12 Legal

International market entry options for exporters

By Chapman Tripp, based on original material by Jonathan Wood.

As an exporter, selling products globally can create new opportunities as well as new risks for your brand and products. New Zealand exporters can use a number of legal structures to enter overseas markets, each of which involves different legal and tax issues.

Possible market entry structures for selling offshore include:

- Direct sales.
- Using a distributor/reseller.
- Using an agent.
- Establishing an overseas branch.
- Forming a wholly-owned subsidiary.
- Entering into a joint venture.
- Licensing others to make products.

It is also beneficial to consider manufacturing goods in market, rather than manufacturing them in New Zealand and exporting them overseas. Manufacturing options when selling offshore include:

- Using contract manufacturers in market.
- Manufacturing in offshore markets through your business, an overseas branch, a subsidiary, or a joint venture.

If your business does not export tangible goods (e.g. software companies, software-as-a-service providers and other web-based businesses), the manufacturing options and some of the entry risks may not apply. However, you should still consider the best entry structure for your business, as you will need licence arrangements and may still require in-market sales channels to reach target customers.

The key characteristics of each structure and option are outlined below.

WHICH MODEL SHOULD I USE?

Direct sales (including online)

Key legal characteristics

- The exporter sells directly to end customers offshore.
- The exporter retains all risk and responsibility for marketing and product quality.
- There are no intermediary parties, subsidiaries, or branches.

Positives

- This option is low cost overall, as it does not involve significant time or infrastructure investment.
- There are no language, distance, or culture barriers to manage in market, and no need to address divergent interests.

Negatives

- The exporter will be directly liable for trading obligations and risks.
- The exporter remains exposed to all business risks, including the credit risk on customers.
- Some customers will not want to deal with a foreign entity, particularly one located in a different time zone.
- Limited opportunities for localisation (adapting a product to be suitable for the local market) or geographic expansion.
- Increased shipping costs are likely due to small (customer by customer) shipping quantities.
- The exporter may be subject to a range of local laws (e.g. consumer protection, privacy and data protection laws, censorship, advertising controls, age-related restrictions and prohibitions on supply of certain goods or services, sales and consumption taxes), despite selling and supplying from New Zealand.

Other considerations

- You will still need to get your product message to market. This may require significant travel and/or marketing investment (both online and through traditional channels) or mean that local salespeople and other intermediaries are still necessary.