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Sources of Law

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Each country's legal system has its own sources of law, with greater weight placed on some sources than others. In developing an infrastructure project, it is important to identify which sources of law apply in the host country and their relative weighting. The following are the most common sources:

Constitution/Code

A country's Constitution is a set of fundamental ground rules setting out the powers of the different branches of government (i.e. executive, legislative and judicial) and how these entities operate and interrelate. The Constitution may also set out basic principles, such as fundamental freedoms and rights. In Civil Law systems these rules are usually embodied in "Codes".

All but a very few countries have written constitutions where these fundamental rules can be easily identified (although their interpretation may be less straightforward). The remaining few have unwritten constitutions established by long-standing tradition.

A Constitution overrides any other source of law and it is usually highly difficult to amend. There may be a separate judicial court which considers constitutional issues, namely whether any law, regulation or administrative act is inconsistent with the Constitution and therefore void.

Legislative Enactment - Statute

Legislation is the second key source of law and usually takes priority over sources of law other than the Constitution. There may be more than one legislative body in a country - central, provincial or state and municipal authorities may each have separate power to legislate. Rules will determine the extent to which

and in what areas one legislative body has priority over another.

Primary legislation may delegate powers to a particular ministry or regulator to prepare secondary legislation designed to supplement and develop the principles set out in the primary legislation. For example, tariff setting guidelines for a regulatory authority that is established by primary legislation may be set out in secondary legislation. Secondary legislation is usually not subject to full parliamentary scrutiny guidelines and so is faster to enact. However, it may be more difficult to identify than primary legislation as it may be recorded in subsidiary documents.

Judicial Decision

In some countries, judicial decisions are authoritative and develop into a source of law known as “case law”. Case law may extend the application of legislation and is deemed to form part of the law.

In other jurisdictions (mainly civil law jurisdictions) judicial decisions are formally only deemed to interpret the existing law and are not a binding source of law, although in practice they are often treated as authoritative.

Treaties

The host country may be subject (or may be about to become subject) to laws made by a regional or world grouping by becoming a signatory to a treaty. Examples are the laws of the European of Union, trade treaties, rules of the WTO and bilateral treaties. It is unlikely that a country could amend these rules easily.

An example of laws of a regional grouping is the body of regulations and directives of the European Union. Regulations have direct application in the respective member states legal systems and will take precedence over each member's national laws. Directives have to be adopted separately into law by each member state, but the member state must ensure consistency with the underlying EU directive. It is not just the current members that need to heed EU law. Countries seeking to accede to the EU (whether their accession has been formalized or not) need to take account of EU laws and the standards that they impose (particularly relevant to infrastructure).

Rules and guidelines may also be imported into law through treaty in relation to such matters as standards of engineering and health guidelines. For example, a country may adopt the World Health Organization's standards for drinking water.

Other Sources

There are a number of other sources of law that may be given greater or lesser weight in a particular country:

- writings of legal scholars - in civil law jurisdictions, academic writings interpreting the constitution or legislation have considerable influence on decisions of the courts;
- edicts from a king/ ruler;
- in the case of certain Islamic countries, "Sharia law" in the form of religious books and edicts from religious groupings.

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