

“IMPORTANT CONSIDERATIONS FOR INTERNATIONAL SALES”

By Romelio Hernandez, Hernandez, Merigo & Hurtado S.C.

If your company is selling abroad, it is likely that a conflict might appear somewhere during the transaction because of failure to perform an obligation. The difference in culture and legal systems to which buyer and seller belong to makes it easier to have misconceptions as to what their duties represent, and what their full responsibilities are.

Moreover, it seems as if nowadays, modern merchants are on a constant lookout for new and improved ways to evade their engagements through the use of unfair business practices and with total disregard to good faith principals.

In all of these situations, when our commercial operations have not been well documented and the possibility of conflict has not been anticipated, it is likely that our business transaction will result in a loss, especially when we're dealing on an international scenario.

To avoid such unfavorable situations in an international sale, it is necessary to foresee three fundamental issues: 1) choice of law that will govern our transaction; 2) jurisdiction to which any controversy will be subject to; and 3) remedies available for us to pursue a collection or legal action for contract enforcement. If your intentions are to sell goods into Mexico, it is highly recommended that you keep in mind the following.

Notwithstanding that our judiciary system has seen great improvement on its part lately, and that our legislation has evolved to the point of enabling modern commerce and securing such business transactions, when we are either dealing with a company of proven financial reputation and the transaction amount is considerably high (generally more than \$100,000 US dollars); when intellectual property rights are essentially involved; or when payment has been properly secured (through a letter of credit), it is advisable that we subject any contract dispute to arbitration.

Arbitration on such situations will provide by far better results in terms of time and effectiveness, and related costs will be well justified considering the amount and importance of such legal matter. Under different circumstances, we strongly believe that litigation through a Mexican court will be the best option to resolve any dispute, or to enforce a contract.

On most sales transactions based on credit, it is often and likely that the debtor will be the one who fails to comply with contract terms, especially payment. That forces us to look for remedies in the debtors country or his place of business' location, compelling him to perform by the use of public force, or seizing his property for payment.

An award granted by an arbitration court can be enforced through a local court, however, the process for enforcement in Mexico will prove to be a similar one to that for general enforcement, where debtor will again be allowed to defend himself (although with limited defenses), and where once again, execution will be extended.

On most situations, it is precisely time what debtors are looking for to enable them to evade their obligations either through fraudulently hiding property, or changing his company's name or location.

If a Mexican court has been chosen to resolve any controversy that might arise, we will then have to consider the choice of law to govern our contract, contract specifics, and enable an effective remedy in advance that assures us payment. That can only be possible if we perfectly know and consider the rule of law of such international setting, but most of all, taking into account Mexican legislation that governs commercial and credit transactions, as well as procedure regulations which provide for effective remedies in court to properly secure payment.

If you are planning on conducting direct international sales into Mexico, whether through a formal written agreement or with out it, you should make sure that all these considerations are taken into account to avoid an unfavorable scenario with the collection process of your delinquent accounts, or with general contract enforcement legal actions.

This material has been provided as free educational message by Hernandez, Merigo & Hurtado S.C. We invite you to send us your comments or to call us for a free consultation. If you have any questions please call us at +52 (664) 685-1387, 685-9196. You can also email us at hbmexlaw@telnor.net. If you would like further information about our firm, please visit us at <http://www.hmh-law.com>