

Corea:

Información aportada por la Sección Económica y Comercial de la Embajada Argentina en Corea

Fecha: 25.09.2012

Adjuntamos la reglamentación de los países que fue aportada por la Embajada correspondiente. Dado que en muchos casos el texto de la ley no es específico aconsejamos leer el que figura para Alemania, pues si bien este solo rige para los 27 países que forman la UE el conocimiento de su texto ayuda a conocer los aspectos a tener en cuenta al firmar un contrato con un agente o representante.

De todas maneras puede también comunicarse con la embajada correspondiente solicitando mayor información.

Legislation: (excepts from the Korean Commercial Code)

CHAPTER V: COMMERCIAL AGENTS

Article 87 (Definition)

A person who makes it his business to act on behalf of a particular merchant not as an employee of any person but as agent or broker in transactions falling within the class of business carried on by principal is called a commercial agent.

Article 88 (Duty to Notify)

When a commercial agent has acted as agent or broker in any transactions, he shall dispatch a notice thereof to the principal without delay.

Article 89 (Prohibition of Competitive Business)

(1) Without the permission of the principal, a commercial agent shall not effect, for his own account or for the account of a third person, any transaction which falls within the class of business performed by the principal, or become a member with unlimited liability or a director of a company whose purpose is to engage in the same kind of business of the principal.

(2) The provisions of Article 17 (2) through (4) shall apply mutatis mutandis if a commercial agent has been in contravention of the provisions of the preceding paragraph.

Article 90 (Power to Receive Notices)

A commercial agent entrusted with the sale of goods or with the brokerage relating thereto shall be entitled to receive notice of defects in the subject matter of the sale or deficiencies in their quantity, and any other notice relating to the performance of the contract for sale.

Article 91 (Lien of Commercial Agent)

A commercial agent may retain things or valuable instrument which he holds in his possession on behalf of the principal, in respect of any claim which has arisen from his agency or brokerage in a transaction and which has become due, until he has obtained performance thereof: Provided, That this shall not apply if there is any different agreement between the parties.

Article 92 (Termination of Contract)

(1) If the parties have not fixed the duration of the contract, either of them may terminate the contract by giving notice two-month prior to it.

(2) The provisions of Article 83 (2) shall apply mutatis mutandis to the commercial agents.

Article 92-2 (Claim for Compensation by Commercial Agent)

(1) If the principal obtains new customers or his business transaction has increased remarkably through his commercial agent's activities, and he gains thereby any profits even after the contract is terminated, the agent may claim a reasonable compensation to the principal, except when the contract is terminated by any reason attributable to him.

(2) The amount of the compensation as referred to in paragraph (1) may not exceed the average yearly remuneration in respect of the period of the last five years before the contract is terminated. If the duration of the contract is less than five years, it shall be based on the average yearly remuneration for such period.

(3) The claim for compensation as referred to in paragraph (1) shall be extinguished upon the expiration of the period of six months after the contract is terminated.

[This Article Newly Inserted by Act No. 5053, Dec. 29, 1995]

Article 92-3 (Duty of Commercial Agent to Keep Trade Secret)

The commercial agent shall keep any trade secret of the principal which he has learned in connection with the contract, even after the contract is terminated.

[This Article Newly Inserted by Act No. 5053, Dec. 29, 1995]

CHAPTER VI: BROKERAGE

Article 93 (Definition)

A person who makes it his business to act as intermediary in commercial activities between other persons is called a broker.

Article 94 (Broker's Power to Accept Performance on behalf of Parties)

A broker may not accept, on behalf of the parties, either payment or any other performance in connection with the transaction in which he has acted as intermediary: Provided, That this shall not apply if there is any special agreement or custom.

Article 95 (Duty to Keep Sample)

If a broker has received a sample in connection with an activity in which he has acted as intermediary, he shall keep it in his custody until the activity has been completed.

Article 96 (Duty to Deliver Contract Documents)

(1) When a transaction has been effected between the parties, the broker shall, without delay, prepare documents containing the name or trade name of each party, the date and a summary of such contract, and after writing his name and affixing his seal or signing thereon, shall deliver such documents to each party. <Amended by Act No. 5053, Dec. 29, 1995>

(2) Except in cases where performance is to be effected by the parties immediately, the broker shall, after having caused each party to write their names and affix their seals or sign on the documents mentioned in the preceding paragraph, deliver it to the other party. <Amended by Act No. 5053, Dec. 29, 1995>

(3) If, in cases mentioned in paragraphs (1) and (2), one of the parties does not accept, write his name and affix his seal or sign on the document, the broker shall dispatch notice thereof

to the other party without delay. <Amended by Act No. 5053, Dec. 29, 1995>

Article 97 (Duty to Maintain Books)

- (1) The broker shall enter in his books the particulars mentioned in the preceding Article.
- (2) Either party may at any time demand of the broker the delivery of a copy of his books in connection with the activity in which the broker has acted as intermediary for him.

Article 98 (Duty not to Disclose Name or Trade Name)

If either party has demanded the broker not to disclose his full name or his trade name to the other party, the broker shall not enter such full name or trade name in the document mentioned in Article 96 (1) and in the copy mentioned in paragraph (2) of the preceding Article which are to be delivered to the other party.

Article 99 (Responsibility of Broker)

If the broker has not disclosed voluntarily, or in accordance with the provisions of the preceding Article, the full name or trade name of one of the parties to the other party, the latter may demand the broker to perform the terms of contract.

Article 100 (Right to Demand Remuneration)

- (1) The broker shall not demand remuneration unless he has complied with the formalities prescribed in Article 96.
- (2) The broker's remuneration shall be borne by both parties in equal proportions.

CHAPTER VII: COMMISSION AGENCY

Article 101 (Definition)

A person who makes it his business to effect sales and purchases of goods or of valuable instruments in his own name for the account of other person is called a commission agent.

Article 102 (Status of Commission Agent)

By a sale and purchase effected for his principal, the commission agent directly acquires rights and incurs obligations with regard to the other party to the transaction.

Article 103 (Ownership of Goods Consigned)

Goods or valuable instruments which have been received by the commission agent from his principal, or goods, valuable instruments or claims acquired through sales and purchases by the commission agent, are deemed to belong to the principal so far as the principal and the commission agent or the principal and the commission agent's creditor are concerned.

Article 104 (Duty to Notify Sale or Purchase and to Submit Statement of Account)

If a commission agent has effected the sales or purchases consigned to him, he shall dispatch notice of a summary of the contract and of domicile and full name of the other partner, and he shall submit the statement of account thereof to his principal without delay.

Article 105 (Liability of Commission Agent to Secure Performance)

If the other party does not perform his/her obligation arising from sales or purchases which a commission agent has effected for his/her principal, the commission agent shall be liable for performance thereof: Provided, That this shall not apply where any special agreement or custom exists.

Article 106 (Duty to Observe Designated Price)

(1) If a commission agent has sold at a lower price or bought at a higher price than the price designated by his/her principal and the commission agent bears the difference, the sales or purchase shall be binding upon the principal.

(2) When a commission agent has sold at a higher price or bought at a lower price than the price designated by his/her principal, the difference shall be deemed to be the profits of the principal unless otherwise agreed by the parties.

Article 107 (Commission Agent's Right to Intervention)

(1) When a commission agent has received a commission to sell or purchase goods having the exchange quotation or securities, he/she may directly become the buyer or seller. In such cases, the price shall be determined by exchange quotation at the time a notice of sale or purchase was sent by the commission agent.

(2) In cases under paragraph (1), the commission agent may demand remuneration from the principal.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 108 (Effect of Damage or Defects, etc. in Consigned Goods)

(1) When the commission agent becomes aware of, after having taken over the subject-matter of sale through a commission agency, the fact that there is damage or defect in the goods, or there is a fear of decomposition or decay of the goods, or commercial circumstances which show decline of commodity prices, he/she shall without delay send a notice thereof to his/her principal.

(2) In the case of the preceding paragraph, if the commission agent is unable to receive the instruction of his/her principal or such instruction is delayed, the commission agent may take an adequate measure for the benefit of his/her principal.

Article 109 (Right to Place Goods in Public Depository or on Auction)

Where the commission agent has received a consignment to buy the goods, Article 67 shall apply mutatis mutandis when the principal refuses or is unable to accept delivery of goods so purchased.

Article 110 (In Case Consignor of Purchase is Merchant)

If the principal who is a merchant consigned the purchase in connection with business, the provisions of Articles 68 through 71 shall apply mutatis mutandis to the relation between a principal and commission agent.

Article 111 (Applicable Provisions)

The provisions of Article 91 shall apply mutatis mutandis to a commission agent.

Article 112 (Application of Provisions concerning Mandate)

In addition to the provisions of this Chapter, the provisions relating to mandate shall apply to the relations between a principal and a commission agent.

Article 113 (Quasi-Commission Agent)

The provisions of this Chapter shall apply mutatis mutandis to persons who make it their business to effect, in their own name, for the account of the other person, activities other than sales or purchases.