SheTrades

SheTrades MENA

DUBAI
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Economy and Tourism

SHETRADES MENA GUIDEBOOK TRAINING MATERIALS

HOW TO EXPORT GUIDE: AGENTS AND DISTRIBUTORS

This exporting guide has been produced by SheTrades MENA hosted by the Dubai Department of Economy and Tourism

Entering Foreign Markets

One of the most important decisions that an exporter needs to make is the mode of entry into a particular market. A firm wishing to export, but lacking the necessary infrastructure or expertise can export through commission-based agents or distributors, local buying offices, merchant exporters, etc. In this method of exporting the firm tends to use a foreign representative to sell its products to the end user. The key benefits and disadvantages of this method of exporting are:

Advantages:

- A firm need not worry about acquiring lots of customers as this is the role of the local agent or distributor,
- It saves the exporter from additional costs involved in setting up a foreign presence and in some cases a separate department or section in the home country.
- Reduces management time and effort for the exporter.
- The exporter may be exposed to greater risks
- The local country marketing and technical issues including in some cases after sales support is the responsibility of the local agent or distributor allowing the exporter to concentrate on production,
- An exporter does not need to spend time and resources building a local presence as the local agent or distributor should have this in place,
- The firm benefits from the professional expertise of the local agent or distributor.
- It offers a low-cost entry strategy into a foreign market

Disadvantages:

- The possibility of losing control over the delivery of the good or service to a foreign representative,
- The possibility that the agent or distributor may be overly aggressive or mis-sell the product thereby creating a global loss of reputation for the exporter,
- The customers may associate the product or service with the local agent or distributor instead of the exporter,
- Lower profit margins as the agent or distributor will need a payment,
- Supervision costs associated with monitoring the activities of the local agent or distributor as there may be a mismatch between the objectives and practices of the two organisations.

Types of Agents and Distributors

Dubai based firms seeking to export their products or services into foreign markets have a number of different types of agents and distributors some of which include the following:

Commissioned Agents:

They act as brokers, who link an exporter's product with a foreign buyer. Usually, the agent does not fulfill the orders, but passes them to the exporter for acceptance. These agents can sometimes assist with export logistics such as packing, shipping and export documentation.

Export Management Companies (EMC's):

EMC's act as an exporter's off-site export department, representing the exporter's product to potential foreign buyers. The EMC searches for business on behalf of the export firm and takes care of all aspects of the export transaction. Hiring an EMC is often a viable option for smaller exporters who lack the time and expertise to break into foreign markets on their own. An EMC provides a range of services from negotiating export contracts to providing after-sales services. Usually, the EMC's operate on a commission basis, but some take title to the products they sell and make a profit on the mark-up.

Export trading companies (ETC's):

ETCs perform many of the functions of EMC's. However, they tend to be demand-driven and transaction-oriented, acting as an agent between the buyer and seller. Most ETC's will take title to your goods for export and will pay your company directly. This arrangement practically eliminates the risks associated with exporting. However, the exporter needs to make sure that appropriate checks are made regarding the ETC. More often than not ETC can be a good source of export opportunity.

Export merchants:

Export merchants will purchase and then re-package products for export, assuming all risks and selling the product to their own customers. This export intermediary option should be considered carefully; as your business runs the risk of losing control over your product's pricing and marketing in foreign markets.

Co-exporting:

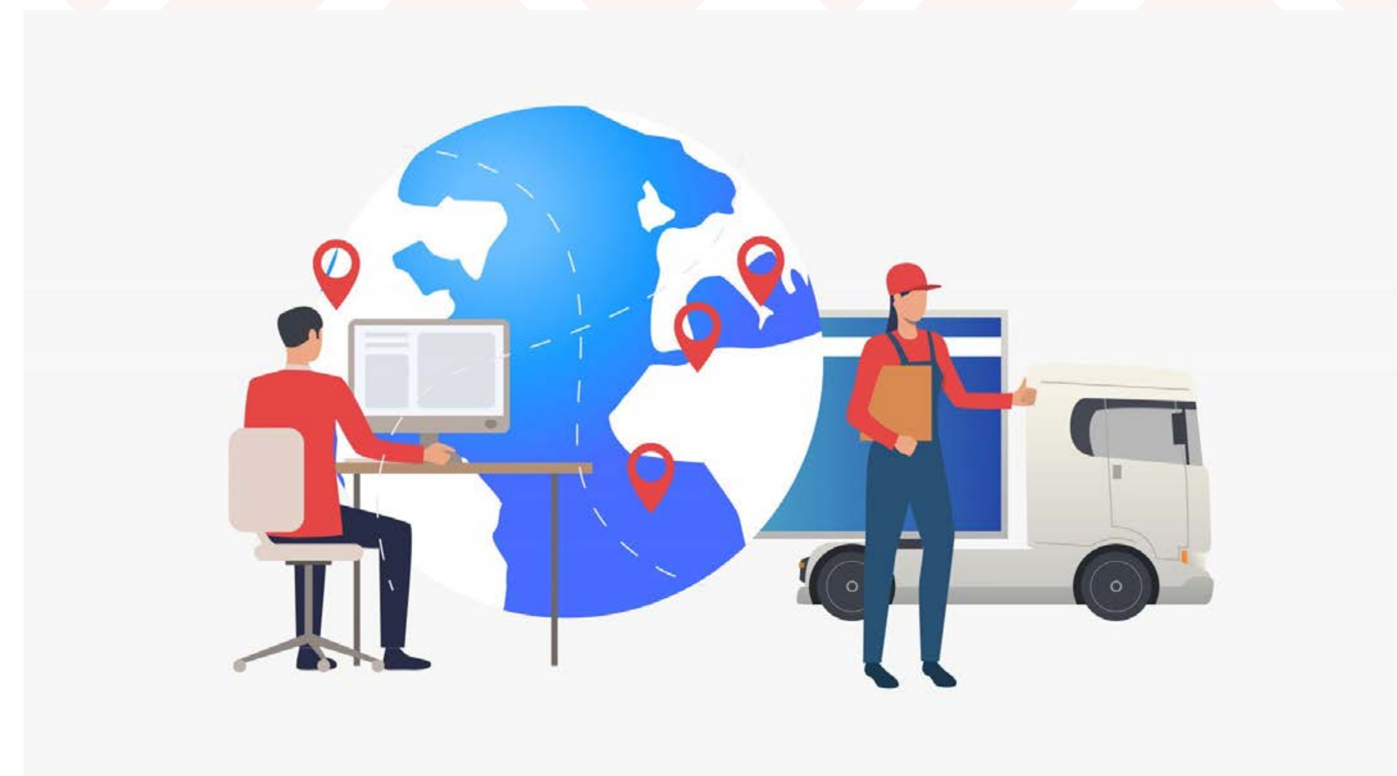
In this case, an exporter allows another firm, which already has an export distribution system in place, to sell your product in addition to its own. Co exporting (sometimes called piggyback exporting) has several advantages. This arrangement can help you gain, immediate foreign market access. Also, all the requisite logistics associated with selling abroad are borne by the exporting company.

Distributors:

Foreign distributors buy a product from an exporter and re-sell it at a profit. They maintain an inventory of the export product, which allows the buyer to receive the products quickly. Distributors often provide after-sales service to the buyer as well as dealing with the issues involved in import country customs regulations and processing.

Foreign government buying agents:

Foreign government or quasi-governmental agencies are often responsible for procurement. This form of exporting can often represent significant export potential for small exporters. Foreign country commercial attaches in the UAE can provide exporters with the appropriate in-country procurement office contact details.

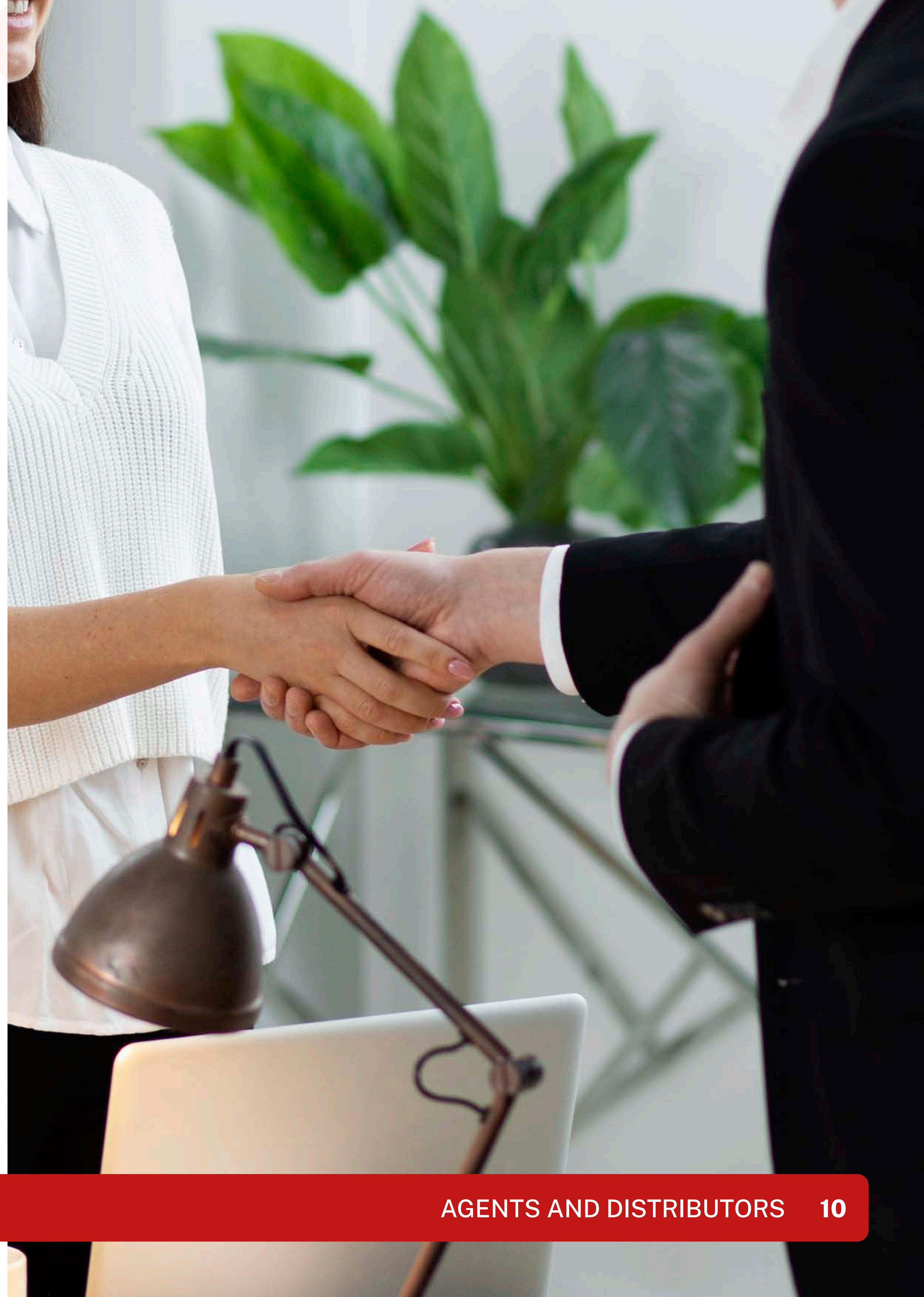


Difference between an Agent and Distributor

Broadly speaking, there are two kinds of foreign representatives namely, the commission agent, and the distributor which are described below:

Commission Agent. A commission agent is essentially a person appointed by the exporter to maintain a direct relationship with the customer. The commission agent does not buy and sell the goods but merely locates business opportunities for the exporter, and negotiates and concludes deals on behalf of the exporter. Working on a fixed salary or commission (i.e. percentage on sales concluded and paid for), the commission agent normally carries no inventory or credit risk. The sales contract is always between the exporter and the buyer even though the commission agent may sign it on behalf of the exporter. The exporter controls the price at which goods are sold. Apart from directly being in touch with sales outlets, commission agents may also undertake market research on behalf of the exporter.

Distributor. A distributor, usually a wholesaler or a local importer, buys goods outright from the exporter and then sells them to the customer at a profit. The distributor usually represents the interest of the exporter in a specified territory or region for an agreed range of products. There are relatively no credit risks for the exporter in such cases. The distributor holds stock, and looks after local publicity and sales promotion. He or she also provides after-sales service where required. With a distributor, a more direct and deeper market penetration can be achieved, and if the distributor is well known, this choice of sales agent can be an effective way of securing a quick entry for the product in the market. The distributor may however, represent more than one manufacturer, though not necessarily the same range of products. Usually, the exporter does not have control over the final pricing of the product which is fixed by the distributor depending on market conditions.



Although an agent and distributor can both represent an exporter in the foreign market there are key differences between the two which are listed below:

Agent	Distributor
Acts merely as a representative of the exporter	Is a customer of the exporter in the foreign market
Has no financial involvement in the sale except to receive a fee or commission	Purchases the goods on its own account for resale at a profit
Merely facilitates the import process	Carries out the import process
The end users or customers are associated with the exporter however well-established agents may have their own customers.	The distributor has an established client base.
Tends not to be responsible for after sales support	Is responsible for after sales support and in some cases this can include warranties and guarantees
Tend not to pay for distribution, logistics, marketing costs	Tend to either fully or co-fund the distribution, logistics, marketing costs
Will tend not to be visibly identified with the exporter's product.	Its customary to display the name and contact details of the distributor on the product or packaging/ promotional support material
Has no control over the selling price	Has considerable control over the selling price
Does not take any responsibility for customer default or non-payment	Takes full responsibility for customer default or non-payment

The essential difference between an agent and distributor is that the latter takes a greater responsibility in acquiring and selling the product compared to the former. As a result of the difference in the nature of the agent and distributor an exporter needs to be very careful as to which to use in the foreign market as both have their advantages and disadvantages which are listed below:

Advantages of an Agent	Disadvantages of an Agent
Agents are a good route to identifying local buyers	The exporter bears all the costs
Agents tend to have good local knowledge and expertise	Agents do not hold any stock nor take any responsibility
As agents tend to charge a fixed rate the profit margin can be known in advance	Agents do not take any risk in the success or failure of the product
The exporter is in control of the product	The exporter may have very little say in the final delivery of the product
The customers are aware of the exporter	The customers may associate the product with the distributor

Advantages of a Distributor	Disadvantages of a Distributor
The exporter deals with only one customer in a foreign market	Lack of control in the foreign market especially in relation to the prices which may make the product uncompetitive in the market
The distributor keeps an inventory so that customers have ready stock	Customers may not be aware of the exporter or have no relationship to it
The distributor shares in the costs of selling the product in the market and hence risk	Branding etc. may not be entirely under the control of the exporter
The risk taking aspect ensures that the distributor builds a strong customer base	Distributors may have a conflict of interest if they represent many companies

How to Find an Agent or Distributor

Dubai based exporters can identify a foreign representative in the following ways:

Trade journals: Often, foreign representatives as well as exporters place advertisements in trade journals or a listing in a trade directory. Although, these advertisements or listings are unqualified in other words the firm has not been verified it nevertheless gives the exporter an idea of the number and type of firms operating in the market. The second stage is for the exporter to carry out its own due diligence.

Participate in catalogue and video exhibitions: Catalogue and/or video exhibitions are another low-cost means of advertising export product abroad. In this way, the export products are introduced to potential partners or representatives at major international trade exhibitions. Usually, the embassies show export products catalogues and/or videos to interested agents, distributors and potential buyers.

Exhibit at trade shows: International trade shows are an excellent way of marketing an export product abroad and to locate foreign representatives.

Participate in trade missions: Participating in foreign trade missions is another way to meet foreign representatives. Public and private trade missions are often organized by governments and trade associations including Export Development Corporation. Arrangements are handled by the organizing party so that the process of meeting prospective foreign representatives is simplified.

B2B (Business to Business): This is an electronic market place where exporters and foreign representatives can meet and transact business. The B2B exchange is effective in reducing search cost as well as the provision of information to a large number of potential partners.

SheTrades MENA: Seeks to assist women owned businesses identify an appropriate agent or distributor. SheTrades MENA has developed four broad categories of services which are first export preparation which involves working with women owned businesses in order to develop their export capabilities and creating an awareness of their products and services. Second, export facilitation which seeks to support the export activities of women owned businesses through creating global networks, foreign market intelligence, trade events and financial assistance packages. Third, international assistance which enhances the women owned businesses' ability to penetrate foreign markets through the provision of market access and compliance data, advocacy and representation. Fourth, buyer matchmaking services which link foreign buyers with appropriate women owned businesses through the ITC SheTrades platform.

How to Select an Agent or Distributor

One of the most important decisions that an exporter needs to make is to select an appropriate representative in the target country. Recruiting the correct foreign representative can ensure that the exporter's products are successful in the target market. On the other hand, the wrong foreign representative can lead to not only a disastrous entry into the target market but wasted management time and resources. Exporters can minimize the risks of finding a foreign representative by ensuring the following aspects:

- A proven track record or experience in the product in question for the target market;
- An extensive geographical coverage with a supporting infrastructure;
- An established player in the market with key advantages over its competitors;
- Experienced sales team that is well managed with appropriate financial and non-financial incentives;
- Ability to provide the exporter with appropriate market information;
- Have adequate warehousing, servicing and after sales;

Although, the above aspects cover the essential qualities that a foreign representative need to have it is important to bear in mind that there are also other human factors that need to be considered. For example, the exporter and the foreign representative need to have a strong and positive relationship that is built on trust and transparency.

The normal procedure in selecting a foreign representative is to first to identify at least five or six potential partners. The second stage usually involves the exporter meeting the key personnel of the foreign representative. This stage allows the exporter to its own strategic direction and corporate practices with that of the foreign representative. This will allow the exporter to assess if the two entities share the same corporate goals. In doing so the exporter will also be able to evaluate the business and non-business aspects of the key personnel in the foreign entity and evaluate whether its own team will be able to work together. The third stage can be a formal due diligence of the foreign which can cover the various aspects including the following:

- Sound financial position with a good reputation for prompt payment,
- Ownership structure
- HR issues
- Trade membership
- Ability to deliver a quality service and after sales support.
- Ability to adequately market the product or service
- Legal issues

Once the due diligence has been carried out the exporter needs to decide whether to go ahead and enter into a long-term arrangement with the foreign representative or to first have a trial period. There is no golden rule as to how long a trial period to have but usually it is between six months to a year. Anything short of six months will not give the foreign representative sufficient time to build sales or the incentive to invest. The second decision that an exporter needs to make is to whether appoint a sole representative or to have multiple agents/distributors. Of course, the foreign representative will want to have exclusivity for a particular region or country. Whether an exporter awards exclusivity or not depends on the legal environment in the country, the size of the market, the capability and size of the foreign representative, requirements on the representative to make an initial investment, the length of the contract, performance targets etc.

Regardless of whether an exporter works with a single or multiple foreign representative it is important to ensure that there is a mechanism for performance evaluation. In this way the exporter can ensure that the foreign representative is meeting its goals. The usual aspects included in performance evaluation include the following:
reports on a monthly basis which include information on sales, inventory, after-sales requests and customers attended, competitor's performance, new product developments, pricing, etc.
end user or buyer feedback surveys

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Contractual Aspects

Most countries have specialised legislation covering the rights and obligations of both parties in an agency agreement. An exporter planning to appoint an agent should always seek legal advice in the agent's country before entering into an agreement in order to be fully aware of the legal, financial, and operational implications of the agreement.

Any foreign representative agreement must cover the following points:

- Type of agreement; exclusive or non-exclusive. In case of non-exclusive agency agreement, the exporter has the option of appointing additional agents at a later date in the territory of agent appointed with non-exclusive rights.
- Geographical coverage.
- Coverage of the exporter's products included then or to be included in future.
- Remuneration.
- Exporter's obligations: price list, brochures, samples, selling aids, training of sales staff, guarantees and repairs, sales promotion and advertising.
- Agent's obligation; sales coverage, sales reports, ware-housing and financing.
- Confidentiality clauses
- Method of quoting by the exporter (ie principal) and the use of any brands or trademarks.
- Force Majeure clause.
- Duration and termination clauses
- Provision for arbitration in case of dispute (even agency agreements for fixed periods cannot be terminated at expiry of specified period without payment of compensation to the agent).

The clauses mentioned above should be included in both types of contracts. However, since the functions of commission agents and distributors are different, so should be the contract details. Some of the specific contract clauses required is given below:

For commission agents:

- Extent of commission agent's authority;
- Commission rates and mode of calculation;
- Responsibility for credit checks on potential customers and for collecting debts;
- Requirement to disclose all relevant facts;
- Exporter's right to inspect client's accounts;
- Commission agent's discretion to other special tools to customers.

For distributors:

- Responsibility for advertising, fairs and exhibitions;
- Conditions of sale-discounts;
- Guaranteed minimum target;
- Minimum stock levels of products and spare parts;
- After sales services, repairs and warranty;
- Selling prices
- Supplier's liability for defective goods.

In general, governments are very protective of their agents and distributors. In the event of "unjust" termination, many courts insist on compensation being paid to the agent/ distributor for loss of income and reimbursement of the costs incurred in establishing the sales territory, even if the termination is at the end of the contract period. Therefore, although the drafting of a legal agreement can be expensive, it may in the end, prove to be cost saving. In the contract, particular attention should be paid to the termination clause. It may be necessary to include a breach, or agreement clause, so that if either party breaches the agreement, the non-defaulting party can terminate the contract and seek recourse.

Terminating the Commission Agent/Distributor Contract
TERMINATED?

In general, governments are very protective of their agents, representatives, and distributors. In the event of "unjust" termination, many courts insist on compensation being paid to the commission agent/distributor for loss of income and reimbursement of the costs incurred in establishing the sales territory, even if the termination is at the end of the contract period. Although the drafting of a legal agreement can be expensive, it may in the end, prove to be very beneficial, saving the costs of additional legal expenses for both parties in the event of a contract being terminated. It is therefore important to seek the advice of an experienced international trade attorney before entering into any agreement.

In the contract, particular attention should be paid to the termination clause. It may be necessary to include a breach, or agreement clause, so that if either party breaches the agreement, the non-defaulting party can terminate the contract and seek recourse. While negotiating a contract, business people are often reluctant to consider which law governs their agreement and how potential disputes will be settled. Two clauses, the choice of law and arbitration clause, could save both parties from costly and long drawn out legal procedures.

The Type of Contract that an Exporter Can Use
A written contract helps to solve disputes that may arise during the execution of a business transaction by making sure that the rights and duties of the parties involved in the trade deal are safeguarded. Therefore, to ensure the smooth running of the business transaction, it is necessary to draft the contract carefully by including comprehensive and precise terms and conditions on all important aspects of the trade deal. The obligations arising out of a contract for the sale of goods might differ according to the law which will apply to the contract. For this reason, some internationally accepted contracts and forms have been prepared by the United Nations (UN) and the International Chamber of Commerce (ICC). Selecting these forms will make it easier for the exporter to handle the contractual part of export and avoid conflicts of law that are always cumbersome. ICC has developed standard terms of delivery (Incoterms) which can be incorporated into contracts for the international sale of goods. Each Incoterm provides clear obligations for each party. It must be said, however, that some countries will apply their own law. In this respect, the United Nations Commission for International Trade Law (UNCITRAL) has prepared a model law for international sale goods, which is known as the Vienna Sales Convention which has been ratified by many countries. It is a very clear and simple instrument. The convention will automatically apply if the buyer and the seller are nationals of countries which have ratified the Convention. The Convention can also apply if the parties agree upon its application in the contract.

The Important Aspects in a Contract
It is difficult to draw up a comprehensive contract that can be standardised for all export transactions. However, the exporter and the importer should be aware of certain minimum general requirements when drawing up an export contract. The clauses covering these requirements will make up the basic elements of the contract and are outlined below:

Name and addresses of the parties: The parties to the contract should be clearly stated in the contract.

Product; standards; and specifications: The export contract should explicitly state the product name, as well as technical names if there are any; sizes, in which the product is to be supplied (if this is required); the applicable national or international standards, and specifications; specific buyer requirements; and sample specifications.

Quantity: The quantity should be clearly stated in both figures and words and units of measure should be specified.

Inspection: Although a number of goods are now subject to pre-shipment inspection by

designated agencies, foreign buyers may stipulate their own inspection agencies, and conditions for inspection. Therefore, the parties must clearly state the nature, manner, and focus of the inspection envisaged as well as the inspection agency.

Total value of the contract: The total value of the contract should be put in both words and figures, and the currency should be specified.

Terms of delivery: One of the Incoterms should be stated in the contract. For Example: EXW (Ex Works) The seller's obligation is fulfilled when the buyer has been notified, and the goods (suitably packed for export) are available to the buyer, at the named place within the time specified. The buyer is responsible for all costs and risks, including the loading of the goods from the named/specified point.

Taxes, duties and charges: The prices quoted by the seller may be inclusive of taxes, duties, and charges. Responsibility for payment of all such taxes should be clearly specified in the contract.

Period of delivery, shipment, etc.: The place of dispatch and delivery should be clearly specified, and also whether the period of delivery will run from the date of the contract, from the date of notification of the issue of an irrevocable letter of credit, or from the date of receipt of the notice of issuance of the import licence by the seller.

Part-shipment, trans-shipment and consolidation of cargo: The contract should explicitly state whether the parties to the contract have agreed on part-shipment or trans-shipment. The contract should also indicate the port of transshipment and the number, if any, of partial shipments agreed. If the goods are likely to be shipped under a "consolidation of export cargos" scheme, this should be mentioned in the contract.

Packaging, labelling and marking: Packaging, labelling, and marking requirements should be clearly stated in the contract.

Terms of payment: amount, mode and currency. When quoting different payment terms, the exporter should specify whether the prices are based on the current rate of exchange of UAE dirham, or on the basis of another currency (e.g., US $). Fluctuations in the rate of exchange should be quoted as well.

Discounts and commissions: The contract should specify the amount of discount or commission to be paid and by whom (i.e. by the exporter or by the importer). If required, the basis of calculation of commission and rate to be applied should also be clearly stipulated. Discount or commission rates may or may not be included in the export price agreed upon by the exporter and importer.

Licences and permits: Import licences may be difficult to obtain in the buyer's country. Parties to the contract should therefore clearly state whether the export transaction will require any export or import licenses, and whose responsibility and expense it will be to obtain them.

Insurance: A contract should provide for the insurance of goods against loss, damage, or destruction during transportation. The contract should specify the type of risk covered and the extent of coverage.

Documentary requirements: Documents required for international trade transactions can be divided into four broad categories:

- Documents required for exportation and subsequent importation of goods.
- Documents needed by the buyer for taking delivery of the goods.
- Documents relating to payment.
- Special documents required by the nature of the goods, and conditions of sale (e.g., certain engineering goods may involve documents relating to erection, repair, and maintenance). Common export documents include the bill of exchange, commercial invoice and other invoices, bill of lading or air way bill, insurance policy and letter of credit.

Product guarantee: The length of the period of guarantee should be fixed.

Delay in delivery: The contract should define the damages due to the buyer from the seller in the event of late delivery owing to reasons other than force majeure. Force majeure or excuse for non-performance of contract: Parties should include certain provisions in the contract defining the circumstances which would relieve them of their liability for non-performance of the contract. Such provisions are called force majeure and are intended to identify the relief which may be available to either party to the contract, should supervening circumstances occur during the period of validity of the contract.

Remedial action: As defaults in contractual obligations by any of the parties can occur, it is always advisable to include in the sale or purchase contract certain specific remedial actions. These remedial actions should reflect the mandatory provisions of the law applicable to the contract.

Applicable law: The contract should state the law of the country which is to govern the contract.

Arbitration: The contract should include an arbitration clause to facilitate the amicable and quick settlement of disputes or differences that may arise between the parties.

Signature of the parties: The signing of the contract indicates the agreement of both parties to the terms and conditions of the contract.

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