



Taking Your Small Business International? Be Flexible.

by Patrick R. Hughes

phughes@dbllaw.com

Are you starting or planning on growing your small business? The idea of operating a successful small business on a local, regional or even national basis is a thing of the past. International markets such as Asia, the European Union and the Mideast are no longer just for major multinational corporations. With the opening of once closed markets and the Internet, the opportunities to sell your services or products are nearly infinite. At the same time, customers you may have once considered your "territory" are fair game for competitors throughout the world.

When jumping into the international business arena you will immediately be struck by what seems to be a never-ending series of legal hurdles, ranging from anti-corruption laws to tax considerations, and cultural differences. Don't worry, it is possible to address the bulk of these issues if you remember one rule: Be flexible!

For any business relationship it is essential to clarify the agreement of parties in a contract at the beginning. In the legal and business traditions of the United States, contracts are less of an outline and more of a detailed technical document addressing every likely scenario, in some cases containing contingencies for unforeseeable solar events. This tradition of dotting every "i" and crossing every "t" is mostly North American, and to a lesser degree Western European. The idea of predicting every possible scenario, or for that matter never deviating from the terms of the agreement are, well, "foreign" to our potential business partners in areas such as South America or the Middle East. They have a much more fluid approach to doing business.

In order to successfully do business on an international scale, small business owners will need to be flexible, and accept that your international business partner will likely view the contract as a sort of living document subject to regular renegotiation. This approach obviously relies heavily on maintaining constant communication at high levels and constant attention to the relationship. You'll be better off regularly talking with your international partner, than constantly reading the terms of the contract. On this note, U.S. business owners have an advantage; most of our international counterparts can and are willing to transact business in English. But don't quit your language classes, English may not always be the favorite language of commerce.

Despite the need to be flexible, you do not want to throw caution to the wind. When drafting your contracts with international business partners there are a number of key clauses that should be included. Here's a sampling: (1) a clause establishing the official language of the agreement; (2) a clause establishing the official currency; (3) a choice of law provision and forum clause to set which country's law governs and the forum for any dispute resolution; (4) a clause assigning responsibility for applicable trade tariffs, export fees etc.; and (5) in cases of production contracts, the applicable standards of the production, e.g., no lead paint, especially in toys!