

کلیدانڈو  
CLYDE & CO

# Elements of Contract – A Smart Approach

Presented by:  
**Abhimanyu Jalan, Partner**

19 December 2018

# Agenda

1. Commonly used Contracts in the Region
2. Understanding of Legal System and Infrastructure
3. Elements of Contract – Formational and Operational
4. Smart Approach to Contractual Elements
5. Nature of Business/Parties Involved
6. Risk Management during the Life Cycle of a Contract
7. Dispute Resolution

# Commonly used Contracts in the Region

1. Agreement for Incorporation
2. Joint Venture Agreement
3. Shareholders Agreement
4. Property Contracts (purchase, lease, rent)
5. Construction Contracts
6. Supply Contracts
7. Licensing Agreements
8. Franchisee Agreements
9. Credit Facility Agreements
10. Confidentiality / Non-Disclosure / Non-Circumvention Agreements
11. Security Agreement (Undertakings, Pledges, Guarantees, etc.)

# Overview of the Legal Systems and Infrastructure

## Different legal traditions

- Islamic law
- French civil law tradition
- Anglo-American “common” law tradition



# Elements of a Contract

## FORMATIONAL

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## OPERATIONAL

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Smart Approach to Contractual Elements

1. Due diligence
2. Proper execution
3. Understanding of rights and obligations
4. Intervention of third parties
5. Risk assessment, mitigation and management
6. Deterrence and damages
7. Deadlocks
8. Enforcement

# Elements of a Contract – Smart Approach - **Due Diligence**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach – **Proper Execution**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement



# Elements of a Contract – Smart Approach – **Understanding of Rights and Obligations**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach - **Intervention of Third Parties**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach - **Risk Assessment, Mitigation and Management**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach – **Deterrence and Damages**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach – **Deadlocks**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Elements of a Contract – Smart Approach – **Enforcement**

## **FORMATIONAL**

- Parties, Capacity and Form
- Consideration and Obligations
- Purpose of the Contract
- Representations and Warranties
- Covenants and Undertakings
- Governing Law
- Dispute Resolution

## **OPERATIONAL**

- Clarity and understanding
- Effect of governing law
- Nature of potential breaches
- Resolution of disputes
- Effective enforcement

# Risk Management – Why is it important?

Contractual risks are primarily of two types:

**Liability risks:** breach of contract issues, claims, warranty problems, terminations, intellectual property infringement charges, alleged confidentiality disclosures, disputes and litigation.

**Business risks:** poor relationships, failure to obtain objectives, bad public relations, declining morale, instability, weakening of brand integrity, loss of goodwill and reduced revenue or profits.

**BE AWARE**  
  
**BE PREPARED**

# Periodic Contract Review

- Maintain legal compliance
- Adapt to changing business needs
- Streamline for better customer engagement
- Ensure both parties are performing their responsibilities as per the contract.
- Be prepared for change.
- Review expiry of contract.





# Clyde & Co

- Full Service – Specialist areas
- Local and International laws
- Number of attorneys and partners
- Corporate Services
- Debt Collection
- Clyde & Co Network (offices and correspondents)

# Clyde & Co

We are the largest international law firm in the Middle East

Clyde & Co has the largest presence in the MENA region with over **40 partners** and **400 staff**.

Located in the major commercial hubs of the region, our **5 offices** allow us to support regional organisations and international investors throughout the GCC and the wider Middle East region.

Most **Band 1** legal rankings in the UAE

**40+**

Partners

**200+**

Legal Professionals

**400+**

Staff

**5**

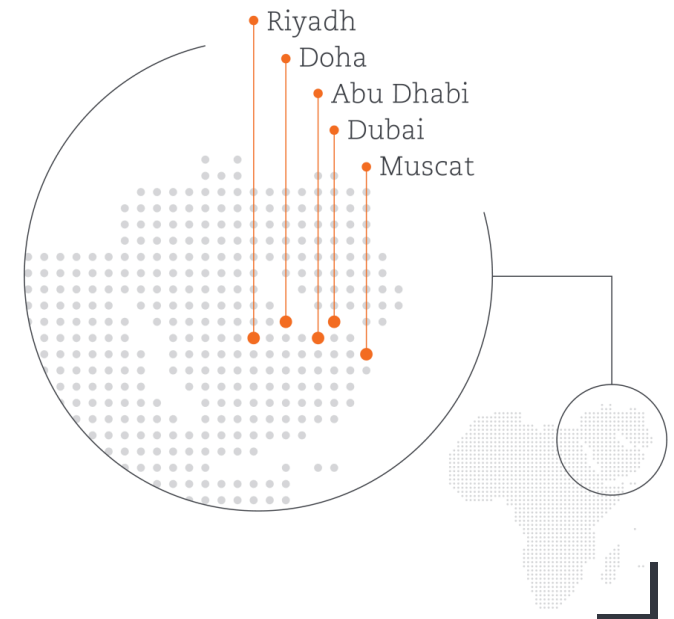
Offices & associated offices

**29+**

Years in the UAE

**10+**

Years in Qatar





**415**

Partners

**2,200**

Legal  
professionals

**3,800**

Total staff

**50+**

Offices and associated  
offices

Clyde & Co\* accepts no liability for loss occasioned to any person acting or refraining from acting as a result of material contained in this document. The content of this document does not constitute legal advice and should not be relied upon as such. Advice should be taken about your specific circumstances. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co.

\*Clyde & Co LLP, Clyde & Co Technical Services JSC and Clyde & Co LLP Lawyers & Legal Consultants

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Authorised and regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2018