

## **Step 5 – Know the Law**

- The “Perfect” International Partner
- Criteria to Select International Partners?
- Different Legal Systems Throughout the World
- Potential Legal Problems
- Elements to Include in Contracts
- Protect Your IP Outside the U.S.
- Where To Get Help



## How to Find Qualified Partners

Description	Web Site
Gold Key Service	export.gov/salesandmarketing/eg_main_018195.asp
International Partner Search	export.gov/salesandmarketing/eg_main_018195.asp
Trade Events	export.gov/eac/trade_events.asp
Trade Leads	export.gov/eac/eg_main_017401.asp
International Buyer Program	export.gov/ibp/eg_main_018009.asp

## Best Type of Representative/Partner for You

Country you're exporting to \_\_\_\_\_

Type	Your Legal Responsibility	Required Documentation	Business Model Fit	Ease of Termination
Employee in Country				
Independent Sales Agent				
Distributor				
EMC/ETC				

## Selection Criteria for Potential Global Partners

Considerations	Answers
Years in business	
Credit rating	
Industry Expertise	
Customer Base	
Current market share	
Exclusivity	
How many other companies do they represent?	
Territory Coverage	
Will they accept title to goods?	
Payment terms on goods	
Payment terms on commissions	
Non-performance clause	
Service & Maintenance	
Warranty & Returns	



## Legal Questions You Need to Consider

Questions	Answers & Notes
What is the governing legal system for this country?	
What are this country's laws on payments in and out of the country?	
Are there "unwritten" legal customs in this country that you need to be aware of?	

## Initial Consultation with ELAN or Lawyer

Questions & "Red Flags"	Answers & Notes

## Contract Checklist

These are general requirements for contracts with global partners, and should be adjusted depending on type of partner (i.e. EMC, ETC, independent agent or distributor).

**Note:** If you decide to hire an employee, be sure to check the labor laws in the country and consult with a lawyer in that country.

<b>X</b>	<b>Contract Requirements</b>
<b>General</b>	
	Clear introduction of all parties to the contract
	Definition of territory by geography, market segment, specific distribution channel or specific customers
	Description of product line(s)
	Exclusivity and restriction of sale of similar/competitive products
	Your company's rights in designated territory
	Country of jurisdiction and governing law
	Contract language
	Ownership of intellectual property
	Duration of contract with extension provision
	Delivery and shipment terms
	Method and terms of payment
	Terms of transfer of title of shipped goods
	Payment policy for commissions and payments
	Currency payments and fluctuation clause
<b>Your Duties as the Exporter</b>	
	Define the level of product quality and accompanying service support
	Specify marketing materials that will be provided
	Commit to delivery performance level
	Specify warranty, maintenance and liability responsibilities
<b>Duties of the Distributor/Independent Agent</b>	
	Clause that defines the limited capabilities of the overseas partner as a representative, not a legal agent
	Continued exclusivity from competitive products
	Level of service required
	Performance clauses

	Inventory Requirements
	Compliance with all U.S. laws (FCPA, Anti-Boycott) and Export Administration Regulations
	Define marketing responsibilities
	Define maintenance, service and warranty responsibilities
	Training requirements
	Reporting obligations
	Define process for new product introductions and specify responsibilities
<b>Termination</b>	
	Grounds for Termination
	Dispute settlement clause and country of jurisdiction
	Length of notice required for termination
	Consequences of termination
	Escape clauses for each party

## Level of Intellectual Property (IP) Protection

What is the governing body in your destination country?

\_\_\_\_\_

Name of domestic and in-country counsel

\_\_\_\_\_

## Type of IP Protection Required

X	IP Types	Initial Cost & Maintenance	Ability to Protect	Duration
	Patent			
	Trademark			
	Copyright			
	Trade Secret			
<b>Note:</b> Ensure trade secret information is secure in a safety deposit box.				

## Initial Meeting with IP Lawyer

**Note:** No one should register your trademark except you or your lawyer to ensure you own your own name.

Questions	Answers & Notes

## IP Action Plan

X	Action	Target Start Date	Target Completion Date

## Resources

- Gold Key Service - [export.gov/salesandmarketing/eg\\_main\\_018195.asp](http://export.gov/salesandmarketing/eg_main_018195.asp)
- International Partner Search - [export.gov/salesandmarketing/eg\\_main\\_018195.asp](http://export.gov/salesandmarketing/eg_main_018195.asp)
- Trade Event Search - [export.gov/eac/trade\\_events.asp](http://export.gov/eac/trade_events.asp)
- Trade Leads - [export.gov/eac/eg\\_main\\_017401.asp](http://export.gov/eac/eg_main_017401.asp)
- International Buyer Program - [export.gov/ibp/eg\\_main\\_018009.asp](http://export.gov/ibp/eg_main_018009.asp)
- Legal systems throughout the world - [en.wikipedia.org/wiki/List\\_of\\_country\\_legal\\_systems](http://en.wikipedia.org/wiki/List_of_country_legal_systems)
- Export Legal Assistance Network (ELAN) - <http://www.exportlegal.org/>
- Country Commercial Guides - [export.gov/about/eg\\_main\\_016806.asp](http://export.gov/about/eg_main_016806.asp)
- Holmvall, Leif, "Export & Import: Winning in the Global Marketplace"
- Small Business Development Center (SBDC) - [www.cochise.edu/sbdc/](http://www.cochise.edu/sbdc/)