

EXPORTER'S SHORT LEGAL GUIDE: MAKING SURE YOU GET PAID

Those who deal in international trade realize that having an experienced lawyer from their customers' jurisdiction is essential. Here is why – a Polish lawyer explains the way it works in Poland.

LETTERS OF CREDIT & BANK GUARANTEES

Ideally, Polish customers would be eager to offer the foreign exporter a letter of credit or a bank guarantee. Even if it were so, it would still be worthwhile having a Polish lawyer (law firm) check how much such a guarantee is worth under the Polish law. One simple reason for this is that bank guarantees are normally drafted in a local language and subject to local law; foreign language versions are usually for reference only.

OTHER FORMS OF SECURITY

However, not all customers are willing to provide documentary credits, as these are costly. Then, a local lawyer might advise as to other forms of security, which may be less onerous for the buyer, while being still acceptable for the seller. For example, in Poland a popular way of guarantee is a special statement signed by the debtor before a notary public, which – in case of a failure to pay – may be used by the seller in enforcement proceedings, without the need to go to court. The execution of such a statement does not require the presence of the seller; what is important is that the relevant draft be reviewed in advance by a Polish lawyer. Of course, buyers may propose other forms of security, which should be each time scrutinized by a competent lawyer.

CONTRACTS

Even though Incoterms are a handy tool in international trade, full-fledged contracts still have a major role to play. A mere statement contained in an order confirmation or on the invoice that the sale is made 'FOB' or 'CIF' does not turn out very useful when it comes to debt recovery. In such a case the first question that needs to be resolved is where the unsatisfied seller may go to court. Within the EC, the rules of the so-called Rome I Regulation provide that - when the parties do not make a proper contract indicating the applicable law – international sale contracts are governed by the law of the country where the seller has 'his habitual residence'. However, this solution does not make happy those sellers who would prefer to pursue legal action in the country of their debtor, for example due to cost and time efficiency. The familiar legal regime only seemingly creates an advantage for the seller; in reality it may have just the opposite effect: just imagine a Polish judge having to interpret the English law. Court actions pursued by English companies abroad are particularly complicated due to the fact that the UK is not a party to the 1980 UN Convention on Contracts for the International Sale of Goods. From the point

of view of the local judge, such cases are entirely based on a foreign legal system and therefore require an extra time to collect and understand the sources of the applicable law. As a result, an otherwise simple case could turn out to be unnecessarily complicated and time-consuming. Such problems may be easily prevented at an early stage, when a simple sale contract may provide for the governing law and the jurisdiction.

Additionally, a formal contract would certainly be helpful both in proving the claim itself and providing regulation of such issues as the breach of contract or retention of title to the goods sold.

DEBT COLLECTION

No matter which court issues a decision against the debtor, it must be enforced locally. For example, when a Polish court makes an injunction against a Polish debtor, if it has to be enforced it is as easy as instructing the local court bailiff. It becomes more complicated when an English court decision needs to be enforced: such a decision has to be additionally reviewed by the Polish court, which involves extra costs in respect of translation and legal fees. In either of the above cases hiring a local lawyer is essential, let alone in the event of the debtor's bankruptcy or fraudulent behavior, when additional legal steps are necessary. Besides, it is always useful to have local trusted lawyers at hand, so that they approach the debtor personally, which may both facilitate communication and help the debtor understand that an urgent payment is the only solution.

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If you need help with your trade transactions in Poland or seek advice regarding presented matters, you are welcome to contact the **author of this paper**:

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