

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, but a typical provision included in many agreements is the appointment of an agent for service of process more commonly known as a “process agent.” The parties involved should understand the role of the process agent and why appointing one must be taken care of prior to the deal closing.

PURPOSE AND ROLE OF THE PROCESS AGENT

Parties to an agreement negotiate a choice of law clause that specifies that any dispute arising under the agreement shall be determined in accordance with the law of a particular jurisdiction. While the choice of law can vary, New York and the U.K. are commonly chosen due to their established commercial law. When the agreed upon choice of law is in a jurisdiction where the parties do not have a presence, a process agent is appointed. 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 such court papers pursuant to their instructions.

In a single financing transaction, multiple parties may be required to appoint a process agent and may be named in more than one agreement. Typically the fee charged is based on the number of parties required to appoint a Process Agent and the number of years in the transaction. Lenders generally prefer the Process Agent to be unable to resign for the term of the agreement creating an irrevocable 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. In addition, many global transactions require the appointment of a process agent, including:

- Credit financing
- Aviation leasing/financing
- Pre-export financing
- Derivatives
- Debt/equity capital market offerings
- Rule 144A/Regulation S offerings
- Private placements

ADVANTAGES OF CHOOSING A PROFESSIONAL PROCESS AGENT

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.

When choosing a process agent, it is important to engage a company that will respond to your requests quickly and understands their role. A process agent will provide immediate notice of receipt of any legal proceeding in accordance with the terms of the agreements, maintaining an accurate database of its appointments and current contact information.

Appointing a professional process agent gives all parties to the transaction confidence there won't be a missed or mishandled legal proceeding resulting in a default judgment. A professional process agent will keep confidential and not disclose any information related to its appointment or the underlying transaction without seeking the express permission of the appointing party.

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. Colleen has been with COGENCY GLOBAL since 2002. For questions related to this article, contact Colleen by calling +1.800.221.0102 or by sending an e-mail to: COLLEEND@COGENCYGLOBAL.COM.