

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

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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 appointing one must be taken care of prior to the deal closing.

WHAT IS THE PURPOSE AND ROLE OF THE PROCESS AGENT?

What does a process agent do exactly, and why do you need one? In a cross-border financing transaction, you'll need to decide which country's governing law will preside over any legal issues should they arise.

Parties to an agreement must negotiate a choice of law clause which 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, the [U.K.](#), [New York](#) and [Hong Kong](#) are jurisdictions commonly chosen due to their established commercial laws.

Once the parties have agreed on a choice of law in a jurisdiction where they don't have a physical presence (i.e. an address), 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 be 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. In addition, many global transactions require the appointment of a process agent, including:

- Credit financing
- Aviation purchase/leasing/financing
- Pre-export financing
- Derivatives

- Debt/equity capital market offerings
- Rule 144A/Regulation S offerings
- Private placements
- Commercial bank and syndicate lending deals

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 comprehends what is required to establish and accept a process agent appointment in cross-border financing deals. They understand their role at the time of appointment and during the term of your financing. They should also have the experience to provide flexible and customised services (e.g. in your appointment agreement or invoicing instructions) to meet your particular needs.

Responsiveness

When choosing a process agent, it's essential to engage with a company that will respond to your requests quickly. They should understand the importance of delivering their acceptance in advance of your closing date, as the cost for not closing or funding on time can be significant. During the term of the appointment, a process agent will provide immediate notice of receipt of any legal proceeding in accordance with the terms of the agreements. They should 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 instils 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 is likely to be costly and a burden for the client. A professional process agent will also keep confidential, 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 they can assist in your cross-border transactions, it's time to find a trusted partner and appoint a professional process agent who will help you every step of the way.

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