



Legal Issues to Consider

Exporting

The principle that “ignorance of the law is no excuse” holds true universally, meaning advice should be sought before costly legal mistakes are made in export markets. Areas where contentious issues arise include; appointing an agent, export control legislation and intellectual property. Inserting a simple arbitration clause in your contract could pay huge dividends in dispute resolution.

Appointing an agent

If you are appointing local agents or distributors, it is important to understand the legal difference between the two. Critically, with agents, the title to goods does not pass to them during a sale, meaning, if the customer doesn't pay, it is the principal (you - the exporting company) who bears the loss. In contrast, a distributor who purchases goods from you and resells them will bear the loss if their customer doesn't pay.

When appointing an agent, it is important to seek advice about the legal protections you both enjoy and to make sure your agreement protects your position to the fullest degree possible.

It is advisable to record the rights and duties of both parties clearly in a written agreement to avoid misunderstandings and minimize the risk of costly disputes later.

An agreement should list the goods and/or services in relation to which the agent is being appointed and should permit you, as the principal, to update this list.

Intellectual property (IP)

Exporters need to plan appropriately in relation to IP, both to protect their own IP and to avoid running afoul of the IP rights of others. In addition to the obvious security benefits of having a robust IP policy, managing it carefully can bring a number of positives to your business:

- Reviewing the IP of competitors can provide competitive intelligence; for example, early identification of a competitor's next move.
- Reviewing the patents of others can avoid time being wasted re-inventing the wheel.
- Potential collaborators can be identified through IP searching. Licensees or technological solutions to problems may be identified.
- A good IP strategy can be crucial in attracting investment.
- A 'qualifying patent' may attract tax relief.

Major IP pitfalls to avoid include:

- Not registering trademarks;
- Assuming that a .com domain name or Companies' Office registration gives protection equal to that provided by trade mark protection;
- Failing to appreciate the extent to which international business depends on IP;
- Trying to patent protect a product after it has been launched on the market;
- Not registering designs;
- Not planning for IP creation and, thus, encountering disputed ownership of IP from employees or outside developers asked to make a specific contribution to a project;
- Running blindly into problems with the IP of others;
- Not budgeting for registration of IP.

*Note: Original text from the Exporter Toolkit from the Caribbean Export Development Agency (CEDA).
The content has been updated for the Bahamas Trade Information Portal with permission of CEDA.*