

## ***Bio-Based SMEs: How To Access New Markets?***

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***One of the greatest successes of the European Union has been to make cross-border trade easier, through the creation of a vast single market with some 500 million consumers. It gives business the possibility to market one product throughout the EU, without necessarily having to adapt it to national rules and offers SMEs huge opportunities for growth.***

***Whilst today's global economy, powered by the internet, offers increased opportunity to develop and sell products and services on a wider scale, it also presents increased competition in the marketplace. Language barriers, legislative and regulatory difference, inadequate access to finance and a lack of knowledge of other markets are, according to entrepreneurs, some of the main reasons why more SMEs do not expand their activities abroad.***

### **1. Going International**

Launching your company in a new market is like launching a start-up. As with any start-up plan, you need to ensure you can answer questions including: What is the size of your target market? Who are your competitors? How do customers buy? Which countries offer the best opportunities? Are there any financial incentives? Do you need to establish a physical presence in that country?

In order to address some of those questions we have listed below some of the alternative, and less expensive options to establishing a physical presence in foreign countries:

- **Joint Venture**

<b>Details</b>	<ul style="list-style-type: none"> <li>• A JV is a contractual agreement between two or more individuals or companies to engage in a specific project or undertaking. All parties agree to share in the profits and losses of the enterprise.</li> <li>• Normally a JV is for a specific project, and not a legal entity, whereas a Partnership usually involves a long-term business relationship.</li> <li>• It is important to fully understand what you want to achieve from your JV before making any commitment.</li> </ul>
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<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• Access to new capacity and expertise;</li> <li>• Allow companies to enter into new geographical markets without all of the financial burden ;</li> <li>• Access to greater resources, including staff and technology;</li> <li>• JVs are flexible and can have a limited life span for the life of a specific project.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• It takes time and effort to build the right relationships;</li> <li>• Different culture and management styles may result in poor integration;</li> <li>• The financial rewards are halved;</li> <li>• There may be an imbalance of expertise, investment or assets brought by the partners of the JV.</li> </ul>
<p><b>Legal Status</b></p>	<ul style="list-style-type: none"> <li>• A JV is an agreement between parties that is limited to a purpose or project;</li> <li>• It is not a legal entity and cannot enter into contracts, hire people or have tax liabilities;</li> <li>• A JV should include: the main objectives of the JV; the financial contributions each partner will make; the IP developed by the JV; day to day management of finances and responsibilities and any dispute resolution.</li> </ul>

- **Sales Agent**

<p><b>Details</b></p>	<ul style="list-style-type: none"> <li>• Sales agents are to be found in all areas of business and are ideal solutions for companies not wishing to have all the costs involved with setting up a new entity overseas;</li> <li>• A Sales Agent will accept sales orders and refer them back to the overseas principal and will only get paid for what he sells;</li> <li>• Prior agreement will normally be made on the territory and if the Sales Agent is the Sole agent for that area.</li> </ul>
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<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• You do not have the expense of hiring and maintaining a sales team;</li> <li>• A Sales Agent will normally be very experienced and successful and be well informed of the market;</li> <li>• They will already have established business contacts in that area;</li> <li>• There are less set up costs involved and you are only paying for the sales that you have achieved.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• You have no control over the Agent and the amount of effort they put in to sales of your product;</li> <li>• An independent Sales Agent may take up a competing line for another company unless you have a stipulation that you cannot in your Agreement;</li> <li>• The overseas Agent won't have access to the same resources as your own Agents.</li> </ul>
<p><b>Legal Status</b></p>	<ul style="list-style-type: none"> <li>• A legal agreement must be written up and accepted by both parties in the country the Sales Agent will work.</li> <li>• The agreement should include:             <ul style="list-style-type: none"> <li>- details of the territory for which the agent is responsible;</li> <li>- sales targets;</li> <li>- confirmation on whether the agent can accept orders and give discounts on behalf of the principal and notice of termination of the contract.</li> </ul> </li> </ul>

## • Licence Agreement

<p><b>Details</b></p>	<ul style="list-style-type: none"> <li>• A licence agreement is a contract giving someone the legal right to use intellectual property rights owned by another person. It is used when the owner of a product / technology does not have the necessary expertise, resources or time to successfully manufacture / operate or market the particular product.</li> <li>• The owner grants a licence to a third party who has the business acumen, knowledge and experience to operate, manufacture and market the product in a certain territory on behalf of the owner of the product.</li> </ul>
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<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• By licensing the product / technology the owner of the product still owns the intellectual property and usually retains control over the product;</li> <li>• In addition, the licensor may receive continuing royalties throughout the duration of the licence;</li> <li>• A licence agreement is a useful way for the inventor to exploit a product to its full value and receive a return without relinquishing title to it;</li> <li>• Licensing can provide a means to access new markets that may otherwise be inaccessible.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• You must initially consider whether the intellectual property is capable of being afforded legal protection;</li> <li>• A licensee can become the licensor's competitor;</li> <li>• The licensee may ask for certain contributions, such as technical assistance or data, and training of personnel;</li> <li>• The licensor depends on the skills, abilities and resources of the licensee as a source of revenue.</li> </ul>
<p><b>Legal Status</b></p>	<ul style="list-style-type: none"> <li>• Licence Agreements can be established using on-line templates, but need to be validated by a legal entity should any problem occur in the future.</li> <li>• Licence Agreements should include:             <ul style="list-style-type: none"> <li>- the rights and obligations of both parties;</li> <li>- the payment or royalties;</li> <li>- confidentiality and intellectual property rights;</li> <li>- length of term of the licence agreement.</li> </ul> </li> </ul>

## • Distribution Agreements

<p><b>Details</b></p>	<ul style="list-style-type: none"> <li>• A distribution agreement is a legal agreement between a supplier of goods and a distributor of goods.</li> <li>• The supplier may be a manufacturer or maybe a distributor reselling another's goods.</li> <li>• Agreements can be made as either exclusive or non-exclusive.</li> </ul>
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<b>Advantages</b>	<ul style="list-style-type: none"> <li>• The supplier can pass a greater degree of risk to the distributor;</li> <li>• There are greater incentives to sell the product;</li> <li>• They avoid the need for the supplier to have an established place of business in the territory and reduce costs.</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• There is a certain lack of control over the distributors activities;</li> <li>• They may not perform as well as first indicated in the agreement;</li> <li>• Risks such as transport etc need to be managed. For example who will cover insurance costs etc?</li> </ul>
<b>Legal Status</b>	<ul style="list-style-type: none"> <li>• Legal agreements need to be established to cover territory, competition and have an escape clause, should the distributor not perform.</li> <li>• You also need to perform due diligences on the distributors financial background; quality of sales staff, if they have foreign trading rights, marketing abilities, types of outlet the distributor covers.</li> </ul>

## • Technology Transfer

<b>Details</b>	<ul style="list-style-type: none"> <li>• Is the process of sharing skills, knowledge, technologies and methods of manufacturing, this enables the user to exploit the technology into new products, process and applications.</li> <li>• Recently there has been a shift from the traditional development of technologies in-house by multi-national organisations to Open Innovation where new technologies are sourced externally and then exploited.</li> </ul>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• Enables the development and commercialisation of academic and business findings without significant investment;</li> <li>• It accelerates the commercialization of R&amp;D;</li> <li>• A company is able to lower the commercial risk by combining external capabilities with internal innovation resources.</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Invention Disclosure, too much information shared;</li> <li>• Securing IP can be costly and difficult to secure when operating in multiple countries;</li> <li>• Uncertainty of value of technology and risk of exploitation;</li> <li>• Complicated royalty distribution issues.</li> </ul>

<b>Legal Status</b>	<ul style="list-style-type: none"> <li>As with Licensing Agreements a legal agreement should be established to determine the technology that is to be transferred, the use of that technology and the length of time the agreement will last.</li> <li>Prior to any disclosure of information a Non Disclosure Agreement (NDA) should be established between both parties.</li> </ul>
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## 2. European Commission simplifying company registration

The European Commission has presented a proposal for a Statute on a European Private Company (EPC). This new company format will enable small and medium-sized enterprises (SMEs) to do business throughout the EU.

The EPC has been designed to address the current onerous obligations on SMEs operating across borders, who may need to set up subsidiaries in different company formats in every Member State in which they want to do business.

In practical terms, the EPC would mean that SMEs can set up their company in the same format, no matter if they do business in their own Member State or in another. Opting for the SPE will save entrepreneurs time and money on legal advice, management and administration.

Whilst the paper was submitted in 2008, the EPC is still at the consultation stage.

## 3. Case Study

***OJ-Bio Ltd** is a joint venture between **Orla Protein Technologies Ltd** (Orla) a UK nanobiotechnology company and leading Japanese electronics and communications company **Japan Radio Company Ltd** (JRC).*



Orla Protein Technologies Ltd is a privately owned company based in Newcastle upon Tyne, UK. Its key assets are its protein and bio-surface expertise, including protein design and manufacture, for bio-surface applications. The company has a range of patented, fully-owned technologies that are used to provide bespoke solutions in these fields.

In November 2009 Orla established a joint venture company with multi-billion pound Japanese electronics giants Japan Radio Co Ltd, developing mobile diagnostic technology. OJ Bio is 80% owned by Orla with 20% backing from JRC.

Orla and JRC have been working together since November 2007 to develop handheld wireless diagnostic devices. The unique diagnostic device and biochip platform allows the rapid measurement of disease markers, electronic storage, and wireless transmission of results

In August 2010 OJ Bio Ltd was awarded funding of over €100,000 by the Technology Strategy Board,

to develop handheld wireless diagnostic units and biochips for rapid on-the-spot detection of sexually transmitted diseases (STDs) including Chlamydia, using bodily fluids such as urine and saliva.

## 4. Finding Partners and Agents in Europe

The list below gives an indication of some of the resources available when trying to identify potential partners and agents within Europe.

Organisation	JV*	SA*	LA*	DA*	TT*
Biotechnology – Europe <a href="http://www.biotechnology-europe.com">www.biotechnology-europe.com</a>	✓		✓		✓
Enterprise Europe Network <a href="http://www.enterprise-europe-network.eu">www.enterprise-europe-network.eu</a>	✓		✓		✓
Embassies <a href="http://www.embassyworld.com">www.embassyworld.com</a>	✓				
Sales4Sales <a href="http://www.sales4sales.com">www.sales4sales.com</a>		✓			
Sales Agent Europe <a href="http://www.salesagenteurope.com">www.salesagenteurope.com</a>		✓			
Euro Pages <a href="http://www.europages.co.uk">www.europages.co.uk</a>		✓		✓	
Technology Innovation International <a href="http://www.tii.org">www.tii.org</a>					✓
NineSigma <a href="http://www.ninesigma.com">www.ninesigma.com</a>					✓
Agents24.com <a href="http://www.agents24.com">www.agents24.com</a>		✓		✓	

\* Key: JV (joint venture); SA (sales agent); LA (licence agreement); DA (distribution agreement); TT (technology transfer)