

An aerial, grayscale photograph of a cityscape. A prominent canal runs through the center, flanked by lush greenery and modern buildings. In the background, several tall skyscrapers rise against a hazy sky. One building on the right has a sign that reads "JOY IS BMW". The overall scene is a dense urban environment.

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Working with Lawyers in International Business

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Thai businessmen are increasingly involved in international business dealings with foreigners in either Thailand or abroad. Thai businessmen traditionally call on their lawyers when a contract that they have signed has run into trouble and a dispute has occurred or is about to occur. They expect their lawyers to defend their interests in resolving the dispute, through litigation or negotiation, or both. In some instances, they may ask their lawyers to draft a contract or other document according to their

instructions.

One of the things Thai businessmen soon discover is that the foreigners are more likely to involve their lawyers from an early stage. They may also notice that the foreigners seem to use their lawyers in different ways. Increasingly, Thai businessmen feel it necessary to have their own lawyer in various negotiation situations or where problems have arisen in order to put themselves on an equal footing with the foreigners. They may hire a Thai lawyer with good English and legal education and experience abroad or a foreign legal advisor. Often, however, these arrangements are not entirely successful from either the client's or the lawyer's point of view.

The main reason why these problems occur is mutual misperceptions. The client does not understand what foreign educated lawyers think they are supposed to do. The foreign lawyers do not understand what the clients expect and want. This is not to say that foreign clients and their lawyers do not have these kinds of problems. Rather, these problems are less likely to occur or are less severe when both the lawyers and clients have similar backgrounds than when the experiences and methods of working are vastly different as in the situation we are discussing.

Fortunately, it is not difficult to solve these problems. There are certain fundamental principles that the parties need to apply to their relationship. They apply equally to situations where the client is seeking advice, representation in negotiation or litigation, or is looking to have the lawyer draft a contract or other document.

The client faces a choice of law firms. There are sometimes situations where the mere fact that he has hired a famous firm will prove useful, as the name of the firm will impress or intimidate the other side. More often, however, the client can choose among a number of firms both large and small. There is no one answer as there are many successful firms, both large and small. In making his choice, the client must understand that it is not the size of the firm that matters but rather the skill of the lawyer who will be handling the case. Large firms are usually broken down into practice areas that are in effect groups of small firms working together. Normally, client matters do not require the involvement of more than one practice group. In the large firms, it is often the case that the senior lawyer whom the client meets in the beginning does not really handle the matter but instead turns it over to more junior lawyers, sometimes lacking in experience. This is different from the senior lawyer having a support team. The client must be comfortable with the lawyer he has decided to use, must be sure that he will be handling the case, and be satisfied that he has

a qualified support team, if necessary, whether or not the client's lawyer is with a large or small firm.

Of course, the client goes to the lawyer with a specific problem and even a certain solution in mind. The good lawyer will listen to what the client has to say. He will then do something that may seem strange but which is the key to a successful relationship. He will ask the client to tell the story in detail, not describe the problem. The lawyer needs to know what happened and what the client wants. Usually what the client really wants only comes out as he tells the story in detail. If it is a contract-drafting situation, the lawyer will ask the client not what he wants the contract to say but what he wants the contract to accomplish.

If it is a dispute issue, he will want to know all about how the problem came about. If it is a negotiation question, he will want to know what the client really expects and what areas he is flexible about. If the client is willing to tell the lawyer what the lawyer wants to know, not withholding anything, whether or not the client thinks it is important, and, if the lawyer is willing to listen and ask questions, the problem and the solution will come into focus. The client may discover that the problem is not what it seemed to be or that there is another solution. The lawyer may realize that

the solution he usually recommends in similar situations is not the best one. It is often possible to develop the legal situation into something more beneficial for the client than either the lawyer or client expected at the beginning of their work together.

Just as the client should be candid with his lawyer, the lawyer is under a duty to maintain what he has learned and his advice to his client in the strictest confidence. He is also under a duty not to undertake any work where there might be conflict of interests. Fortunately, generally the legal profession is regulated. There are strict rules about confidentiality and conflict of interests. These rules are rigorously enforced.

Both the lawyer and the client need to understand clearly that what the client needs is a recommended solution to his problem. The lawyer needs to explain and the client needs to understand what the legal system permits or forbids in a specific situation, what are the rules that he must know, and what he can expect to happen. The lawyer must understand that the client needs legal advice on which to base his decision or action. He is not interested in the business judgment of the lawyer. Both must also consider that these are fine distinctions and that they must communicate clearly and openly with each other so that the client will know exactly what he needs to decide. Too often, however, the client receives a lecture or memorandum on the theoretical

legal principles that he does not find helpful. The client wants a definite answer or a specific recommendation. He wants to know the reason. The client should not expect the lawyer to tell him what to do or rely blindly on what the lawyer says. It is only by the lawyer and the client jointly exploring and developing the relationship between the legal and business elements of the issue can there be a truly useful solution.

The client needs to understand that the lawyer has to have time to study the problem, research as necessary, and give his recommendation. He should not expect an instant answer nor can the lawyer necessarily tell what the advice will cost in the beginning. The client should understand that the lawyer can do some work on a fixed fee basis but that there is some that he cannot do that way. The lawyer should understand that the client is concerned about the fees. The lawyer needs to explain how the fees will be charged and who will do the work. He should be able to give at least an estimate of the fees once the client presents the problem. They should discuss exactly what form of work product the client wants and does not want. If the client does not need a detailed memorandum or even a written report, he should say so. The lawyer must recognize that there should be no surprises to the client. If, as the work goes forward and there appears to be a problem with the estimate, the lawyer

needs to inform and discuss as the change occurs.

If the parties follow these principles, the client will obtain maximum benefit from his lawyer if he consults him at the earliest possible point. If he needs advice, he should get it before he makes his decision. In business negotiations, the lawyer may have experience with similar situations that the client will find useful. If it is a contract drafting or negotiation situation, the lawyer needs to be involved before the client discusses the contract draft which the other side may give him or which he plans to give. All too often, the client comes to the lawyer seeking advice after he has decided something or with a contract that he has already signed. All he wants is confirmation that there is nothing wrong. The lawyer can do nothing except warn the client about problems that may arise in the future. If the client appears to be headed for a clash, skillful legal advice may be able to prevent it from escalating into a full-blown dispute. Usually the client who seeks the lawyer early ends up spending less on legal fees.

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