

Direct and Indirect Representation

Do you act as an Indirect Representative? You may be acting on this basis without realising it or without understanding its full implications, which can be costly. The BIFA Standard Trading Conditions state in Clause 7 that “In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company (BIFA Member) is deemed to be appointed, and acts, as Direct Representative only”, however, this can only apply where the customer is based within the UK. If the customer is based outside of the UK this Clause is unlikely to be applicable.



The Union Customs Code (UCC) allows a representative to be appointed on either a Direct or Indirect basis. When acting for a party established outside the EU the Representation will be Indirect, whilst it may be Direct when appointed by an EU based entity.

It is essential to understand the fundamental difference between Direct and Indirect Representation and how this impacts on your responsibilities and liabilities.

Direct Representation

The customs representative acts in the name of and on behalf of another party. The party being represented is the declarant and is obliged to meet all the obligations arising from the declaration. The declarant will be responsible for maintaining the records and also providing an audit trail. A customs representative may have a liability if they make an error on the entry as HMRC's view is that they have failed to act in a competent manner and become jointly and severally liable for the debt.

Appointment - a simple declaration signed by the party for whom the forwarder is going to act should be sufficient.



For further information, please contact Hazel Downes - Freight & Marine Manager
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Indirect Representation

The customs representative acts on behalf of another person but acts in their own name. The customs representative must maintain a full audit trail of the customs declaration. **The Indirect representative shall be jointly and severally liable for all customs liabilities arising from the customs related transactions.**

Liabilities when acting as customs representative for a non-EU based entity

Customs are most likely to pursue the customs representative because there is no other EU based party to take action against. The customs agent should ensure that they have contractual arrangements in place to protect them from any non-compliance by their customer.

Indirect representative when acting on behalf of an EU based entity

In this scenario, the customs representative is in a stronger position than in the previously described one, because there is another party based in the EU for Customs to pursue for the debt.

Direct and Indirect Representation



Appointment - When acting as an Indirect representative for a UK based company there are two aspects to consider: the empowerment to act as a customs representative and the contract detailing responsibilities, entitlements and penalties that will underpin the empowerment.

When acting for a party based outside the EU, as the exporter/seller's customs representative the customs agent will be fully liable and thus self-representing.

Empowerment

Documentary evidence must be available of a positive written engagement to the agent to act as their customs representative whether this is Direct or Indirect, regardless if this is on an open ended or for a single shipment, which can be a completed form, letter or e-mail. This can include a written acceptance of BIFA's STC where under Article 7, the customer appoints the BIFA Member to act as a direct representative. Failure to obtain the correct empowerment will create a situation where the customs representative is self-representing with full liability for the customs declaration.

Appointment of Sub-Agent

If the agent delegates customs clearance to a sub-agent, the agreement between the agent and the principal must make an allowance for this. If it does not, the sub-agent will not be empowered to directly represent the principal and will be considered to be acting on their own behalf, and fully liable for any customs debt that arises.

Further information is available in the BIFA 'A Guide to Representation with HMRC' information guide on their website (www.BIFA.org) in the Good Practice Toolbox which includes more detailed instructions and sample letters to facilitate these contracting and empowerment requirements.

IT IS POSSIBLE TO ADD AN EXTENSION TO YOUR FREIGHT LIABILITY INSURANCE TO PROVIDE SOME COVER FOR YOUR EXPOSURE WHEN ACTING AS AN INDIRECT REPRESENTATIVE.



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