



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

**GLOBAL SOURCING PRACTICE GROUP**

# **Guide to Going Global**

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**BierceKenerson.com**  
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***Bierce & Kenerson, P.C.***  
***Infrastructure Services Law***

## Contents

<b>1. OVERVIEW .....</b>	<b>4</b>
1.1 GENERAL SCOPE .....	4
1.2 LEGAL FRAMEWORKS .....	4
1.2.1 <i>Key Legal Systems</i> .....	4
1.2.2 <i>Multilateral Conventions</i> .....	6
1.2.3 <i>Regional and Bilateral Agreements</i> .....	8
<b>2. KEY REGULATORY CONCERNS OF GOVERNMENTS .....</b>	<b>11</b>
2.1 CONSUMER PROTECTION .....	11
2.1.1 <i>General Protections for Consumers</i> .....	11
2.1.2 <i>Safety</i> .....	11
2.1.3 <i>Price DISCRIMINATION AND Unfair Trade Practices</i> .....	11
2.1.4 <i>Internet Selling - Direct Selling from Abroad</i> .....	12
2.2 EMPLOYEE PROTECTION .....	12
2.2.1 <i>Unions and Collective Labor Organizations</i> .....	12
2.2.2 <i>EU's "Acquired Rights" Directive</i> .....	13
2.2.3 <i>Visas for Foreign Workers</i> .....	13
2.3 TAX COLLECTION .....	13
2.4 DATA SECURITY AND PRIVACY .....	13
2.5 MARKETS AND SANCTITY OF CONTRACTS .....	14
2.5.1 <i>Contract Formation</i> .....	14
2.5.2 <i>Enforcement</i> .....	14
2.5.3 <i>Public Policy Limitations on Autonomy of Contracting Parties</i> .....	14
2.5.4 <i>Antitrust and Competition Regulation</i> .....	14
2.6 ENVIRONMENTAL PROTECTION .....	15
<b>3. KEY PROMOTIONAL CONCERNS OF GOVERNMENTS .....</b>	<b>15</b>
3.1 EMPLOYMENT .....	15
3.1.1 <i>Works Councils/Labor Unions</i> .....	15
3.1.2 <i>Unfair Dismissal/Constructive Termination</i> .....	16
3.1.3 <i>Transfer of Undertaking</i> .....	16
3.2 EXPORTS .....	16
<b>4. KEY PROMOTIONAL FRAMEWORKS FOR GLOBALIZING ENTERPRISES .....</b>	<b>16</b>
4.1 SPEED TO MARKET; MARKET PENETRATION .....	16
4.2 CORPORATE OWNERSHIP AND GOVERNANCE .....	17
4.2.1 <i>Decision-Making Rights</i> .....	17
4.2.2 <i>Family-Owned Companies</i> .....	17
4.3 CORPORATE FINANCE .....	17
4.4 A BALANCED PROFILE FOR RISK AND REWARD .....	18
<b>5. SUPPLY CHAIN MANAGEMENT .....</b>	<b>18</b>
5.1 BUSINESS PROCESS MANAGEMENT .....	18
5.1.1 <i>Business Processes</i> .....	18
5.1.2 <i>Outsourcing, In-sourcing and Integration with Global Supply Chains</i> .....	19
5.2 SUBCONTRACTING AND VICARIOUS LIABILITY .....	20
5.2.1 <i>Managing the Chain</i> .....	20
5.2.2 <i>Flowdown Clauses</i> .....	20
5.3 BUSINESS CONTINUITY PLANNING / DISASTER RECOVERY .....	20
5.3.1 <i>Force Majeure (and Exceptions)</i> .....	20
5.3.2 <i>Alternative Sourcing</i> .....	20
5.4 SALES REPRESENTATIVES AND AGENTS .....	21
5.5 FOREIGN DISTRIBUTORS .....	21
<b>6. KEY RISK MANAGEMENT CONSIDERATION .....</b>	<b>21</b>

6.1	DISPUTE RESOLUTION PLANNING .....	21
6.1.1	<i>Choice of Law</i> .....	21
6.1.2	<i>Choice of Forum</i> .....	21
6.2	LIMITATION OF LIABILITY .....	22
6.2.1	<i>Incorporation</i> .....	22
6.2.2	<i>Indemnification</i> .....	22
6.2.3	<i>Insurance</i> .....	22
6.2.4	<i>Immunity (Sovereign)</i> .....	22
6.3	EXCUSE FOR NON-PERFORMANCE.....	22
6.3.1	<i>Force Majeure</i> .....	23
6.3.2	<i>Short Supply</i> .....	23
6.3.3	<i>Commercial Impracticability</i> .....	23
6.4	TERMINATION RIGHTS AND REMEDIES.....	23
6.4.1	<i>Definition: Vague or Specific</i> .....	23
6.4.2	<i>Right to Cure</i> .....	23
6.4.3	<i>Damages</i> .....	23
6.4.4	<i>Security for Payment</i> .....	24
6.5	U.S. LEGAL COMPLIANCE PROGRAMS .....	24
6.5.1	<i>Export Controls</i> .....	24
6.5.2	<i>Foreign Corrupt Practices Act</i> .....	24
6.5.3	<i>Anti-Boycott Rules</i> .....	25
6.5.4	<i>Foreign Investment in a U.S. Entity</i> .....	25
6.5.5	<i>Establishment or Acquisition of a Foreign Entity</i> .....	25
6.5.6	<i>Divestiture of a Foreign Subsidiary</i> .....	25
6.6	PROTECTION OF INVESTMENTS ABROAD .....	25
6.6.1	<i>Bilateral Investment Treaties</i> .....	25
6.6.2	<i>Expropriation, Nationalization and Currency Inconvertibility</i> .....	26
<b>7.</b>	<b>GETTING STARTED TO “GO GLOBAL” .....</b>	<b>26</b>
7.1	BUILDING AN INTERNATIONAL BUSINESS TEAM.....	26
7.2	RESTRUCTURING INTERNAL BUSINESS PROCESSES FOR SCALABILITY.....	26
7.3	PLANNING FOR GLOBAL COMPLIANCE .....	26
7.3.1	<i>Taxation</i> .....	26
7.3.2	<i>Code of Conduct</i> .....	27
7.4	ANALYZING AND PLANNING TO MANAGE RISKS.....	27
7.5	SHARING A GLOBAL FUTURE: BALANCING ECONOMICS AND SOCIAL RESPONSIBILITY.....	27
<b>8.</b>	<b>FURTHER CONTACT .....</b>	<b>28</b>

# 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.

**To receive this White Paper in its entirety or for more  
information please contact us at:**

**Bierce & Kenerson, P.C.  
420 Lexington Avenue, Suite 2920  
New York, New York 10170  
info@biercekenerson.com  
Phone: (212) 840-0080  
Fax: (212) 840-6210**