

WHAT IS A PROCESS AGENT AND WHY DO YOU NEED ONE?

By Colleen A. DeVries, COGENCY GLOBAL

International transactions vary greatly from country to country, yet a typical provision included in many agreements is the appointment of an agent for service of process, more commonly known as a [‘process agent’](#).

When it comes to cross-border transactions, it’s vital for all parties involved to understand the role of the process agent and why process agent appointment should take place before a deal closes.

WHAT IS THE PURPOSE AND ROLE OF A PROCESS AGENT?

In a cross-border financing transaction, parties to the agreement must negotiate a choice of law clause specifying that any disputes under the agreement will be determined in accordance with the law of a particular jurisdiction. While the choice of law can vary, New York, Hong Kong and the U.K. are commonly chosen jurisdictions due to their established commercial laws.

When parties agree on a choice of law in a jurisdiction where they don’t have a physical presence (i.e. an address), a process agent from that jurisdiction is appointed. What does this process agent do? The role of the process agent is to act as a representative upon whom court papers may be served, on behalf of the appointing parties, and to deliver those court papers per the instructions of the appointing parties.

Multiple parties may be required to appoint a process agent in one single financing transaction, and the same process agent may be named in more than one agreement. Typically, the fee charged is based on the number of parties appointing a process agent and the number of years in the transaction. Lenders generally prefer that the process agent is unable to resign for the term of the agreement, creating an irrevocable or binding appointment. Irrevocable appointments are paid in advance for the full term of the agreement.

TYPES OF TRANSACTIONS THAT REQUIRE A PROCESS AGENT

Process agents are often appointed as part of cross-border financial transactions involving commercial banks, sovereign states, multilateral lending agencies, export credit agencies and corporate entities. Appointment of a process agent may also be required in the following types of global transactions:

- Credit Financing
- Aviation Purchase, Leasing and/or Financing
- Pre-Export Financing
- Derivatives
- Debt/Equity Capital Market Offerings
- Rule 144A/Regulation S Offerings
- Private Placements
- Commercial Bank and Syndicate Lending Deals

● **AMERICAS HQ**
COGENCY GLOBAL INC.
122 E 42ND ST, 18TH FL
NY, NY 10168
D: +1.212.947.7200
P: 800.221.0102
F: 800.944.6607

● **EMEA HQ**
COGENCY GLOBAL (UK) LIMITED
REGISTERED IN ENGLAND & WALES,
REGISTRY #8010712
6 LLOYDS AVE, UNIT 4CL
LONDON EC3N 3AX, UK
+44 (0)20.3961.3080

● **APAC HQ**
COGENCY GLOBAL (HK) LIMITED
A HONG KONG LIMITED COMPANY
UNIT B, 1/F, LIPPO LEIGHTON TOWER
103 LEIGHTON RD, CAUSEWAY BAY
HONG KONG
P: +852.2682.9633
F: +852.2682.9790

ADVANTAGES OF CHOOSING A PROFESSIONAL PROCESS AGENT

From flexibility and responsiveness to trust and confidentiality, a professional process agent is knowledgeable about the various types of legal proceedings and understands the urgency and steps that must be taken upon receipt of such proceedings.

EXPERIENCE AND FLEXIBILITY

A professional process agent understands what is required to establish and accept a process agent appointment in cross-border financing deals and understands their role not only at the time of appointment but throughout the term of financing. They have the experience to provide flexible and customized services (e.g. in an appointment agreement or invoicing instructions) to meet the particular needs of a transaction.

RESPONSIVENESS

When choosing a process agent, it's essential to engage with a company that responds quickly to requests. A professional process agent understands the importance of delivering their acceptance in advance of a closing date, as the cost for not closing or funding on time can be significant. During the term of the appointment, a process agent provides immediate notice of receipt of any legal proceeding in accordance with the terms of the agreements. They also maintain an accurate database of its appointments and current contact information.

TRUST AND CONFIDENTIALITY

Professional process agents understand the exact legal processes or notices they are required to receive on behalf of their client company. As such, a process agent instills confidence in all parties in the transaction that there won't be a missed or mishandled legal proceeding resulting in a default judgment.

For instance, the process agent is required to receive legal papers (i.e., summons and complaint) on behalf of each appointing party in a transaction for any action related to that specific financing transaction. If a process agent were to receive and send legal papers to their client from the wrong transaction or matter where they weren't the appointed process agent, getting the matter dismissed can be costly and a burden for the client.

A professional process agent maintains confidentiality and won't disclose any information related to its appointment or the underlying transaction without seeking the express permission of the appointing party.

Now that you're aware of the role of a process agent and how a professional process agent can assist in your cross-border transactions, it's time to find [a trusted partner who will help you every step of the way.](#)

Colleen A. DeVries is currently a Senior Vice President at [COGENCY GLOBAL](#). She is responsible for researching, developing and training staff on domestic and international registered agent services. Ms. DeVries has been with COGENCY GLOBAL since 2002. For questions related to this article, contact Ms. DeVries by calling **800.221.0102** or by sending e-mail to: COLLEEND@COGENCYGLOBAL.COM.

This content is provided for informational purposes only and should not be considered, or relied upon, as legal advice.

● **AMERICAS HQ**
COGENCY GLOBAL INC.
122 E 42ND ST, 18TH FL
NY, NY 10168
D: +1.212.947.7200
P: 800.221.0102
F: 800.944.6607

● **EMEA HQ**
COGENCY GLOBAL (UK) LIMITED
REGISTERED IN ENGLAND & WALES,
REGISTRY #8010712
6 LLOYDS AVE, UNIT 4CL
LONDON EC3N 3AX, UK
+44 (0)20.3961.3080

● **APAC HQ**
COGENCY GLOBAL (HK) LIMITED
A HONG KONG LIMITED COMPANY
UNIT B, 1/F, LIPPO LEIGHTON TOWER
103 LEIGHTON RD, CAUSEWAY BAY
HONG KONG
P: +852.2682.9633
F: +852.2682.9790