Kingdom of Saudi Arabia

How to keep IPO, PO, and Private Placement costs down

Saudi Arabian businesses remain to a large extent family run, there is however an increased appetite for growing the business, by accessing equity capital markets ("**ECM**"), whether by an initial public offering (an "**IPO**"), public offering (a "**PO**") or by way of a private placements ("**Private Placements**").

The discussion in this paper is equally relevant when a company is considering growth by accessing funds through the debt capital markets ("DCM"), whether by normal debt instruments by issuing bonds (usually abroad) or through the Saudi Tadawul (the Saudi Stock Market), by issuing Sukuks.

Either of the option requires an element independent due diligence, (commonly, just shortened to "**DD**") to be carried out by lawyers, financial advisors and accountants for the benefit of the potential investors, (the market as a whole, open to the general public as well as sophisticated investors in the case of an IPO and PO, and generally to sophisticated investors in the case of Private Placements).

Depending on the law firms, the fees can be anything from a US$25,000 to US$250,000 and sometimes even more, this does not of course include cost of remedial work, which again can be anything from a moderate sum to those that extend to hundreds of thousands of dollars.

The biggest problem with remedial work is delay, and the cost of delay is not just in loss of management downtime, but also loss of opportunity cost as well the expected and anticipated direct and calculable financial costs, such as increased costs of borrowing as opposed to an injection of equity.

A logical question to ask is: What can a client do to reduce costs and also potential delays?

Know your company

Seems obvious but it's not. Most of the companies have been in operation for decades and accordingly the distinction between the shareholders and the company has in many cases become lost in the pages of history so to say. Effectively, the assets of the shareholders and that of the company is indistinguishable, to make matters even worse, sometimes, it is unclear what assets belongs to what shareholder, and this can be further confounded where "**establishments**" have been effectively converted into LLC's (Limited Liability Companies). One of the key areas of disputes always revolves around ownership of real property.

Do a due diligence

By now either you have realised you have issues alluded to above you need to fix, or you want to 'know your business'. Identify an appropriate firm that can provide a cost effective and quick analysis of your business and assets, a very quick legal due diligence, (we can do this at One 2 One Legal).

This DD is to understand the followings matters for the purposes of re-structuring and/or for remedial actions:

Who owns what?
Have the correct form of name for the company been used (a very common error)?
What loans the company has (indeed some loans may be made to the individuals but been used for the company or vice versa!)?
Whether there are any major litigations or disputes that are about to be commenced or are on-going?

This is a snap shot only.

Organise a pre-restructure sign-off

The DD would have now produced an issue list that should have identified areas such as assets in the name of individual shareholders when the assets should be in the name of the company, or loans in the names of individuals etc. The company should take decisions as to any and all issues raised and agree them with the shareholders and ensure that proper legal documents are in place recording the decisions for future reference.

Restructure the business

Employment contracts

It is not uncommon to see that senior members of the company being shareholders, who hold virtually all senior positions, not to have any written contract of employments. It is of paramount importance that such matters are regularised.

Assets

As in section 2 above appoint an appropriate firm to put into effect the restructuring required to ensure that the 'arms length' relationship between shareholders and the company are respected. The legal agreements do not need to be extensive other than to ensure that the asset is clearly identified, and that the nature of the transfer and the value is appropriately identified. Properties usually are not transferred to the company, but the problem revolves round the fact that there are no proper lease arrangements in place. Investors and their lawyers usually and rightly so, do become very concerned about rental valuations and potential risk of abuse where a proper rental agreement is not in place. The positive aspect for the shareholders is that mostly the rental charged is not market rental and accordingly they usually end up better off any event.

Loans

Ensure that loans are actually in the name of the company as opposed to individuals, and ensure that the company is not inadvertently paying for a loan taken out by a shareholder. Once these basic matters have been resolved consider issues of re-paying and/or extending (reducing, re-negotiating terms to reduce borrowing costs) the loans terms as appropriate bearing in mind the proposed injection of additional funds through the potential IPO and/or Private Placement.

Trading contracts

Ensure that all names on any contracts are corrects by a simple amendment agreement, this opportunity can also be taken to extend or correct other issues such as contract extension, prices, scope of services.

Disputes

There is a very "laissez faire" approach to litigation. This approach may be suitable to particular individual hands on style of managements but is not suitable nor encouraged in corporate environments and certainly is not looked favourably by investors and naturally affects the value of a particular business and accordingly, to the extent that there are pending or already existing litigation in place, a responsible attitude needs to be taken to resolve them.

Corporate governance

Family businesses are usually run almost as you'd expect a family patriarch to run a family. This is never acceptable with investors. Investors want to see a proper governance structure and prefer to see a devolved management structure where a professional board of directors are appointed to manage and run the operational affairs of the company.

Following the above the approach and adopting the process outlined, not only will shareholders be able to structure their business incorporating the latest in business process and risk management strategies but will also significantly reduce the time and cost to take the company public or otherwise make use of the ECM and DCM to grow the company.

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Since 2000 Siraj Al Islam has built a significant expertise in legal and legal related business risk management. In addition to specializing in Islamic banking and finance, Siraj Al Islam has a long history of advising sponsors, banking institutions and quasi-governmental entities with the structuring, implementation and delivery of major corporate and commercial projects' including PPP and PFI

At the age of 28, Siraj Al Islam was appointed to and served as the United Kingdom General Counsel for ISS, a global organization listed by Forbes as the world's 5th largest private employer.

Prior to founding **One 2 One Legal LLP**, Siraj Al Islam worked with UK "Magic Circle " and USA " White Shoe" law firms, some of the largest law firms in the world.

One 2 One Legal LLP, is a limited liability partnership, registered in England, United Kingdom.

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This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call or email us.

For further information on One 2 One Legal LLP, please visit www.one2onelegal.com