



AIA Best Practices: Do's and don'ts of overseas projects

Contributed by Thomas Vonier, FAIA, RIBA

Summary

Every architect in the United States who works overseas needs a working knowledge of foreign business customs and practices. This article highlights key considerations for American architects and architecture firms that desire to establish and maintain successful international business relationships.

Background

When American architects do business in foreign countries they need to adjust expectations, alter business practices, and refine negotiating tactics. Of course, many factors do not change: Just as with domestic work, disputes can arise. Clients may fail to pay professional invoices on the terms or timetables agreed upon; those who seem genuinely interested in reaching an agreement for services may simply be fishing for free ideas and judgment; signed contracts may in the end amount to little more than a departure point for additional negotiations; and demands may mount for uncompensated services.

But there are significant differences in the business conditions surrounding overseas work. Project costs can escalate and project profits can sink due to currency fluctuations; unanticipated foreign taxes and fees; favoritism in legal and administrative disputes from courts and regulatory bodies toward local companies, clients, and professional counterparts; and proceedings that often use different terms of law than those prevailing in the United States, often in languages other than English.

Firms completing projects in countries outside the United States are well advised to remain mindful of several significant factors.

Foreign clients may expect a different—and often a more complete—range of services than would be customary or contracted for in the United States. Architects and engineers may be expected to provide more in the way of services in a foreign setting than they would in the United States, and it is not unusual for clients to regard retained design professionals as responsible for anything and everything needed to complete a project, whether or not the work was foreseen, and whether or not the architect receives compensation.

Scopes of design service and methods of service delivery vary widely from country to country. The conventions, practices, and customs surrounding professional practice in the United States may not prevail. This includes such basic, commonly held canons as the need to separate financial interests, to state such interests clearly, and to remove conflicts of interest. Even the more or less usual role of the architect as the owner's representative in dealings with contractors is rarely a foremost consideration. Also, many countries

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rely more widely on performance-based specifications, rather than on product-specific ones, and contractors or vendors are frequently called upon to develop construction details and to decide what product or approach will best meet a general specification.

Obtaining payment may be far more difficult overseas than it is in the United States. When business relationships come to an end, or when professional services are no longer required for whatever reasons (such as abandonment or termination of a project, or the onset of irreconcilable disputes), it may be necessary for a U.S.-based architect to expend great effort collecting payments that remain due. Given distance and other factors, it could easily cost more to effect the collection of a debt than the value of the debt itself.

Prior agreements, contracts, understandings, and written documents may have little significance. Personal and family relationships, a muttered word, a quick nod or a handshake—and even assent or agreement presumed by a client as a result of almost imperceptible factors—may carry greater weight or meaning than a carefully crafted letter or contract document. It always pays to seek understanding of the cultural practices, business customs, and ethics that prevail in the host country.

Design professionals who have prior experience and who are not direct competitors may be willing to share their knowledge and experiences of the country in question. Many publications discuss unique factors that apply in certain cultures and societies, e.g., the U.S. Department of Commerce and the U.S. Department of State publish information on issues in trade and commercial dealings with foreign countries.

In nearly all instances it is advisable to form a relationship with a known and trusted local firm. Contracts should generally be made directly with the principal client rather than through a local associated firm or a consulting entity. Otherwise, important legal leverage can be lost and unscrupulous associates can more readily seek to remove, replace, or supplant the foreign professional.

Some American professionals advocate trying to develop strong personal or social ties to foreign clients, hoping thereby to establish bonds that exceed the purely contractual. Personal warmth, trust, and candor have a place, but an approach that is too personal can have unintended consequences; clients may expect concessions on significant matters, purely out of a sense of personal loyalty or social obligation.

“Our Asian clients typically want an all-in-one price that covers fees and expenses, and they typically want to negotiate down our initial price. This means two things: Be crystal-clear about the number and duration of person-trips included in the price, and be sure to cover yourself for negotiations. Specify that all overseas travel is in business class, include these costs in your price, and specify payment by wire in U.S. dollars. As with any project, seek assurances that your client is financially reputable and the project is viable, and see that your contract protects you adequately. In our experience, due to their British legacy, both Hong Kong and Singapore basically operate under Western legal systems, so contracts are in English and are structured similarly to those in the United States. We have never had to pay any taxes or business fees to do work in Hong Kong or Singapore. The People’s Republic of China is a bit wilder in the contract and business fee department, especially since the base contract is in Chinese, so seek expert advice on these matters before doing work.” —Design Firm Principal, New York City

The pre-project negotiation stage provides an opportunity to anticipate and identify ways to resolve potential problems. If approached carefully—and with a well-informed sense of good faith desire to satisfy the

legitimate interests and concerns of all parties—negotiations should pave the way for amicable and forthright dealings throughout the life of a project and client relationship. The same basic rules apply to international and domestic negotiations.

Avoid ultimatums, threats, legalisms, and rigid positions or statements. It is unwise to become locked into positions where later retreat or adjustment could result in an apparent loss of face or signal a lack of resolve. It is generally better to acknowledge what has been said or proposed, agree to consider the matter, reinforce the point that all parties desire fair and effective resolution, and stress that the main interest is to ensure the project goes forward on a sound footing.

Combine or link key points, hotly disputed issues, and major concessions. Instead of making concessions individually or addressing major issues on an ad hoc basis throughout the course of a negotiation, consider grouping issues and offering several proposals for resolution or concessions at key junctures. Contractual issues may in fact be closely linked, so it usually makes sense to gain as full a sense as possible of all gaps in position before offering a way forward. Many foreign cultures are more accustomed than our own to such “horse trading,” and many take pride in their bargaining skills. It can help to acknowledge such prowess.

Avoid immediate reactions and making key decisions on the spot. Sound negotiations require thought and consideration, and these require time. Of course, one should be prepared to enter negotiations, and it is always advisable to maintain a keen sense of self-interest.

Reacting or answering too quickly is a pitfall. There is no weakness or loss of position in telling interlocutors that you require time to reflect on an issue or to consult with partners, and you can usually forestall objections by providing a timeframe for response.

Most contracts and key contractual provisions, whether designed to apply in the United States or in an international environment, are intended to reflect common sense, ensure fairness and balance, protect legitimate interests, and reinforce sound business practices. In this sense, the following suggestions and guidelines could be considered universal:

- Do include provisions to stop work after a specified period in the event of delinquent or insufficient payment. Consider linking project deliverables to timely and complete payments.
- Do include provisions that allow electronic invoicing, via receipted email, or transmittal of invoices by facsimile. Foreign postal systems vary widely in dependability, and lag time can be increased by loss of mails or delays in delivery.
- Do attempt to protect your firm against serious payment delinquencies and breach of contract or default by the foreign client. In some instances payment can be guaranteed by a U.S. subsidiary or by the parent corporation of the foreign entity, or through letters of credit issued by a respected, stable financial institution.
- Do define carefully all products and deliverables associated with each stage of a project. Cite specific examples drawn from other projects if they are available.
- Do incorporate carefully defined dispute-resolution procedures and specify recognized arbitration or mediation approaches.

- Do insist on a signed contract or letter of intent before commencing work, with an advance payment, retainer or deposit; characterize this as an important.

U.S. professional custom that should be respected by the client:

- Do seek to obtain a deposit or retainer sufficient to meet the largest fee payment you expect to earn, and specify that the deposit or retainer amount could apply to the final fee payment due.
- Do specify all anticipated costs and expenses, because foreign clients may assume that such expenses are a part of basic or comprehensive professional fees.
- Do submit separate invoices for expenses and fees, so that any overdue fee payments or reimbursements can be addressed separately.
- Do outline a monthly payment plan or identify payments at key project milestones, to reinforce the point that international clients may not withhold payment until, for example, he or she deems that all project work has been completed satisfactorily.
- Don't expect disputes to be framed or resolved in the same manner they would in the United States, or that they will conform to your sense of due process and fairness.
- Don't assume that project-related disbursements, itemized costs, and additional services will be reimbursed. Negotiate fees and budgets to ensure flexibility and to anticipate margins of error.

Care must be exercised with regard to undisclosed or “special” taxes, which may not be apparent at the outset of a project or evident to persons who are not well-grounded in host-country laws, practices, and regulations. Some measure of protection may be offered by specifying in the basic contract that fee and reimbursement payments made by a client to the U.S. firm are exclusive of any local taxes due, and that the client is responsible for any and all taxes levied by host-country authorities.

Some U.S. firms have been successful in securing fee payments in U.S. dollars from international clients, and it may be possible to negotiate contract provisions that trigger fee adjustments in the event of significant currency fluctuations. Insurance against currency fluctuations may also be available.

The web and powerful search engines make it possible for firms to do extensive research on international cultural and business factors, and to explore the experiences of other U.S. companies and firms active in selected offshore regions. Extensive research can make a world of difference.

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Architect's Handbook of Professional Practice, 15th edition Unit 1 - The Profession
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Section 08 – Practicing in a Global Market