

Which Way to Sell Goods Abroad?

A person engaged to sell your goods abroad (or in the UK) could be:-

- an employee,
- an agent, or
- a distributor.

A company can be an agent or a distributor but not an employee.

Commercial arrangements can be complicated and involve aspects of two or more of the above. Proper legal advice at the outset is crucial to understanding the implications of the arrangement proposed.

Employees

An employee is under your direct control and must comply with your reasonable instructions.

Pros:

- Direct control, both of the employee and the whole process of deal-making, contract, delivery etc.

Cons:

- Employees have extensive employment rights and social costs throughout Europe, e.g. giving protection against dismissal.
- Employees incur more overheads and management time.
- It can be difficult to find experienced salespeople to employ.

Agents

An agent is someone who has authority to make sales on your behalf. Your relationship with an agent is governed partly by the general law of agency and partly by your contract with the agent.

Pros:

- Agents are generally paid commission only, so are highly incentivised to achieve sales for you.
- You dictate the prices at which the agents will sell.
- The agent simply takes the order on your behalf, so you retain control of the contract and delivery and other logistics.

Cons:

- Agents have significant rights to payment based on past performance if you terminate their contract.
- Logistics and other costs and management remain with you unless the agent is specifically contracted to handle these.

Distributors

A distributor buys goods from you with the aim of selling them on to customers.

Pros:

- The distributor takes the risk of finding buyers for the goods you sell it.
- In most countries, a distributor is not entitled to payment of compensation when your contract with it expires or is terminated under notice properly given.

Cons:

- Distributors pay you less for your goods than customers.
- Competition law limits how much you can control how your goods are sold on by the distributor (e.g. outwith a defined territory).
- Distributors are less likely than agents to deal exclusively in your goods, and are therefore not incentivised to push your brand ahead of all others.

This is a general advice note only. For further advice, contact **Derek McCulloch** or **Christopher Smith** in our Commercial Department on 0131 225 1677.