







## Negotiating an Agreement with a Foreign Representative

These tips can make the process of signing a foreign representative better.



# Negotiating an Agreement with a Foreign Representative

When your company has found a prospective representative, the next step is to negotiate a foreign sales agreement. There is certain information you need to provide, and many legal issues to consider.

In drafting the agreement, you must pay special attention to safeguarding your company's interests in case the representative proves unsatisfactory. Your contract can include an escape clause or establish a certain term for the agreement.

Learn as much as you can about the legal requirements of the representative's country and obtain qualified legal counsel in preparing the contract.

Provide foreign representatives with information on your company's:

- Pricing structure
- Product profit potential
- Terms of payment
- Product regulation
- Competitors
- Firm support
- Sales aids
- Promotional material

- Advertising
- Sales Training
- Service Training
- Ability to deliver on schedule

Specify the actions of the foreign representative in the contract. Consider the following:

- What is the designated sales territory and is it exclusive? Foreign representatives often request exclusivity for marketing in a country or region. It is recommended that you not grant exclusivity until the foreign representative has proven his or her capabilities or that it be granted for a limited, defined period of time, such as one year, with the possibility of renewal. The territory covered by exclusivity may also need to be defined, although some countries' laws may prohibit that type of limitation.
- Is there a time period for the agreement? You can specify a certain term for the agreement (usually one year), but arrange for automatic annual renewal unless either party gives written notice of its intention not to renew.
- How do you hold the foreign representatives accountable? Consider including performance requirements, such as a minimum sales volume and an expected rate of increase.
- Should the representative be referred to as an agent? In some countries, the word agent implies power of attorney. The contract needs to specify whether the representative is a legal agent with power of attorney.

Other provisions to include the contract might be that the foreign representative:

- Not have business dealings with competing firms (because of antitrust laws, this provision may cause problems in some European countries).
- Not reveal any confidential information in a way that would prove injurious, detrimental, or competitive to your firm.

- Not enter into agreements with other parties that would be binding to your firm.
- Refer all inquiries received from outside the designated sales territory to your firm for action.

In case you need to end the agreement, be sure your contract addresses the following legal topics and provides you with an escape clause:

- How far in advance must the representative be notified of your intention to terminate the agreement? Some contracts specify written advance notice of 30, 60, or 90 days. Three months satisfy the requirements of many countries, but a registered letter may be needed to establish when the notice was served.
- What is “just cause” for terminating a representative? Specifying causes for termination in the written contract usually strengthens your position.
- Which country’s laws (or which international conventions) govern a contract dispute? Laws in the representative’s country may forbid the representative company from waiving its nation’s legal jurisdiction.  
Many companies define the United Nations Convention on Contracts for the International Sale of Goods (CISG, or the Vienna Convention) as the source of resolution for contract disputes, or they defer to a ruling by the International Court of Arbitration of the International Chamber of Commerce.
- What compensation is due to the representative on dismissal? Depending on the length of the relationship, the added value of the market that the representative created for you, and whether termination is for just cause as defined by the foreign country, you may be required to compensate the representative for losses.
- What must the representative give up if dismissed? The contract should specify the return of property, including patents, trademarks, name registrations, and customer records.

Finally, in what language should the contract be drafted? In most cases, the contract should be in both English and the official language of the foreign country.