

The Agency Contract in Spain

I. Introduction

The agency contract in Spain is governed by the Act 12/1992, dated 27 May, on agency contracts, based on the European Directive 86/653/EC on the coordination of the laws of the Member States relating to self-employed commercial agents.

Article 1 of the mentioned Act 12/1992 defines the commercial agent as a person or entity *"committed, in a continuous or stable way and against remuneration, to another person to carry out commercial transactions and operations on his behalf or to promote those acts, as an independent intermediary, without, -unless otherwise provided-, assuming any risk of those operations"*.

II. Form of the agency contract

The Spanish law does not provide any special formalities regarding the validity or effectiveness of the agency contract.

III. Main obligations of the parties

1. Article 9 of the mentioned Act stipulates the main obligations of the agent, summarized as follows:

- a) Promotion and formalization of transactions on behalf of the principal with loyalty and in good faith;
- b) Communication to the principal about any relevant information about his activity and eventually about the solvency of customers;
- c) Performance of the activity according to the reasonable instructions received from the principal, provided his independence will not be affected by them;
- d) Receipt of claims from third parties on behalf of the principal regarding quality or quantity defects related to the goods sold as a result of the operations performed, even prior to completion;
- e) Independent bookkeeping of the transactions and operations of each principal on whose behalf the agent is acting.

2. Article 10 stipulates the main obligations of the principal, summarized as follows:

- a) Placement at the agent's disposal of any documentation about the goods concerned and necessary for the agent's activity;
- b) Communication to the agent of any relevant information regarding the execution of the agency contract, and in particular, in case of anticipation that the volume of transactions and operations will be considerably lower than that which the agent could normally have expected;
- c) Payment of the agreed remuneration

IV. Remuneration

1. The remuneration of the agent may consist of a fixed amount, a commission or a combination of both. In case of a lack of regulation, the remuneration will be fixed in accordance with the commercial practices of the location where the agent performs his activity.

The agent is entitled to the right of commission:

- **During the agency contract** after the conclusion of the commercial transaction or operation as a result of the agent's involvement, or, in case of exclusivity, independently from the agent's involvement if the transaction or operation is concluded in the agent's territory or with his customers;
 - **After the termination of the agency contract**, the agent's right of commission persists, provided that (a) the transaction or operation is the direct result of the agent's activity during the contract and (b) the transaction or operation was concluded within **three months** after the termination of the contract.
2. The commission **becomes due** from the moment the transaction or operation is executed, **payable lately the last day of the month following the quarter in which it came due**. However, it has to be pointed out that the legislator has taken into account the agent's autonomy and independence by shifting the risk of non-execution of the transactions to the agent, unless the non-execution is attributable to the principal. The agent might even be obligated to reimburse commissions perceived in case of posterior non-execution or failure of the transaction.

V. Agreement about restriction of competition

The agency contract under Spanish law may contain a restraint of competition for the agent, also after termination of the agency contract. However, the validity of such stipulation is subject to the following conditions:

- a) it is concluded expressly in **writing**;
- b) it is **related** to the geographical area or the customers entrusted to the agent and to the kind of goods covered by the agency contract and
- c) the duration of the restraint shall not exceed **two years** after termination of the agency contract;

VI. Term of the agency contract

Agency contracts may be convened for a **specific** or **indefinite** term. In case of the indefinite term, the law provides a termination upon **unilateral notice** from any of the parties via prior written notice, which shall be **one month for every year of the term of the contract** (even in case of less than one year term), with a maximum period of six months. However, the parties may convene longer periods, providing that the period for the principal must never be longer than the one established for the agent.

VII. The Agent's right to compensation and indemnity after termination of the contract

1. The compensation for customers

The compensation for customers according to article 28 requires that (a) the principal benefits directly and substantially from the customers (b) procured previously by the agent after termination of the agency contract and (c) that the compensation is equitably appropriate, which means that all the concurring circumstances, particularly the commissions lost by the agent due to the termination of the contract or the existence of agreements about competition restrictions have to be taken into account.

The agent is entitled to such compensation regardless the reason of termination of the contract, unless the termination was due to a breach of contract committed by the agent. The agent's heirs are entitled to the said compensation in case of termination of the contract because of the agent's death.

The compensation shall not exceed the **average annual amount** of the remuneration perceived by the agent during **the last five years** of the validity of the contract.

2. The indemnity for losses and damages

Regardless the aforementioned compensation, article 29 entitles the agent to a compensation for losses and damages in case of a unilateral notice of the contract of the principal, provided the notice is not reasonably based on a breach of contract by the agent.

VIII. Jurisdiction

The amendment to the Act 12/1992 ("disposición adicional") establishes that jurisdiction for any claim deriving from the agency contract will correspond to the Court of the **agent's domicile**, being null and void any contrary provision.

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