

**CROSS-BORDER TRANSACTIONS**

**SELLER PROTECTION FROM  
BUYER FAILURE TO PAY**

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In today's market, payments originating from cross-border transactions are becoming more difficult to predict. Indeed, due to the lack or sudden reduction of credit lines available, corporations are having a hard time meeting their obligations when due.

We assume the case of an Italian company (the **Seller**) in a cross-border transaction with a U.S. corporation (the **Buyer**) for the sale of goods (such as, textiles, electronics, food).

What to do, how to protect a Seller in a cross-border transaction from a Buyer's failure to pay?

First, Seller needs to have a legal and binding agreement with the Buyer. To do so, upon request of the Buyer, Seller should present a price list of its own goods for sale. A proper price list should contain legal wording such as: "This price

list is an offer for sale by and between merchants". "Acceptance of this offer can be given by purchase order or similar requests". "Upon acceptance, no transfer of rights is allowed without the previous written consent of the Seller". "Jurisdiction and applicable laws: New York State".

Furthermore, Seller should keep a clean and precise record of the transaction. Each invoice should be drafted in English, stating the precise kind of goods, number of goods and final purchase price. Each invoice should also refer to a specific purchase order and should contain the following language: "This invoice is an instrument for the payment of the amount stated in the invoice". In addition, Seller should also keep a precise record of delivery confirmation of the goods.

If Seller has complied with the legal requirements set forth above, judicial

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recovery of the amount due will be an expedited process. Indeed, the New York Civil Practice Law and Rules provides, at § 3213, that if an action is based upon an instrument for the payment of money, such as an invoice, a Seller may file a request to the Court (Motion for Summary Judgment in Lieu of Complaint) to adjudicate the matter based on a sworn declaration of the Seller, evidence produced with the request and the case does not present a triable issue of fact.

wherever located in the United States, up to the full satisfaction of the judgment.

Once the Court adjudicates the matter in Seller's favor, Seller should start the enforcement of the Judgment. In this respect, it should be noted that full faith and credit provides authority to enforce a judgment also in a sister state. Thus, Seller will be able to execute the judgment over all assets of the Buyer,

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