

**CHECKLIST OF LEGAL CONSIDERATION IN
FOREIGN TRADE TRANSACTIONS & CONTRACTS**

I. BASIC LAW OF THE OTHER COUNTRY

A. The Legal System

1. Is the legal system a common law system or a codified civil law system?
2. Does the doctrine of precedent apply, obliging judges to follow previous decisions?
3. Are lawyers public servants or independent of government?
4. Is the judiciary composed of career public servants or not?
5. What are the remedies which the courts can give to a successful litigant?
6. What avenues are there for executing or enforcing a judgment in the courts
7. Is there any provision for registering foreign judgements?
8. What are the criteria whereby the local court will assume jurisdiction to hear a dispute?
9. Is there any provision for commercial arbitration?

B. Contracts

1. What are the requirements for an agreement to become binding?
2. Are there any restrictions on the powers of a company to contract?
3. Are there any special formalities required for the signing, witnessing or registering of contracts?
4. Will the host government take action to enforce an international contract entered into by one of its nationals

C. Agency

1. How is agency created?
2. How is the authority of an agent determined?
3. What is the liability of the agent to third parties?

4. What is the liability of the principal where the agency is disclosed/undisclosed?
5. Is there any law fixing the commission of the agent?
6. Is there any law prohibiting a secret profit by the agent?
7. What are the legal duties of the agent?
8. What is the agent`s power of sub-delegation?
9. Is it necessary to register a power of attorney?
10. Are there any statutory damages for dismissal of an agent?

D. **Sale of Goods**

1. Is there an Act or Code or international Convention (e.g. the U.N. Convention) which applies specifically to sale of goods?
2. Are there any special requirements for the validity of a contract for sale of goods
3. Are there any warranties which the seller must give?
4. What remedies are available to buyer and seller?
5. What are the buyer`s rights of inspection?
6. Is there a right of stoppage in transit?
7. When does risk and property pass between buyer and seller?
8. What is the host country law on letters of credit?

E. **Torts**

1. Is a vendor or manufacturer liable to the eventual consumer? Is there any “strict” liability
2. Can the manufacturer be required to recall goods of a class found to be defective?
3. What is the degree of remoteness of damage which a manufacturer can be liable for where goods are defective?

F. **Real Property**

1. What are the procedures for registering transfers of real property?
2. How can a lender take security against real property? How is it enforceable?
3. What are the requirements for a contract for sale of real property?
4. Are aliens permitted to own real property?

II. **FORMS OF BUSINESS ORGANIZATION**

A. **The Sole Trader**

1. Is there a duty to register as a merchant or sale trader?
2. What are the disclosure requirements?
3. Are there any restrictions on the business name that can be used?

B. **The Partnership**

1. How is a partnership created?
2. Must a partnership agreement be registered?
3. What are the disclosure requirements?
4. What are the liabilities *inter se* of the partners?
5. What is the liability of each partner to outsiders?
6. What is the extent of authority of each partner?
7. What is the liability of incoming and outgoing partners?
8. What accounts are required to be kept?
9. May a corporation be a partner?
10. May an alien be a partner?
11. Are there different categories of partners, such as managing partners, silent partners or limited partners?

12. How can a partnership be dissolved or a partner be expelled?
13. Are there any restrictions on the partnership name that can be used?
14. Can an interest in a partnership be sold?

III. **TAXATION**

A. **Generally**

1. What are the rates of personal tax and company tax?
2. Is there a tax on capital gains, gifts, remission of profits overseas, property taxes, municipal taxes, tax on documents, death duties, payroll tax, withholding tax, or any other form of tax?
3. Is a partnership taxed as an individual or as a company, or at all?
4. Is there any surtax or excess profits tax?
5. Are there any rebates or allowances given for taxpayers operating in certain industries or in certain geographical areas?
6. What are the rules relating to the calculation of taxable income, allowable deductions, losses, depreciation, value of stock in trade and other assets?
7. Is there access to the courts in the event of a dispute with the revenue authorities?
8. Is there a double taxation convention with the host country?
9. Is there any provision made in either the host or the home country to avoid double taxation in the absence of a convention?
10. Does either host or home country seek to minimize the avoidance of tax by transfer pricing?
11. Is the tax philosophy of the host country based on a rigid and literal application of a taxing statute or is it based on a fluid, discretionary application by officials in the revenue authority?

B. **Company Taxation**

1. Is company tax imposed using the same principles as personal income tax?

2. Is the company's tax accumulated with the tax of any other company or person in order to assess the tax payable, or does the corporate veil prevent this?
3. Are company dividends taxable in the hands of the recipient?
4. Is there any obligation on the company to distribute its profits or to reinvest any of its profits?
5. Where dividends are taxed, is any credit given for the underlying company tax paid by the company on the profits out of which the dividend was paid?
6. Is tax payable upon a dividend being declared but not paid?
7. Will the revenue authorities require consolidated accounts to be lodged where the company is a member of a group?
8. To what extent will the revenue authorities examine and reopen intragroup transaction on the basis that the company should be taxed as if it were operating at arm's length from the rest of the group?

C. **Double Taxation Conventions**

1. Does a convention apply between the home and host country?
2. Does it create a credit for tax paid or exempt income which has already been taxed in the host country?
3. Does it restrict the rate of withholding tax on dividends?
4. How does it describe a dividend?
5. Does it make any provision for employees who earn salaries in the host country but reside in the home country?
6. How does the convention define a "permanent establishment"?

IV. **EXCHANGE CONTROL**

1. How are residents and non-residents defined for exchange control purposes?
2. What transactions are subject to exchange control approval?
3. Is the approval given by the central bank or by some other authority?

4. Are there any restrictions on the repatriation of capital or the remission of profits overseas?
5. Are there any restrictions on the remission of royalties or interest overseas?
6. Is there any restriction on the entry of loan capital from overseas, particularly short term loans?
7. Are there any provisions designed to prevent delayed payments for imports or prepayment for exports?
8. Is it possible to have bank accounts in a foreign currency or must all foreign currency be sold to the central bank?
9. What are the host government's policies on direct investment by aliens in the host country?
10. What are the home government's policies on direct investment overseas?
11. Are aliens able to invest in shares?
12. Are aliens able to invest in real estate?
13. Are there some sectors of the economy which are viewed as strategic, which aliens are not allowed to invest in?
14. What disclosure requirements are there for the company taking over?
15. Are there any stock exchange requirements relating to takeovers?

V. **CUSTOMS**

1. What is the rate of custom duties on the importation or exportation of goods?
2. How is the value of goods assessed?
3. Are there any quotas or anti-dumping regulations which apply to the goods concerned?
4. Is it necessary to obtain a licence to import the goods?
5. What is the dispute resolution procedure?

VI. **BUSINESS REGULATION**

1. Do the home country's antitrust regulations have extraterritorial effect and will they extend to controlling activities which occur in the host country?
2. Does the host country have laws which attempt to prohibit monopoly, antitrust or restrictive trade practices?
3. Are there price control in the host country which apply?

VII. **INDUSTRIAL PROPERTY**

1. Does the host country provide protection for all forms of industrial property?
2. Is the host country a party to any treaties regarding the protection of industrial property?
3. What is the cost of registering a patent, trademark, copyright or license?

VIII. **DISPUTE SETTLEMENT**

1. What forms of litigation or arbitration are possible?
2. What is the cost of litigation or arbitration?
3. What is the delay encountered in litigation or arbitration?
4. What appeal procedure is there available?

IX. **EXPROPRIATION**

1. Is the host country obliged by law to provide compensation if it expropriates the property of foreigners?
2. How is the value of property expropriated assessed?
3. Is there any treaty relating to expropriation or compensation between the host country and the home country?