**Using Agents and Distributors**

**Additional notes**

Before making any decision on how to sell in China, thoroughly research and then visit the market to build relationships and seek first-hand advice and information from various sources.

If you decide to contract out the sales process, then you need to decide between an agent or a distributor.

* An agent is your company's direct representative and is paid commission.
* A distributor buys your products and then sells them on to customers through a third party. Their income comes from the difference between their buying and selling price.

Issues such as the size of the market, language and cultural differences and the sheer amount of choice available make finding the right agent or distributor, and then managing them, challenging.

**Advantages and disadvantages of agents**

The advantages of agents are:

* the principal has greater control over terms of sale
* the freedom to choose customers with whom to deal
* direct contract between manufacturer and customer
* greater control over methods of marketing
* the manufacturer is able to retain risk of stock
* the commission paid to an agent is typically lower than the margin of profit a distributor will make

The disadvantages of agents are:

* agents have the right to claim a lump sum compensation upon termination of agency agreement
* sometimes a principal will be treated as trading in a territory if he has an agent there, which could have tax implications. Consideration should be given to local law and double taxation
* maintaining stock inventory can be costly

In all likelihood an agent will also be selling similar products to yours and this has to be managed.
(Poon, K. (2005). Business Guides. London: China-Britain Business Council.)

**How to find an agent**

There are a number of ways you can get in touch with potential local sales agents.

* Discuss with your partners in China to get a recommendation.
* Commission research through consulting firms.
* Get a recommendation from another company already operating in China.
* Attend and make the most of networking at trade shows, seminars and exhibitions in China and Hong Kong.
* Use reputable business matching websites.

Before making a final decision on who to use, you should do thorough research and go to China yourself to check out first-hand what you are getting yourself into. Business people in China also prefer to meet business face-to-face and build up friendship and trust to underpin the business relationship.

Be very wary of 'walk in' agent candidates. It has been fairly commonplace for businesses to recruit someone as an agent on a sight unseen basis via a website. Large sums of money have been lost in this manner.

Likewise be cautious about taking on someone you have met casually at a trade show who vaunts their extensive networks or their abilities as an interpreter. Being bilingual is not sufficient in itself to make an effective representative for your company.

Ask the question - you might be the best partner for them, but are they the best partner for you?

It is important to do a thorough due diligence on any agent, distributor or customer before you hand over any goods, money or intellectual property.

**Kiwi lesson: Beware of overpromising**

"Many agents in China will promise much and deliver little." - Dr Anatole Bogatski, former Director Student Services and Market Development, AIS St Helen

**What to look for in an agent**

An agent is your direct representative so it is important to make the choice right. Attributes you should look for in an agent include:

* good references
* proven track record
* English language skills
* enthusiasm and fit with your product
* the number and quality of sales staff
* solid finances and payment record
* client coverage
* good networks
* geographical coverage
* network of sub-agents
* knowledge of market / market segments
* familiarity with your product.

**What should be in a contract with an agent?**

Contracts need to be detailed and well put together as there's not much Chinese law governing agents and distributors.

A contract should:

* guard against exclusive agreements. No agent can cover the whole country and it is recommended to keep your options open by having several regional agents to introduce an element of competition between them. If one regional agent does particularly well you can negotiate for them to set up a sub-agent network beyond their immediate region. When introducing competition, keep an eye on any undercutting of prices that may result
* have escape clauses, including performance reviews
* control risks, for example transportation and warehousing
* contain the terms of the standard individual sales order
* allow for arbitration in case of dispute.

**Managing performance and incentives**

It's up to you to get the best out of your agent(s) by supporting and encouraging them.

To keep the agent on track you should:

* link performance to incentives and agree on milestones
* have regular reports on progress and prospects
* write a marketing and sales plan
* provide regular training for the sales staff and after-sales training for the technical staff (in New Zealand and China)
* do sales support trips to keep your products and services front of mind. This will also help ensure they are not taking on competing suppliers who pay higher commissions.

Sales commission should only be paid to agents when the customer has paid. This incentivises the agent to encourage customers to pay on time, and to not deal with customers who are late payers.

All advertising and promotional material must be verified by you, especially material written in Chinese. Agents will often demand marketing 'budgets' and they need to be tightly controlled. Translate all your own materials, print them and deliver to your agent without hidden margins.

You should also have access to a Chinese speaker who can verify for you any material being produced in market. A number of New Zealand companies have been caught out by claims made in promotional material by Chinese partners that the New Zealand company does not only disagree with, but have never even heard of.

**Advantages and disadvantages of distributors**

The advantages of distributors are:

* the supplier can pass a greater degree of risk to the distributor
* greater incentive for the distributor to sell the product
* avoids the need for the supplier to have an established place of business in the territory (reduces costs)
* supplier only needs to monitor the accounts of one distributor rather than for each customer
* no compensation payable on termination.

The disadvantages of distributors, suggested by Penningtons, a British law firm, are:

* loss of control over activities of the distributor
* exclusive distributor is the supplier's entire credit risk in respect of sales rather than with each customer
* distribution agreements will be regulated by competition law.

**How to find a distributor**

Do lots of research first. Industries are not structured the same as in New Zealand or other Western countries. For example, many large Chinese firms have large procurement departments in-house which go direct to manufacturers and not through distributors.

You may need to integrate your products into complementary ranges. Find win-win scenarios.

Companies should consider China in a regional framework, with the primary commercial areas being the coastal regions of Bohai Gulf, Yangtze River Delta and the Pearl River Delta:

* Northern China; the provinces of Heilongjiang, Jilin, Inner Mongolia
* Bohai Gulf; the cities of Beijing and Tianjin and the provinces of Liaoning, Shandong and Hebei
* East China/Yangtze River Delta; the city of Shanghai and the provinces of Jiangsu, Zhejiang and Anhui
* Central China; the city of Chongqing and the provinces of Shanxi, Henan, Hubei, Shaanxi and Sichuan
* Western China; the autonomous regions of Xin Jiang, Tibet and the provinces of Qinghai, Gansu, Ningxia
* Southern China/Pearl River Delta; Guangdong (includes Guangzhou), Fujian, Hunan, Yunnan, Jiangxi, Hainan Island, Guizhou, Guanxi (includes the autonomous region of Zhuang). Also included in southern China are the Special Administrative Regions of Hong Kong and Macao.

The Chinese government is promoting the investment into the western provinces, but for most New Zealand companies, the coastal cities and provinces will be the first areas to concentrate on.

Consider having a different distributor and strategy in each, possibly including pricing and market channels.

There are a number of ways you can get in touch with potential distributors:

* via your agent or other Chinese partners
* recommendation from another company already operating in China
* attend and work the foot traffic at trade shows, seminars and exhibitions in China
* use reputable business matching websites
* research through consulting firms or NZTE.

Despite the size of the country, you may find that there are only a few very good representatives in some industries (for example wine).

It used to be common for foreign suppliers to appoint Hong Kong companies to act as their distributors in China. Payment may be easier to get out of Hong Kong, but China is now much more open and the Hong Kong route may simply add additional costs.

It pays to keep in mind that China does not have an efficient nationwide distribution system. Distribution channels are dominated by regional and provincial players whose abilities vary enormously. Smaller cities and rural areas in particular are badly served. For more information on China's logistics see '[How to get products from A to B](https://www.nzte.govt.nz/en/export/export-markets/greater-china/china/sales-and-marketing/using-agents-and-distributors/)'.

Finally, get independent due diligence done before signing any agreements.

**Kiwi lesson: Watch out for opportunists**

Identifying the appropriate distributor is particularly challenging. There are lots of opportunists clouding the view and taking advantage of newcomers." - Tim McIver, Managing Director, Lanocorp Pacific

**Kiwi lesson: Good ones are expensive**

"If a distributor is very good, they will be very expensive and be using a product from a multi-national. They will invariably run their own brand and will not be willing to deal with you exclusively. If a distributor is interested in selling only your products, you have to ask about their track record." - David Percy, Chief Executive, Pertronic Industries

**What to look for in a distributor**

When looking to engage a distributor, factors you should consider are whether the distributor:

* has a stable financial background
* has enough quality sales staff
* is enthusiastic and right for your product
* has foreign trading rights (or a good relationship with an import/export company)
* has an appropriate business focus
* can store and distribute your goods adequately.

You should also check out:

* the types of outlets the distributor covers
* their after-sales service
* their marketing abilities
* English language skills (and not just at head office).

Again, as with an agent you need to look for a representative that knows your industry and has the links.

**A distribution agreement**

Distributor contracts need to be detailed and well drafted as there's also little Chinese law in relation to distribution. The supplier-distributor relationship is primarily governed by the contract.

The contract should:

* guard against exclusivity (most Chinese distributors want exclusive rights for the whole country even if their network is limited to one province or even an area within a province)
* agree on volume targets
* manage risks, for example transportation
* cover intellectual property issues
* contain the terms of the standard individual sales order
* have escape clauses including performance reviews
* allow for arbitration in case of dispute.

Before signing a contract with a distributor, make sure they can directly enter into contracts with foreigners.
Also, be wary of using the Ministry of Commerce's standard sale contract. They favour the distributor.

Contracts signed in China often need to be in Chinese, which is the binding language as well. Always have a qualified law firm review any translated documents and English ones for compliance with local laws.

As with agents, you need to be cautious when granting exclusive territories.

**Managing performance**

It's up to you to support and encourage distributors to do their best. Ways to do this include:

* regular visits to the market to meet with them
* performance agreements
* regular reports on progress and prospects
* write a marketing and sales plan and tightly control marketing budgets
* provide regular training for the sales staff and after-sales training for the technical staff (in New Zealand and China).

Notes taken from