What of keeping to time? Can we cut out the “Nigerian time” lateness to meetings and imbibe punctuality?

Whenever you have the opportunity, do be a good ambassador.

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