

Dinamarca:

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

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La actividad de los agentes comerciales está regulada a nivel europeo por la Directiva N° 86/653/CEE del Consejo de 18 de diciembre de 1986 relativa a la coordinación de los derechos de los Estados miembros en lo referente a los agentes comerciales independientes.

La legislación sobre este tema de Agentes y Representantes en la Unión Europea es la misma para todos los países miembros: Alemania, Austria, Bélgica, Bulgaria, Chipre, Dinamarca, Eslovaquia, Eslovenia, España, Estonia, Finlandia, Francia, Grecia, Hungría, Irlanda, Italia, Letonia, Lituania, Luxemburgo, Malta, Países Bajos, Polonia, Portugal, Reino Unido, República Checa, Rumanía, Suecia.

Aconsejamos leer el texto 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.

Información adicional sobre agentes y representantes comerciales en Dinamarca

Ley Danesa

DANISH ACT ON COMMERCIAL AGENTS

promulgated on May 4th, 1990

(Lov 1990-05-02 nr. 272 om handelsagenter og handelsrejsende)

Chapter 1

Derogation from the law

§ 1. The law can be deviated by agreement unless otherwise stated in the law. The provisions of chapter 3 can further-more be deviated by custom.

Section 2. The provisions in §§ 22 and 25-27, that may not be deviated to the disadvantage of the agent, may neither be deviated to the disadvantage of the agent through an agreement stipulating that foreign law shall be applied to the legal relationship if the legal relationship would otherwise be judged according to this law.

Section 3. If Danish law applies under circumstances where the assignment of the agent due to contractual provisions is not to be conducted in a member country of EEC or EFTA, or in one of the Nordic countries, the parties can deviate all the provisions of this law. §§ 22 og 25-27 can, however, not be deviated if indispensable provisions exist concerning cancellation and severance in agent relationships in the country where the agent is to perform his assignment or where the agent is domiciled.

Chapter 2

Commercial agents

§ 2. The expression "commercial agent" in this Act describes a person who, in business, has agreed with another person, the principal, on behalf of the latter independently and continuously to engage in the sale or purchase of goods by obtaining offers to the principal or by concluding agreements in his name.

§ 3. The agent or his principal are entitled to a signed document setting forth the terms of the agency agreement and future changes.

Section 2. Section 1 cannot be deviated by agreement.

§ 4. In performing his activities, the agent shall safeguard the principal's interests and act loyally and honestly.

Section 2. It is especially incumbent upon the agent to

- 1) make reasonable efforts to obtain offers and, if it is part of his activities, to conclude agreements on such matters that are covered by the agency agreement,
- 2) inform the principal about offers that have been obtained and agreements that have been concluded as well as about other circumstances known by the agent and which the principal should be aware of, and
- 3) follow reasonable instructions given by the principal.

Section 3. Section 1-2 cannot be deviated by agreement.

§ 5. The Principal shall act loyally and honestly towards the agent.

Section 2. It is especially incumbent upon the principal to

- 1) supply the agent with the necessary material in respect of the goods to which the agreement pertains,
- 2) supply the agent with the information required for implementation of his activities, and
- 3) inform the agent, without undue delay, that he has accepted or rejected an offer forwarded to him by the agent or that an agreement mediated by the agent has not been fulfilled.

Section 3. The principal shall, without unreasonable delay, inform the agent if he foresees that the scope of the business will be substantially less than that reasonably supposed by the agent.

Section 4. Section 1-3 cannot be deviated by agreement.

§ 6. If the agent or the principal fails to carry out his obligations in accordance with the agency agreement or the law, he is obliged to pay the other party damages arising thereby.

Section 2. The party intending to claim damages shall inform the other party accordingly without unreasonable delay after he has learnt, or should have learnt, of the negligence and damage. Otherwise, the right to damages is lost.

Section 3. Section 2 is not valid if the other party has acted in contravention with his word of honour or gross negligence.

§ 7. If the agent has goods in stock to be sold on behalf of the principal or bought for the latter, the agent has the same obligations and rights concerning the goods as an mercantile agent according to "Kommissionslovens kapitel II", (chapter II of the law on mercantile agents).

Commission

§ 8. If the agent and the principal have not agreed upon the agent's remuneration, it shall be determined at what is customary remuneration of agents for the goods in question where the agent conducts his business. If there is no such custom, the remuneration shall be determined at what is reasonable in view of all the circumstances involved in the activities.

§ 9. The agent is entitled to commission on a transaction concluded during the period of the agency agreement if,

- 1) the transaction may be considered to have arisen through the participation of the agent,
- 2) without the agent's participation, the transaction has been concluded with a third party whom the agent has procured earlier as a customer, provided that the agreement is of the same type or
- 3) the agent has been given a certain territory or a certain clientele and the transaction has been concluded with a third party belonging to the territory or clientele.

§ 10. If the transaction has been concluded under such circumstances as are referred to in § 9, 1-3, after the agency agreement has ceased, the agent is entitled to commission if the agent or the principal has obtained the offer from a third party during the period of the agency agreement.

Section 2. The agent is furthermore entitled to commission if the transaction has arisen mainly through the agent's participation during the period of the agency agreement and if it has been concluded within a reasonable time after expiry of the agency relationship.

Section 3. An incoming agent is not entitled to commission in accordance with § 9, section 1-2 on a transaction which gives the outgoing agent the right to commission in accordance with the first section, unless it is reasonable, in view of the circumstances, for the commission to be split between the agents.

§ 11. Commission is earned when and to the extent that any of the following circumstances is at hand:

- 1) The principal should, according to the agreement with a third party, have delivered the goods or paid the purchase price.
- 2) Third party has paid the purchase price or delivered the goods, or should have initiated fulfilment according to the agreement with the principal if the principal had fulfilled his part of the agreement.

Section 2. An agreement as to which the commission is earned later than due to section 1, no. 2, is void.

§ 12. Commission shall be paid not later than one month after the end of the quarter in which the right to commission was earned, cf. § 11.

Section 2. Section 1 cannot by preceding agreement be deviated to the detriment of the agent.

§ 13. The principal shall, not later than one month after the end of each quarter, give the agent a commission statement showing the commission that has been earned during the quarter. The commission statement shall contain all information of importance for the calculation of the commission.

Section 2. Section 1 cannot by preceding agreement be deviated to the detriment of the agent.

§ 14. The agent only loses his right to commission if it is shown that the agreement between the principal and a third party is not implemented and that this is not attributable to the principal or any circumstance which he can be held responsible for.

Section 2. If a third party has failed to implement the agreement, because the principal has, without the consent of the agent, granted him respite for implementation or agreed with him on cancellation of the agreement, the agent's right to commission is not affected.

Section 3. If a third party carries out the agreement only in part, the agent has the right to commission on the part corresponding to what has been carried out, if nothing to the contrary follows from section 1-2.

Section 4. Section 1-3 cannot by preceding agreement be deviated to the detriment of the agent.

Section 5. If the claim for commission, mentioned in section 1, ceases, the agent shall reimburse commission received.

§ 15. The agent has the right to receive all information which is available to the principal and which the agent needs to enable him to check whether the commission statement contains the amounts of commission which he has earned. Such information includes extracts from the principal's accounting records.

Section 2. If by presentation of such a request, the principal does not supply the agent with information referred to in section 1, or if there is reason to suppose that this information or the particulars in the commission statement are incorrect, the agent has the right to examine the principal's accounting records to the extent which is necessary. In that connection, the principal may decide whether the examination shall be carried out by the agent himself, by an authorized public accountant or by an approved accountant appointed by the agent.

Section 3. The duty according to section 1-2 does not apply, if hereby would be revealed information about circumstances which the principal would be under no obligation to give in evidence as a witness, cf. "Retsplejelovens" § 171 (administration of justice law).

Section 4. Section 1 cannot by agreement be deviated to the detriment of the agent.

Relations with a third party

§ 16. The agent may not, without special authorization, enter into an agreement on sale or purchase on behalf of the principal.

Section 2. If the agent has concluded an agreement on sale or purchase on behalf of the principal without being authorized to do so, the principal shall, if he does not approve of the agreement, inform the third party accordingly. The principal shall give this information without unreasonable delay after receiving news about the agreement. If the principal fails to do so, he is bound by the agreement, if the third party was in good faith about the agent's authorization.

§ 17. If the principal does not wish to accept an offer that the agent has received, the principal shall inform the third party accordingly without unreasonable delay after acquiring knowledge of the offer. If he fails to do so, the offer is considered to be accepted.

Section 2. Section 1 is not valid if the agent and the third party have agreed that the offer shall expressly be accepted by the principal.

§ 18. If a third party has submitted an offer to the agent and the latter has forwarded the offer to the principal, the third party has the right to withdraw the offer before or at the same time as the offer comes to the principal's knowledge.

Section 2. Section 1 is not valid if something to the contrary has been agreed between the agent and the third party.

§ 19. If a third party, who is engaged in business with the principal, has negotiated with the agent and thereafter received a communication from the principal that the principal confirms an agreement or accepts an offer submitted by the agent, the third party shall inform the principal accordingly without unreasonable delay if the third party considers that he has not concluded any agreement or submitted any offer, or that the agreement or offer is incorrectly stated. If the third party fails to do so, he is considered to have concluded the agreement with the content shown by the communication from the principal, unless the contrary is proven.

§ 20. The agent may not, without special authorization, receive payment for sold goods or, after conclusion of the agreement, grant a respite for payment or a price reduction or other alterations in the agreement.

Section 2. If the principal learns that the agent, without authorization, has received payment or has adopted alterations in the agreement, the principal shall, if he does not wish to accept the payment or the alteration, inform the third party accordingly without unreasonable delay. If he fails to do so, he will be considered to have accepted the payment or alteration, if the third party at the time of payment or alteration of the agreement was in good faith concerning the authorization of the agent.

Section 3. Section 1-2 are applied accordingly if the agreement with a third party concerns purchase of goods for the principal.

§ 21. If a third party wishes to cite a fault in purchased goods or a delay in delivery or if he wishes to inform the principal of some other matter concerning fulfilment of an agreement, he may turn to the agent if the agreement may be considered to have arisen through the participation of the agent. The agent may not, without special authorization, reach any settlement as a result of such communication.

Section 2. Section 1 is applied accordingly if the agreement with a third party concerns purchase of goods for the principal.

Termination of the agency agreement

§ 22. If the agency agreement has not been concluded for a fixed period, the principal and the agent shall give notice of cancellation with a notice of one month during the first year of the period of the agency agreement. The notice period is extended by one month for each year or fraction thereof of the agency agreement. The period of notice cannot exceed six months, unless otherwise agreed.

Section 2. Shorter periods of notice than those stated in section 1 cannot be stipulated by preceding agreement. However, they may agree on notice of three months by the agent although the agency agreement has been in force for three years or more.

Section 3. If the parties agree to a longer period of notice of cancellation than stated in section 1, the period of notice of cancellation by the principal may not be shorter than that by the agent.

Section 4. If not otherwise agreed, termination is counted to the end of a calendar month.

§ 23. If the parties continue an agency agreement entered for a fixed period after expiry of the period, § 22 is equivalently applicable. When calculating notice of cancellation according to § 22 section 1, the fixed duration of the agency relationship shall be taken into account.

§ 24. Each of the parties may without observing existing periods of cancellation revoke the agreement, if the other party to a considerable extent has ceased to fulfill his obligations according to the agreement or this Act.

Compensation upon termination

§ 25. When the agency agreement ceases, the agent is entitled to severance payment if, and to the extent that,

- 1) the agent has brought the principal new customers or substantially increased trade with the existing clientele and if the principal will continue to benefit substantially from the relationship with these customers, and
- 2) the severance payment is reasonable in view of all circumstances, especially the loss of commission on agreements with these customers

Section 2. Section 1 is applied accordingly if the agency agreement ceases due to the agent's death.

§ 26. The severance payment in accordance with § 25 shall amount to a sum not exceeding payment for one year, calculated on the basis of the agent's average annual commission for the past five years. If the agreement lasted for a shorter period than five years, the amount is calculated on the basis of the average remuneration in that period.

§ 27. The agent is not entitled to severance payment in accordance with § 25 if

- 1) the principal gives notice of cancellation of the agreement because of material breach of contract attributable to the agent,
- 2) the agent cancels the agreement, unless entitled as a consequence of
 - a) circumstances attributable to the principal or
 - b) the agent's age, infirmity or illness thus not reasonable to demand that the agent continues his activities or
- 3) the agent, with the principal's consent, assigns his rights and obligations according to the agreement to another party.

§ 28. The agent's claim for compensation according to § 25 ceases, if one year after the cessation of the agency agreement, the agent has not informed the principal that such claim for compensation will be put forward.

§ 29. §§ 25-28 cannot by preceding agreement be deviated to the detriment of the agent.

Competition clauses

§ 30. An agreement between the agent and the principal stipulating that the agent shall not conduct business after termination of the agency agreement (competition clause) is binding on the agent only and to the extent that the competition clause

- 1) has been drawn up in writing
- 2) relates to the geographic area or the clientele assigned to the agent, and
- 3) relates to goods of the type to which the agency agreement is applicable.

Section 2. The competition clause can not exceed a period of two years after termination of the agency agreement.

Section 3. A competition clause can be set aside according to "Aftalelovens" § 38 (commercial agreement act).

Chapter 3 Commercial travellers

(§§ 31-34 omitted)

Chapter 4 Entering into force and interim provisions

(§§ 35-38 omitted)

The Danish Association of Commercial Agents is not responsible for errors or imperfections in this unauthorized translation.

The original text is in Danish.
(Handelsagentloven engelsk)

Copenhagen, May 1996