



***Bierce & Kenerson, P.C.***

**GLOBAL SOURCING PRACTICE GROUP**

# **Guide to Going Global**

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# 1. Overview

## 1.1 General Scope

The global economy is changing the way business is conducted at every level. Every business lives and collaborates in a global network, global markets offer opportunities for rapid growth and seizing market share in industry niches. Global services enable every enterprise, however small, to offer complex, sustainable services by designing and orchestrating new supply chains. Automation and outsourcing are no threat if you look at your role in the world as a designer and maestro for your personally tailored business processes. See Daniel Pink, *A WHOLE NEW MIND* (2005).

This White Paper is addressed to globalizing businesses to help them identify and seize opportunities and understand key issues in global markets for buying and selling goods and services and licensing technologies. It offers an introduction and checklist for senior management wishing to expand enterprise profitability, footprint and market share through exports, imports, foreign subsidiaries, joint ventures and licensing.

“Going global” requires an awareness of key business, legal and cultural frameworks in an interdisciplinary, multi-cultural view of the world. Like running any business, working out the kinks in global supply chains requires an ongoing effort.

## 1.2 Legal Frameworks

“Going global” involves adaptation to different legal systems. Americans are familiar with the “common law,” and may know something about “civil law,” but Shariah law and Chinese / communist law may also come into play. Depending on the legal system in the foreign country, Americans going global need to identify and navigate key legal issues such as culture gaps and relationship governance, dispute resolution, choice of law, choice of forum, arbitration vs. litigation in courts and security measures to protect property rights.

### 1.2.1 Key Legal Systems

By definition, international business involves potential friction of conflicts of law between competing legal systems. Such conflicts can result in lost profits, loss of goodwill and personal and corporate liability for damages from commercial transactions. American businesses considering “going global” should invest in legal advice covering countries where they plan to do business as well as American lawyers addressing the U.S. legal issues.

#### 1.2.1.1 Common Law

The “Common Law” is “the body of law derived from judicial decisions, rather than from statutes or constitutions.” *Black’s Law Dictionary* (8th ed. 2004). Developed in England, (and now followed by most Anglophone countries including the United States) this system bases itself on the idea that a court, in its evaluation of laws created by its legislature, determines the meaning of what the law says, means and how it should be carried out. This interpretation (called “precedent”) can then be used as law in any future case pertaining to the law’s subject matter. Common Law is sometimes referred to as “unwritten law,” since major legal principles stem from judicial pronouncements from the bench. Lyria Bennett Moses, *RECURRING DILEMMAS: THE LAW’S RACE TO KEEP UP WITH TECHNOLOGICAL CHANGE*, 2007 U. Ill. J.L. Tech. & Pol’y 239, 279.

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