



AGENCY AGREEMENTS IN SPAIN: UNDERSTANDING THE SPANISH AGENCY LAW

Exploring a new market, even a very well known one in Western Europe, is always a challenge regardless of a company's experience in foreign commerce. We may be surprised by several factors: payment procedures, cultural differences, legal issues... How to address correctly each one of these matters is crucial to our success.

Insider's knowledge of the market comes at a price and many companies choose to rely on local support, which is why agents and distributors are such a favoured option. This is particularly true in Spain due to the exten-

sion of its territory (the second largest country in Europe) and the cultural differences between its regions.

Once an agent has been selected, careful drafting of the agreement is necessary. Although many companies prefer not to put down anything in writing, it is advisable to do so for two reasons: a) to avoid possible misunderstandings in the future; b) to express the true wishes of the parties whereas some provisions of the law are applicable in the absence of agreement.

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The parties cannot derogate mandatory provisions of the Spanish Agency law (Law 12/1992, of May 27), so a thorough knowledge of its contents is essential. The good news is that the Law results from the incorporation of Directive 86/553/EEC into Spanish law; but although many provisions are similar, Member States are allowed some leeway as to how to incorporate them in accordance with national law.

When it comes to negotiating an agreement the main point of contention between the parties usually regards the agent's remuneration: not only how much will the agent be paid but how and when, and, crucially, what happens upon termination. The Law provides clear guides to these matters in Chapter II, Section 3.

Agent's remuneration

Pursuant to article 11, the agent's remuneration can consist of a fixed amount, a commission or a combination of both. In absence of any agreement the agent is entitled to the remuneration commercial agents

are customarily allowed in the place where they carries on their activities.

Is the agent entitled to a commission for transactions concluded after termination of the agreement? Article 13 establishes two separate conditions in which the agent does receive commission. On the one hand, the transaction must have been concluded as a direct result of his efforts during the agreement in the three-month period following termination. On the other, the agent is also entitled to commission whenever an order reaches the principal or said agent before termination. Finally, article 16 foresees that the agent shall receive commission no later than the last day of the month following the quarter in which it has become due.

The issue of reimbursement of expenses can also influence the parties' positions on remuneration. Does the principal have to reimburse the agent's expenses for his efforts? Article 18 states that, unless there is an agreement to the contrary, the agent is not entitled to reimbursement.



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Indemnity upon termination

However, upon termination a different kind of problem may arise which has to do with the agent's right to receive an indemnity from the principal. Pursuant to article 28 the agent will only be entitled to an indemnity if three conditions are met: a) the agent has brought the principal new customers or has significantly increased the volume of business with existing customers; b) the principal continues to derive substantial benefits from the business with such customers; c) the payment of indemnity is equitable considering applicable restraint of trade clauses or loss of commission.

The principal can calculate beforehand the maximum cost of the in-

demnity since the Law provides the following formula: indemnity may not exceed the agent's average annual commission over the preceding five years, or during the agreement's period if it goes back less than five years.

In conclusion, agency agreements are a useful tool when addressing the Spanish market. It is not uncommon for many companies to have several agents, which, of course, makes it especially important to have clear and comprehensible agreements in place. This is the first step in order to build a strong and trustworthy portfolio of agents that can ensure the principal's success. And, as already noted, even if the parties agree on applying foreign law, mandatory provisions of Spanish Law cannot be derogated.

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