

Where time is money

In part 1 of our two-part series on negotiating in the US, **Sergey Frank** warns that while the exterior of a US attorney may be casual, relaxed and humorous, do not be lulled into a false sense of security. Time is of the essence, profit rules the day and a confident attitude is essential when brokering a deal in America

The United States of America is a market leader in many areas of business development. Inventions such as shareholder value, stock options and IPOs were all conceived there. Also, in the world of law firms, many of the leading marketing and business developments come from the US. This, indeed, is an attractive and competitive market with a high ratio of lawyers per inhabitant. Nowhere else in the world is law so predominant as in the US, especially if you look at areas such as product liability and personal injury. And nowhere else is the legal profession so publicly obvious regarding, for instance, the advertising of litigation attorneys in TV and radio commercials, on the internet, in newspapers and in journals.

To be successful in the United States one should bear certain rules of the game in mind. On the one hand the lyrics of the song 'New York, New York' apply: "If you can make it here, you'll make it anywhere!" On the other hand, just taking a euphoric approach is not nearly enough for successful operations in the US. It takes more than this to flourish there.

In general, communication is pleasant and polite, but at the same time focused. In the beginning 'small talk' and a tendency to 'keep smiling' are predominant, as is a rather obvious humour, but not in such a sensitive way as in the UK.

Communication is the natural inborn talent of the Americans. If you give a talk, speak in a relaxed way and use a lot of humour to capture and keep the attention of your audience.

Nowhere else in the world is the attitude 'time is money' as influential on business communication as in the US. After a neutral warm-up phase your US partner will get quickly to the point and will usually place little importance on status, title, formalities and protocol. He will communicate in an informal and direct manner on a first name basis and affect relaxed and casual gestures and body language. It is quite common to remove a

jacket quickly and choose the most comfortable seating position. American attorneys and businesspeople are substantially different from their counterparts, for example, in Japan who pay considerable attention to form, etiquette and distance. In the US, social functions are used to discuss business matters with the partner. Americans tend to be pragmatic businesspeople, but they are also ambitious. The development of a personal relationship with your business partner is not as important as reaching the targets and negotiation outcome. They focus strongly on fast business results. As dividend payments are due and payable every quarter, it is essential to secure profitability on a short-term basis.

Any impatience displayed from your American counterpart resulting from the 'time is money' attitude should not be perceived as impolite, but rather as a necessity in order to achieve quick results. The time factor is essential for implementation of agreements and you will often find that the preamble states that 'time is of the essence'. This attitude has a strong influence on negotiations, since strategic alliances and cooperations with long-term potential such as joint ventures are usually evaluated in terms of the potential to achieve a rapid return-on-investment.

Nowhere else in the world is so much literature on international business practices available as in the US, mostly focusing on the "what" behind the business and not on the more subtle questions based on the "how" and "why" business and communication patterns are so different. Frequently, American lawyers preparing for projects abroad will make themselves familiar with most of the negotiating patterns of the other country. But this can easily fall by the wayside when old habits creep in; therefore expect mistakes in the communication process.

The American way of drafting contracts, that is, with long and exact definitions at the beginning and with many contingency

provisions trying to cover any possibilities within the contract, has become predominant in international business transactions. Therefore, contracts drafted by US lawyers are frequently far more lengthy and detailed than in countries of civil jurisdiction such as Germany or France. Also, in-house counsel are usually involved earlier and more deeply with a business transaction in the US than in Europe.

When doing business with US lawyers it is advisable to take the following considerations into account:

Conducting negotiations on a professional level and making presentations with the help of state-of-the-art technology is very much appreciated in the US. One should communicate on the basis of at least a pre-negotiated agenda if not even on the basis of a draft-agreement. The negotiation should be led in a well-prepared, calm, matter-of-fact and pragmatic manner, sprinkled with a substantial portion of humour. Present and market your case in a positive way. It is advisable not to be too humble about one's own law firm and capabilities. Rather, take a can-do attitude.

Be careful not to be misled by the relaxed way of communicating. There are subjects such as religion, politics or ethnic background that should only be touched upon very cautiously, even in private conversations. The casual attitude in the US, where sandwiches and drinks in plastic cartons are served during conferences, and where your US partners tend to act very casually in the office and chat about their family, should not lead to the assumption that there is no hierarchy that exists in American law firms and companies. On the contrary, it is present in a subtle way, and it may take some time to understand fully the ranking system in depth. ■

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NEGOTIATION

Americans like to get down to business quickly, so it may happen that after a short introduction about more abstract business principles and global considerations, the negotiation will swiftly turn to details of the project at hand. Exact definitions of most key terms of an agreement are essential. Not without reason is there a well-known proverb: "He who defines the terms wins the argument."

The style of negotiating in the US is pragmatic and results-oriented, and may sometimes be very fast and efficient. Communication is polite, direct and straightforward. The same applies to the mutual search for different solutions. The American partner may employ rhetoric in order to reach targets faster and more effectively. Interruptions during a presentation in order to ask questions are possible and not necessarily considered impolite.

Legal presentations should be kept short and simple. American business lawyers are usually open and flexible and without being asked, will illustrate their perspective. They are open-minded about exploring the other side of the discussion in order to see the whole picture. Because of their distinctive pragmatism they can also be quite creative with their problem-solving. It is therefore advantageous to exchange as much non-confidential information as possible, and to have the flexibility to explore new options in joint brainstorming sessions.

Negotiations in the US contain a good deal of bargaining. The American partner will make compromises on the basis of reciprocity and expects the other side to make similar concessions in return ("tit for tat"). He believes in competition, but also has a sound sense of fair-play and tends to choose solutions based on the desire to win, rather than to see the other side lose. In this context it is often possible to reach mutual concessions so that both sides are satisfied with the negotiation result and thus reach a so-called "win-win solution". This does not apply, however, in a situation where one party negotiates from a position of clear strength.

The USA is a country in which lawyers play a very significant role. The



attorney-at-law combines the different functions of a solicitor and a barrister that exist in the UK. The US is, of course, famous for law suits in which enormous amounts of compensation or damages are claimed, and often granted, by the courts. The legal system is seen by some as a way to attain wealth and this has a strong influence on business and negotiations. In-house counsel and attorneys are involved in the negotiating process more frequently – and often earlier – than in the UK and Europe. It is therefore advisable to bear this in mind when commencing negotiations. The attorney should be a specialist in the particular business sector and, at the same time, be familiar with the local legal system of the particular state.

Such involvement may prove very costly since legal advice in the US is more expensive than anywhere else in the world. The precise figure of the hourly rate and any additional expenses should therefore be negotiated in advance. The attorney should be asked to prepare an overall estimate for his services prior to instruction.

Contracts based on Anglo-American law generally come from a case-law history and do not include the principles of a commercial code. Therefore, they are usually very detailed and consider all eventualities. This is why one has to be prepared for a "paper chase" when negotiating in the US. In other words, long contracts commencing with detailed definitions and covering all possible questions and contingencies that may arise. Americans like to stick to contracts as agreed upon, and amendments made later on as a result of a change in circumstances is not usual.

As well as the typical aspects that

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arise during a negotiation such as the communication, the negotiating approach and various contractual points, the following aspects should also be considered.

The USA is a multi-cultural and multi-ethnic melting pot where many attorneys are immigrants of first or second generation. All of them have one thing in common: they are American citizens, who live and enjoy the high standards of the American way of life and its freedom.

Women's liberation has gained significant recognition in US business life. This is why many positions, especially in various service sectors such as management consulting, chartered accounting, in the legal field and in advertising, to name but a few, are more often occupied by women than in Europe.

The dress code is conservative and classic. Dashing combinations are not accepted in the majority of industries. Dark blue and dark grey suits with black shoes and dark socks in particular are appropriate. Light coloured or especially white socks are worn by the Americans for sports activities but not in business life.

After all that has been said, one should not forget one important thing: Americans love to have fun, and fun should also exist in the professional world quite apart from all the stress. It may be exactly this attitude which makes the opportunity of working or doing business in the US appear so attractive. ■

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