Managing Risk in International Agreements: Some Legal Issues

On the eve of Ghana EXPO Canada 2005, the first ever Canada-Ghana trade exhibition, to be held in Toronto over four days from November 17 to November 20, it may be useful to explore some of the legal issues that confront the businessperson wishing to reap the benefits of the easing of barriers to international trade and consequent emergence of new markets and sources of supply. Technological advances and progress in communications and transportation have also made the exchange of goods and services over vast distances far less daunting than in the past.

The advantages to looking beyond one's own borders in doing business are obvious. They include lower labour costs, favourable exchange rates, foreign suppliers that are more efficient through the use of newer equipment and technology, national specialization in select industries, and even the non-availability of certain goods locally. Nevertheless, trading internationally inevitably involves greater complexity than is encountered in purely local commercial relationships. Legal issues become especially significant once commercial activity involves the law of more than one jurisdiction. Thus, in addition to the more readily apparent worries about the circumstances and integrity of foreign businesses with which one considers dealing, there are a number of basic legal issues unique to the international scene that every business should keep front and center in order to avoid potentially costly disputes arising further down the road. The following are matters that businesses dealing globally would be wise consider:

Attornment clauses. Variously referred to as "choice of court clauses", "choice of forum clauses", "jurisdiction clauses", or "attornment clauses", when included in a commercial contract, these clauses are intended to settle the matter of the law by which the contract is interpreted. Although not unknown even in purely domestic contracts, these clauses are critical in international commercial contracts. In the absence of such clauses, in the case of a dispute, a court would be compelled to determine the proper law of the contract before it could begin to address the particular issues that the parties wish to resolve.

Also, where the parties have not indicated what law is to govern the contract, the courts will look for the law that the parties have chosen by implication. This essentially means the law with which the contract appears most closely connected. Historically, this would have been the place where the contract was entered into. It is easy to see, however, how technological advances have made the place of the contract an increasingly difficult thing to determine. Modern methods of communication make it very unclear at which geographical location the parties may have reached their bargain. Therefore, addressing this matter up front can save a great deal of pain later when an international business relationship encounters problems.

Failure to specify the forum for resolving disputes might also lead to the contract being interpreted according to international conventions, such as the Convention for the International Sale of Goods ("CISG" or "Vienna Convention"), which has been adopted by many countries and is currently in force in all of the Canadian provinces. This may or may not be what the parties prefer, and they should therefore be careful to exclude its application if they do not wish their agreement to be subject to it. Moreover, it should be noted that the Ontario International Sale of Goods Act, which gives legal effect to the CISG in Ontario, prevails over any other statute in case of conflict.

Failure to exclude the CISG can potentially lead to serious consequences because of important differences between the CISG on the one hand and the rules of contract in the U.S.'s Uniform Commercial Code (UCC) on the other. For instance, the perfect tender rule allows a buyer to reject any non-conforming goods without limitation. The CISG does not recognize this rule, however, and thus allows a buyer to get out of the contract only if "the failure by the seller to perform ... amounts to a fundamental breach of contract." (CISG Art. 49(1)(a)).

The upside, however, is that the inclusion of an attornment clause in a contract can give the parties considerable flexibility in how they structure their relationship. These clauses can be either "exclusive", meaning that the parties are required to bring their disputes to a particular forum, or "non-exclusive", meaning that they are merely permitted to present their dispute to the specified forum for resolution. A contract can even be structured so that some of its terms are subject to the law of one country, while other of its terms are subject to the law of another.

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Furthermore, what is sometimes not fully appreciated is that the jurisdiction the parties choose to govern the contract need not be connected in any way with either of the parties themselves. In other words, where the parties have specified the law of the contract, courts will generally not interfere with the choice. This is subject only to the long-standing principle that "the intention expressed is bona fide and legal, and provided there is no reason for avoiding the choice on the ground of public policy." In practice, this does not significantly limit the range of laws from which one can choose. Generally speaking, the only reason a court might interfere with the law selected by the parties is where it appears that one or more of the commercial actors involved have specified a particular forum in order to engage in activity that would otherwise be illegal in their home forum.

Methods of payment. Method of payment is an especially important consideration in international agreements. For instance, if one were to neglect to indicate something as basic as whether payment is to be in Canadian or U.S. "dollars", the courts will find the parties intended that the currency in which payment is to be made and received is the same as the proper law of the contract. The contract should also contain terms limiting the permitted amount of exchange rate fluctuation if the currency of the contract happens to be one that is particularly volatile. The contract price must also factor in the applicable duties, and specify who is to bear this cost, as well as taking account of the costs of completing all the paperwork required in an international transaction.

Individuals and companies dealing internationally are also understandably more concerned about the creditworthiness of potential trading partners than they generally are in a domestic context. A financial instrument often used to cope with apprehension relating to payment in international contracts is the letter of credit. In a typical transaction involving a letter of credit, an importer will request that its bank ("issuing bank") issue a letter of credit in favour of the exporter. The issuing bank then issues the letters of credit and sends them to the advising bank (ordinarily located in the country of the exporter). The advising bank verifies the authenticity of the letter of credit and sends the exporter a copy. The essence of this transaction is that exporter can rely on the bank's creditworthiness rather than that of the importer. The exporter, however, must satisfy the bank that it has complied with the terms of the letter of credit by handing over the appropriate documents (for example, by providing documentation confirming the goods have shipped) before it can receive payment. These terms should be identical to those agreed in the contract. If they are not, the letter of credit would likely have to be amended, something which cannot be done without the consent of all parties. If everything proceeds smoothly, the issuing bank finally obtains payment from the importer for the monies already paid to the exporter. Having transactions mediated by major financial institutions in this way helps to remove some of the uncertainty that goes with dealing with a business that is from an unfamiliar culture.

Do your research. Regardless of any other measures taken to reduce exposure, it is always advisable to learn as much as possible, not only about those entities with which you are contemplating doing business, but also about the social and political environment in which they operate. Information about the latter can prove crucial when obtaining insurance. For example, it is important to be aware that standard "all risks" policies do not in fact cover all risks. Losses caused by war, strikes or riots are not covered by an all risks policy. Coverage for these eventualities must be specifically requested. In any case, one should seek the advice of an insurance and legal professionals on these matters.

Technology and the assistance of government and international agencies can do a great deal to fill important gaps in knowledge about foreign actors. International Trade Canada, for instance, has established a website dedicated to assisting Canadian business interests in obtaining more information about foreign markets. The website connects businesses with the Canadian Trade Commissioner Service, which provides information on companies and other key contacts in target markets in a great number of countries around the globe. It may seem trite to say so, but staying fully informed is the key to survival and success in the global marketplace.

Other resources available to businesses include the Canadian Association of Importers and Exporters (at www.importers.ca). This association assists businesses by providing up-to-date information on trade issues as well as links and contact information to help resolve specific problems, as well as disseminating general information through e-mails, newsletters, seminars, and conferences. They have prepared a useful publication for those interested in commencing an international business relationship called "Importing into Canada," outlining the step-by-step procedure of how to set up an import business.

Although the trend towards international free trade has made tariff barriers much less significant as a factor in determining whether an import/export venture will be financially feasible, one must nevertheless be aware of what additional costs the applicable tariff represents. The rules on tariff classification, moreover, are complex, and can be confusing.

One issue relating to tariffs that importers should be aware of is the Canadian Government's recent Market Access Initiative making exports from the United Nations' list of Least Developed Countries (LDCs) both duty and quota free as of January 1, 2003. Care must be taken by businesses looking to take advantage of this special tariff treatment. Trans-shipped goods (that is, goods passing through a third country before reaching their ultimate destination) must satisfy strict rules of origin requirements in order to qualify for this free access treatment. In essence, they must originate entirely or mostly from LDCs. Where goods originate from an LDC, but are processed in a third country where value is added, it might be worth your while to enquire whether the non-LDC content of the finished goods is sufficiently small that they still qualify as duty free under the Initiative.

There are further Canadian

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government initiatives and partnership agreements targeted specifically at African countries and designed to nurture trade growth. The Trade Facilitation Office Canada (TFOC) has, together with the International Trade Centre UNCTAD/WTO, embarked on a joint programme called PACCIA/PACT, which stands for "Programme for Building African Capacity for Trade." This programme was launched at the Kananaskis G-8 summit in 2002 with the mandate "to improve the capacity of African enterprises to do business internationally and promote their exports." Ghana was one of four African countries participating in the initial stage of this programme. To date, the programme has focused mainly on infrastructure matters. In particular, ITC/TFOC experts are looking at giving tailored advice to the packaging sector companies in Ghana with a view to improving product design. In later phases there may be opportunities for Ghanaian businesses to take advantage of programme-sponsored training courses, some of which are specifically targeted at women entrepreneurs.

Documents you need. One of the most significant barriers to making the most of a foreign trade relationship is that of satisfying all the additional regulatory and documentary requirements for goods crossing international boundaries. This additional work is not only costly in terms of time and effort expended in compliance, but also due to the potential penalties for breach. Failure to keep the appropriate records, for instance, can result in fines under the Customs Act ranging from $1,000 to $25,000. Customs brokers will often handle this necessary bookkeeping function. Customs brokers are private agents licensed by the federal government that will, for a fee, do much of the administrative work involved in importing, including the payment of applicable duties. Whether one works with a licensed import broker or not, however, one will still need to ascertain precisely what duties and other charges attach to the goods with which one deals, since this will ultimately affect the profitability of any trade venture.

It is also important to be aware that, due to the heightened state of security under which we now live, the amount of red tape that cross-border businesses have to with deal has continued to grow. In keeping with this change in climate, on December 12, 2003, Canada created the Canada Border Services Agency (CBSA), with the specific mandate to ensure that foreign trade is conducted in a manner that meets Canada's security concerns. Fortunately, the CBSA also works to ensure that new regulations impede legitimate international trade as little as possible, and its website (www.cbsa-asfc.gc.ca) contains a wealth of practical information on regulatory matters and trade restrictions.

Businesses from abroad operating in Ontario. Many foreign businesses will desire to establish local offices in the countries with which they are dealing because it is more convenient for them to operate in this way. A foreign business that intends to erect a presence in, for instance, Ontario, must first ensure that it has satisfied the legal conditions for doing so. At a minimum, this requires that it apply for and be issued an Extra-Provincial Licence. The application process involves appointing an agent for service in Ontario, performing a NUANS (that is, a corporate name search), obtaining a certificate of corporate status from the home jurisdiction (or the legal opinion of a lawyer authorized to practice in the home jurisdiction setting out the same information if such a certificate cannot be obtained), and payment of a $330.00 application fee. There is also an additional filing requirement of an Initial Return/Notice of Change that must be observed within 60 days of beginning to carry on business in Ontario.

Failure to comply with these requirements for obtaining a licence, or with any other of the provisions of the Ontario Extra-Provincial Corporations Act, carries the penalty of a fine of a maximum of $2,000 for an individual and $25,000 for a corporation. It is worth noting that there is an exception to the Extra-Provincial Licence requirement for not-for-profit corporations. Although not-for-profit corporations must still file the Initial Return/Notice of Change form, they need not obtain a licence nor appoint an agent for service in Ontario in order to carry on business in the province.

Individuals and companies engaged in import or export ventures must keep informed regarding local taxes and the special rules governing their application to non-resident businesses. For example, goods exported from a Canadian vendor to a non-resident purchaser are generally "zero-rated", meaning that they are GST-exempt. Businesses importing goods from abroad or exporting goods to foreign countries should also register for an import/export account when registering for a business name with Revenue Canada, since exports must be reported to the Canadian government regardless of their tax status. Since the import/export account number is used to process customs documents, registering with sufficient leadtime before actually importing or exporting goods is important in order to avoid costly delays in their being delayed at the border.

Work Permits. The need to move personnel back and forth across international borders is a natural outgrowth of and complement to the increased cross-border traffic in goods and services. If a company dealing internationally wishes to place experienced employees or specialized consultants to work at their business operations in another country, it obviously would like to ensure that their nationals do not run afoul of immigration authorities simply for want of the proper documentation. Just as with the other issues we have considered, one could save considerable expense by making enquiries about permits early on. Needless to say, not being able to have the people you want where you want them simply because you have to wait for the relevant applications to be processed can be highly disruptive to a business.

Keep in mind, then, that in most cases a foreign national must have a valid work permit to work in Canada temporarily. Obtaining the permit is a multi-step process, and therefore time consuming. First, an employer in Canada must offer a foreign national a job. Then, Human Resources and Skills Development Canada (HRSDC) must provide a labour market opinion, or "confirmation", of the offer of employment. Finally, once HRSDC confirms that a foreigner may take the position, one must apply to Citizenship and Immigration Canada (CIC) for a work permit. For many foreign countries, individuals must apply for and obtain a visa for entry into Canada in addition to needing a work permit. A list of the countries for which a visa is necessary to travel to or work in Canada can be obtained from CIC. The application for a work permit also requires submitting substantial amounts of supplementary documentation. The application fee is $150.

Some individuals do not require a work permit to work in Canada. It is therefore important to check to see if any of the special exceptions apply. A person can, for instance, come to Canada to live as a permanent resident if he or she qualifies for the skilled worker program. Essentially, to qualify one must meet various selection criteria established by CIC. These change frequently and thus should be reviewed carefully.

An important category of individuals that do not require work permits are business persons. This includes persons covered by the provisions of various free trade agreements, such as NAFTA, the Canada-Chile Free Trade Agreement (CCFTA), and the General Agreement on Trade and Services (GATS). Three types of service providers that are excepted from the permit requirement under GATS, for example, are business visitors, professionals, and intra-company transferees. These rules are important for Canadian employers to know, since it is an offence under the Immigration and Refugee Protection Act to employ a foreign national not authorized by the Act to work in Canada.

Conclusion. This article has attempted to highlight only some of the important legal questions that can arise in the context of international contracts for trade. Unfortunately, in this short space it is impossible to canvass every important issue, and there is such an increased variety of possible business ventures created as deals begin to span the globe that each new enterprise will throw up its own unique set of challenges. The additional complexity involved in striking bargains over great distances can sometimes seem quite discouraging.

None of these barriers should be allowed to distract us from the tremendous opportunities that international trade offers, however. Solving problems in this area is still, like anything else, only a matter of having the right information. The Ghana-Canada trade exhibition this November should provide us with an excellent forum to gather that essential knowledge that leads to success in international business.

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5 Simple Steps to Protect Your Business From Costly Lawsuits

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Lawsuits cost a business time and money, and can often bankrupt a business. Businesses must prepare and organize their legal affairs to reduce the possibility and costs of litigation. 5 simple steps can help you avoid and decrease litigation costs.

1. Incorporation: protect your personal assets. Corporations have limited liability and proprietorships and partnerships do not. Corporations are legally distinct from their shareholders, who only risk their investment. Partners and sole proprietors are not legally separate from their businesses and risk everything that they own. A corporation acts like a special insurance policy with a one-time premium that protects your personal assets from the people that deal with your business. Corporations can also provide tax deferral benefits that are not available to sole proprietors or partnerships. Incorporation prepares you for success while protecting you from the worst eventualities.

2. Client Contracts, Waivers and Disclaimers: improve relationships.
Most disputes are usually based on an honest misunderstanding of the deal. Written contracts commit parties to perform certain actions, but more importantly they limit what is required by each party and determine which party bears which risks. Outlining each party's obligations can result in earlier payment and less wasted resources. Detailing exclusions and risks makes the parties more profitable by avoiding or limiting costly disputes and litigation. Parties to a written contract are also more likely to be satisfied at completion of the contract and commit to repeat business, which means more profit.

Consider a contractor hired to remodel a room in a house where a written contract is not used. One party may believe certain work is included in the price, and the other party may not. Who is responsible to move or cover the furniture? Who is responsible for certain types of damages and to what amount? Is there a warranty on materials or labour, how long is each and what do they include and exclude? Is there a deadline for completion?

Client contracts, waivers, and disclaimers are common documents that, when drafted properly, can protect your company. Contracts outline both benefits and obligations, risk placement and are the essence of the business relationship. Waivers, disclaimers and acknowledgments are particular risk reduction tools in situations where one party wishes to place a risk upon the other, who would not normally bear the burden. These documents can be used separately, but are often used in concert. Clear agreements make for better and happier business relations that almost always avoid court.

3. Employment Contracts, Policies and Procedures: control possible damages.
Employees are often the most important assets of a company and they are usually the largest liabilities. Long-term or tenured employees represent significant risks to the companies they work for, if they are terminated, laid-off, or unable to work due to disability. More than one company has gone bankrupt on account of the stringent obligations of employers under Ontario law.

An employment contract can control certain risks or exposures that the company has, and employment policies and procedures can control others. Every company needs to understand employment standards before they hire an employee, as it may be too late afterwards to enforce a subsequent contract with that individual.

4. Risk Assessment and Reduction: avoid costs and catastrophe.
Assessing and reducing risk is a two-part process where you must determine and prioritize risks particular to your company and industry, in addition to the normal risks of business. When risks are identified and prioritized, each risk can then be systematically examined and targeted for possible reduction. Every company has unique risks based on its industry and operational style. These risks need to be prioritized based on likelihood and dollar value exposure in order to move to the next step.

A particular risk can be reduced in many ways. A specific contract, waiver, disclaimer, acknowledgment or other document can reduce or eliminate a specific risk. Insurance may be another route. Sometimes a risk assessment may lead to the elimination of a product or service, when the costs to reduce the risks and/or the risks themselves outweigh the economic benefits. Most companies' change the way they do business after a risk assessment and some even change what business they do. Risk assessment and reduction are important in protecting a company from major hazards because most perils are foreseeable.

5. Quick Response and Settlement: lessen the impact of disputes.
There is justice and then there is legal reality. Many people involved in business litigation believe that when they tell their side of a story to a judge they will win and get everything they deserve. That belief is a legal fiction.

A party may be 100% successful in a claim, but the party will never ever be made whole. The costs of lawyers, experts, lost time, delay in recovery, stress, and the distraction from the business are never fully recovered. In short, going the distance in a lawsuit should usually be avoided if a reasonable settlement can be reached. Quick response and settlement in problem situations prevents the spending of good money to litigate on the mistaken belief that a successful lawsuit will cover all costs and expenses.

No business can completely protect itself from the possibility of a lawsuit, however, the 5 simple steps outlined above can greatly reduce the chances and costs of litigation. Incorporating can protect your personal assets. Client and employment agreements reduce misunderstandings and litigation costs. Risk assessment and reduction improve the bottom line and can save a business from a catastrophe. Quick response and settlement of disputes also save money. Remember, every lawsuit prevented or reduced in cost greatly affects your business' profitability.

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Terminating a Residential Lease: What Landlords and Tenants Need to Know

Whether you are a landlord or tenant, there are some basics of residential tenancies that everyone should be aware of.

Tenancies can be with or without a written lease. The Tenant Protection Act is the governing law on tenancies in the Province of Ontario and covers most rental units. A rental unit can be an apartment, a mobile home park, a house, a room in a boarding house, a care home or retirement home or a land lease community.

Where there is no written lease, it is considered a month to month tenancy and is still governed by the Act. Monthly tenancies are terminable on 60 days written notice, in the proper form, provided the notice was given 60 days prior to the monthly anniversary date. For example, if a landlord or tenant wished to properly terminate a monthly tenancy on September 1st with the anniversary date of the first, the written notice must be provided on or before July 3rd. However, the landlord or tenant cannot serve notice on July the 4th to terminate the tenancy on September the 2nd, even though that is still 60 days notice. Remember to also be careful when the notice of termination period includes February.

Where there is a written lease, neither the landlord nor tenant can terminate the tenancy before the end of term unless there are specific grounds. Be very cautious before attempting to terminate a written lease early and please seek professional advice. Even with a termination date in a lease, both the tenant and landlord still must give proper notice as provided by the lease or by the Act. If notice is not given or a new lease is not signed then the tenancy generally becomes a month to month tenancy. Please note that tenants are not required to sign new leases at the end of every term and can continue as month to month tenants.

Where a lease is being entered into or renewed, landlords and tenants should be careful to review the contents of what they are signing as the tenant is entering into a binding contract for a specified period of time.

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Lenders are out to make money so you must shop around. There are banks, trust companies, insurance companies, private lenders, religious organizations and countless other non-traditional sources. The two main types of financing products from the major financial institutions are conventional and high ratio mortgages.

Conventional mortgages for banks generally mean the buyer is making a 25% equity down payment on the home and the bank is financing 75% with a mortgage. Thus, a $50,000.00 down payment would be needed to conventionally buy a $200,000.00 property and the bank would provide a mortgage for $150,000.00.

High ratio mortgages occur when the borrower is unable to make a 25% down payment and the bank will require the mortgage to be insured. Thus, 10% down on a $200,000.00 home would require a down payment of $20,000.00 and an insured mortgage of $180,000.00. However, it is not exactly that simple.

Calculating from the $200,000.00 purchase example and keeping it simple for discussion, a conventional mortgage down payment would be $50,000.00 and the 10% down payment high ratio mortgage would require $20,000.00, or $30,000.00 less. The insurance premium in the example is usually 2.5% of the whole $180,000.00 or $4,500.00. Normally, the fee is taken off the top, so although the borrower is only being financed an additional $30,000.00 only $25,500.00 is really 'received'.

This will affect the true interest rate and your total cost of borrowing. This is equivalent to paying a 17.6% premium ($4,500.00) to be financed a further $25,500.00. Interest will be charged against the premium and generally none of the fee or interest is tax deductible. $4,500.00 is a lot of rent and a substantial percentage of the purchaser's income who would be buying such a home.

A conventional mortgage is a good thing. It is usually required to make owning more beneficial than renting.

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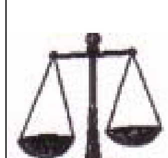

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GETTING PAID: WHY WORK FOR FREE

Calin A. Lawrynowicz
B.A., M.B.A., LL.B., J.D.,

Making money requires three important steps: obtaining new business, completing the work, and then getting paid. Far too often, companies obtain new business, complete the work, but then never fully collect payment. This lost revenue is the worst type as the work has already been completed and time, energy and money have already been spent. The company would have been better off refusing the work in the first place as both morale and profits are heavily reduced. Below are five simple steps to getting paid that will make a company more profitable.

1. Detailed Contracts: Written Contracts Make Businesses More Profitable!

As a lawyer/entrepreneur, I know that some individuals incorrectly view written contracts as a cost of doing business. This is shortsighted. Committing an agreement to paper is probably the single most profitable action that a business can make. A written contract is not incidental to business - it is the business.

A written contract commits parties to perform certain actions, but it more importantly limits what is required by each party and determines which parties bear which risks. Outlining each party's obligations can result in earlier payment and less wasted resources. Detailing exclusions and risks makes the parties more profitable by avoiding or limiting costly disputes and litigation. Parties to a written contract are also more likely to be satisfied at completion of the contract and commit to repeat business, which means more profit.

Consider a contractor hired to remodel a room in a house where a written contract is not used. One party may believe certain work is included in the price, and the other party may not. Who is responsible to move or cover the furniture? Who is responsible for certain types of damages and to what amount? Is there a warranty on materials or labour, how long is each and what do they include and exclude? Is there a deadline for completion?

These are simple questions with answers that can be easily written down. The act of writing the terms down will make a business more profitable and reduce disputes, not to mention the fact that it makes a business look more professional. A business will never be sorry it had a contract, it will only be sorry if it does not. The rule is simple, commit it to paper and make more money.

2. Security For Payment: Never Be Afraid To Ask For Money!

Smart companies require a deposit, down payment or some other form of security for services or products to be provided. The size or reputation of the company are not factors, in fact, the pre-requirement of security for payment usually makes a company look more professional and prosperous. Security for payment indicates that a company values itself and subconsciously earns respect from clients. Furthermore, serious consumers wishing to purchase products or services expect that you would require a retainer or down payment. Moreover, clients that refuse or resist security provisions often turn out to be problem clients. Some security mechanisms to protect a company from non-paying clients include deposits, down payments, payment schedules and collateral security.

Deposits and down payments are legally distinct, although many people wrongly use the terms interchangeably.1 Down payments usually serve as partial payment for products or services to be rendered and are usually refundable. Deposits, however, are used to secure performance of an agreement and are usually non-refundable unless the deposit receiver cancels the agreement. Deposits are applied to agreements as down payments if the deal is completed. Deposits and down payments provide partial security for an agreement.

Payment schedules are actually an extension of retainers and downpayments, in that, as products and/or services are provided, additional retainers or downpayments will be required. Payment schedules are meant to parallel the completion of performance of any agreement. Construction contracts are good examples of where percentages of the advance are to be paid at certain levels of completion with respect to the contract. Another version involving time-based increments may require an amount to be paid each week or each month reflecting the effort placed by a company to complete a project for a client. The key in these types of payment schedules are that at no point is the customer very far behind in monies paid to your company versus the product or services provided.

Collateral security is often useful in larger contracts or large price tag product sales. Collateral can be registered under the Personal Property Security Act in order to put a company in first priority with respect to that item until all of the payments are made. There are costs involved and the key is to make the cost relative to the amount of revenue.

Obtaining security for payment is critical to the bottom line. Clients unwilling to pay now may not pay later, even after completion. Pursing a bill is costly and it is important to protect in advance of a contract and to make certain your company gets paid.

3. Acknowledgement/Sign Offs: Agreement Now, Avoids A Fight Later!

Having a client acknowledge or sign off on the completion of delivery of some service or product is so simple and effective in any dispute that it is hard to imagine not doing it. Nothing is more infuriating than trying to collect on goods or services delivered and the client responding that they either never received the goods or the goods were defective. This problem could even happen months or even years later, which is even more difficult to deal with. This situation can be further complicated wherein the employees who were present during the transaction are no longer with any or either of the companies. Prompt and diligent tracking of performance will avoid problems and save money.

4. Better Communication: Confirm At Least Twice!

Effective communication requires both accuracy and timing. I am not sure which is worse - accurate information too late or inaccurate information on time. Asking questions and verifying answers more than once is not a waste of time, but is essential to reaching a good level of communication. Quick contract making without full verification can create a very very expensive proposition.

5. Refusing Business: Just Say No To New Business!

Quite simply the best rule that I have learned to make more money is to say no to new business. To operate with the thinking that every company wants every client it can get is 100% wrong. There are two approaches to obtaining prime clientele and they both should be used simultaneously. The first approach targets good potential clients and the second approach filters out potentially poor clients. Seldom will a company fail if it employs both approaches properly, however, a company is more likely to fail if it incorrectly filters out poor clients than if it incorrectly targets good clients. It may sound counter-intuitive to some, but poor clients can more quickly bankrupt a business than can the lack of good clients. Thus, it is essential to know what attributes make a client an excellent, a normal or a bad client. Saying no to certain potential clients that 'may be bad clients' is more important than obtaining a good client. One bad client can cost a company as much profit as ten or more good clients.

Most people would rather take the day off than work for free, but so often a business will accept work under terms that it should not and it later regrets it. Businesses must learn to protect themselves before an agreement is made. The five simple steps above can improve a company's profitability by avoiding deadbeat clients and acquiring better pieces of business.

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1 Companies must be careful in how they describe the terms 'down payment' or 'deposit' as courts will look past the actual word used and look at the intention of the parties. A 'deposit' may be held by the courts to be a 'down payment'.

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