

## **Suecia:**

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

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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 – Ley 1991:351**

A continuación encontrará la norma sueca relativa a los agentes comerciales:

### **Commercial Agents Act (SFS 1991:351) General provisions**

#### **Section 1**

For the purposes of this Act “commercial agent” means a person who, in the course of conducting a business, contracts with another, the principal, to independently and on a permanent basis act on behalf of the principal in the sale or purchase of goods through the receipt of offers made to the principal, or through the conclusion of contracts in the name of the principal.

#### **Section 2**

In the event of any conflict between the terms and conditions of an agreement and the provisions of this Act, the contract terms shall prevail, unless otherwise stipulated in the Act. Practices developed during a course of dealings between the parties, as well as trade practices or other such customs, shall constitute implied terms of a contract.

Where in this Act it is stipulated that the parties may not exclude a provision of the Act, such provision shall prevail over any practice developed through any course of dealings between the parties, or through trade practices or other such customs.

### **Section 3**

Repealed. (SFS 1998:170).

### **Section 4**

At the request of the agent or the principal, a document setting forth an agency agreement and amendments thereto shall be prepared and signed by the parties.

The parties may not waive the right to receive upon request such a document as referred to in the first paragraph. The obligations of the agent.

### **Section 5**

In the performance of the agency, the agent shall safeguard the interests of the principal and shall act in a loyal and honest manner.

The agent shall, in particular:

1. make reasonable efforts in order to solicit offers and, where included in the scope of his duties, to conclude such contracts as are covered by the agency agreement;
2. inform the principal in respect of offers received and contracts concluded, as well as in respect of other facts known to the agent which are of significance to his duties; and
3. comply with reasonable instructions given by the principal.

Any contractual terms and conditions which conflict with the provisions of this section shall not be binding on the parties.

### **Section 6**

The agent shall properly take care of the goods and other property belonging to the principal which are in the possession of the agent. The agent shall maintain the requisite property insurance. Goods belonging to the principal shall be held separately from other goods.

Where the agent is entitled to accept payment for goods sold, he shall hold funds so received separate from other funds, and shall present an accounting in respect thereof. The obligations of the principal

### **Section 7**

The principal shall act with loyalty and honesty towards the agent. The principal shall, in particular:

1. provide the agent with samples, descriptions, price lists, and other necessary materials in respect of the goods which fall within the scope of the agency;
2. provide the agent with any information necessary for the performance of the agency; and
3. without unreasonable delay, notify the agent whether he accepts or rejects an offer conveyed to him by the agent, or of the non-performance of a contract entered into by the agent on behalf of the principal.

The principal shall, without unreasonable delay, notify the agent where the principal anticipates that the scope of the business activities will be significantly smaller than the agent could reasonably have expected.

Contractual terms and conditions which conflict with the provisions of this section shall not be binding on the parties. Commission, etc.

### **Section 8**

Where the agent and the principal have not agreed upon the agent's remuneration, such remuneration shall be determined in accordance with that which is customary in the location where the agent carries out his business activities. In the absence of any such custom, the remuneration shall be determined according to that which is reasonable, taking into account all of the circumstances of the agency.

### **Section 9**

The agent shall be entitled to a commission in respect of contracts concluded during the period of the agency:

1. where the contract may be deemed to have come into existence as a result of the activities of the agent;
2. where the contract is concluded other than as a result of the activities of the agent, with a third party whom the agent had previously acquired as a customer in respect of contracts of the same kind; or
3. where the agent has been allotted a certain area or a certain group of customers, and the contract is concluded with a third party belonging to such an area or group of customers.

### **Section 10**

The agent shall be entitled to commission in respect of contracts concluded after the termination of the agency:

1. where the contract has been concluded under such circumstances as referred to in section 9 and where the agent or the principal received an offer from the third party during the period of the agency; or
2. where the contract has come into existence primarily as a consequence of the activities of the agent during the period of the agency, and the contract has been concluded within a reasonable period of time after the termination of the agency.

A incoming agent shall not be entitled to commission under section 9 in respect of a contract with regard to which the outgoing agent is entitled to commission under the first paragraph unless, in light of the circumstances, it is equitable that the commission be divided between the agents.

### **Section 11**

Commission shall be paid within one month of the expiry of the quarter in which the commission is earned.

Commission shall be earned at such time and to the extent that any of the following circumstances pertain:

1. the principal has fully performed under a contract with a third party;
2. the principal was obliged to have fully performed under a contract with a third party; or
3. the third party has fully performed the contract.

The agent shall not be bound by any contractual term or condition which is less advantageous to him than the provisions of the first paragraph.

Nor shall the agent be bound by any contractual term or condition pursuant to which commission shall accrue at a date which is later than the date on which the third party has, or was obliged to have, fully performed under the contract, and where the principal has duly fulfilled his obligations under the contract.

### **Section 12**

The agent's entitlement to commission shall lapse where it is shown that the contract between the principal and the third party has not been performed, and that such non-performance was not caused by the principal or by any circumstances attributable to the principal.

The entitlement of the agent to commission shall not be affected where the failure of the third party to fully perform under the contract is due to the fact that, without the consent of the agent, the principal has consented to a suspension of performance by the third party, or has agreed with the third party on the rescission of the contract.

Save where otherwise resulting from the provisions of the first or second paragraph, in the event of part performance by the third party, the agent shall be entitled to commission in proportion to any part of the contract that has been performed.

Where the agent's claim to commission lapses pursuant to the provisions of the first to third paragraphs, he shall make repayment of any excess money.

The agent shall not bound by contractual terms or conditions which are less advantageous to him than the provisions of the first to third paragraphs.

### **Section 13**

The principal shall, not later than one month after the expiry of each quarter, furnish the agent with a commission statement containing information as to commission earned during the quarter. The statement shall contain all information pertinent to the calculation of the commission.

Where the agent is, in whole or in part, denied the right to commission in respect of a contract, information thereon shall be provided in the commission statement for the quarter in which the right was denied. The commission statement shall state the reason for such denial.

The agent shall not be bound by contractual terms or conditions which are less advantageous to him than the provisions of this section.

### **Section 14**

The agent shall be entitled to receive from the principal any and all information to which the latter has access and which is required by the agent in order to verify whether the commission note encompasses the amount of commission earned. Extracts from the principal's accounts shall constitute such information.

Where the principal fails, within a reasonable period of time after being so requested, to furnish the agent with such information as is stated in the first paragraph, or where there is reason to assume that the information or particulars in the commission statement are incorrect, the agent shall be entitled to review the principal's accounts to the extent so required. The principal may determine whether the review shall be conducted by the agent himself or by an authorized public accountant or approved public accountant appointed by the agent.

The agent shall not be bound by contractual terms or conditions which are less advantageous to him than the provisions of this section.

### **Section 15**

Where the agent does not receive his commission or other remuneration when due from the principal, or where there is material cause to believe that he will not receive it, the agent shall be entitled, as security for his claim, to retain goods, materials and documents belonging to the principal and which the agent has received for the performance of the agency. However, powers of attorney and other documents of particular importance to the principal may not be retained.

Where the agent has purchased goods on behalf of the principal and forwarded such goods to the principal, or where the agent has returned to the principal goods which were in his possession for the purposes of sale, the agent may, in order to secure his rights under the first paragraph, prevent the delivery of the goods to the principal. The aforementioned shall apply even where the principal has received consignment documents in respect of the goods.

The right of the agent to retain goods, materials and documents shall terminate upon the

provision by the principal of acceptable security for the claim.

The agent shall not be bound by contractual terms and conditions which are less advantageous to him than the provisions of this section.

### **Section 16**

Goods retained by the agent pursuant to the provisions of section 15 may be sold by him three months after the agent has notified the principal that the goods have been retained. The agent may apply the proceeds of the sale in satisfaction of the claims in respect of which the goods constituted security. The sale may be executed by private sale or by public auction.

Where the goods are exposed to rapid spoilage or deterioration or are too costly to maintain, they may be sold at a time earlier than stated in the first paragraph.

Where the principal has been placed in bankruptcy or in insolvent liquidation, the provisions of Chapter 8, section 10, of the Bankruptcy Code (SFS 1987:672) shall apply instead.

The agent shall not be bound by contractual terms or conditions which are less advantageous to him than the provisions of this section. Relations to third parties.

### **Section 17**

The agent may not, without specific authorisation, conclude contracts of sale or of purchase on behalf of the principal.

The Distance and Doorstep Sales Act (SFS 2004:59) contains specific provisions with regard to distance and doorstep sales contracts. (SFS 2005:64).

### **Section 18**

Where the agent concludes a contract of sale or of purchase on behalf of the principal but does so without authorisation, the principal shall, if he does not ratify the contract, notify the third party thereof. The principal shall provide such notification without undue delay after such time as he becomes aware of the contract. Should the principal fail to do so, he shall be bound by the contract.

### **Section 19**

Where the principal does not wish to accept an offer which has been received by the agent, the principal shall notify the third party thereof without undue delay after the time he becomes aware of the offer. Should he fail to do so, the offer shall be deemed to be accepted.

The provisions of the first paragraph shall not apply where the agent and the third party have agreed that the offer shall lapse unless expressly accepted by the principal.

### **Section 20**

Where a third party has made an offer to the agent and the latter has forwarded the offer to the principal, the third party shall have the same right to revoke the offer as if he himself had forwarded the offer.

The provisions of the first paragraph shall not apply where the agent and the third party otherwise so agree.

### **Section 21**

Where a third party which is an undertaking negotiates with the agent and thereafter receives notice from the principal that the latter ratifies the contract or accepts an offer which was forwarded by the agent, the third party shall, where he considers that no contract has been concluded or that no offer has been made, or that the contract or the offer have been incorrectly represented in the notification, shall inform the principal thereof without unreasonable delay. Should the third party fail to do so, and where he cannot show that the notification was incorrect, the third party shall be deemed to have concluded a contract on the terms indicated in the notification from the principal.

### **Section 22**

The agent may not, without specific authorization, receive payment for goods sold or, after the conclusion of a contract, agree to a suspension of payment or a reduction in the price, or any other amendment to the contract.

Where the principal becomes aware that the agent, without authorization, has taken such a measure as referred to in the first paragraph in respect of a contract which may be deemed to have come into existence with the assistance of the agent, or which has been concluded with a third party belonging to an area or a customer group allotted to the agent, the principal shall, where he does not wish to ratify the measure, inform the third party thereof without unreasonable delay. Should he fail to do so, he shall be deemed to have ratified the measure.

The Distance and Doorstep Sales Act (SFS 2004:59) contains specific provisions with regard to distance and doorstep sales contracts. (SFS 2005:64).

### **Section 23**

Where a third party wishes to invoke a defect in a purchased goods or a delay in delivery, or wishes to otherwise notify the principal with regard to the fulfilment of a contract, he may do so through the agent, where the contract may be deemed to have come into existence through the activities of the agent or where the contract has been concluded with a third party belonging to an area or a customer group allotted to the agent. The agent may not, without specific authorisation, take any decision as a result of such notification.

Where the principal becomes aware that the agent has, without authority, taken such a decision as referred to in the first paragraph, he shall, where he does not wish to ratify the decision, inform the third party thereof without unreasonable delay. Should he fail to do so, he shall be deemed to have ratified the decision. Termination of the agency agreement, etc.

#### **Section 24**

An agency agreement that has not been concluded for a definite term may be terminated by the agent or by the principal after the period of notice of termination stated in the second paragraph.

The period of notice of termination shall be one month during the first year of the agency. Thereafter the period of notice of termination shall be prolonged by one month for each year of the agency or portion thereof, up to a period of notice of termination of six months.

The parties may not agree in advance on a shorter period of termination than stated in the second paragraph. They may, however, agree that the period of notice of termination by the agent shall be three months, notwithstanding that the agency has subsisted for a period of three years or more.

Where the parties agree on a longer period of notice of termination than stated in the second paragraph, the period of notice of termination applicable to the principal may not be less than the period of notice of termination applicable to the agent.

The period of notice of termination shall be calculated from the expiry of the calendar month in which the notice is given.

#### **Section 25**

An agency agreement which is concluded for a fixed term ceases upon the expiry of the term.

Where the parties continue the agency relationship after the expiry of the term of the agreement, the agreement shall thereafter be considered to be for an indefinite term. In respect of such an agreement, the entire period in which the agency relationship has subsisted shall be taken into account when calculating the period of notice of termination pursuant to section 24.

Contractual terms or conditions which conflict with the provisions of the second paragraph shall not be binding on the parties.

#### **Section 26**

The agent or the principal may terminate the agency agreement with immediate effect where:

1. the other party has failed to fulfil its contractual or statutory obligations and the breach of contract is of material importance for the terminating party, and this fact was realised, or should have been realised, by the other party; or
2. there otherwise exists an important reason to withdraw prematurely from the agreement.

Any party wishing to terminate the agreement prematurely shall do so without undue delay after the time in which he becomes, or should have become, aware of the circumstance which he invokes. Should he fail to do so, he shall be deemed to have forfeited the right to



invoke such circumstance.

The agent shall not be bound by contract terms which are less advantageous to him than the provisions of this section.

### **Section 27**

The agency agreement shall cease to apply where the agent or the principal is placed in bankruptcy or in insolvent liquidation. However, notwithstanding the bankruptcy or insolvent liquidation of the principal, the agent may, where he neither previously knew nor should have known of the bankruptcy, perform the agency until the expiry of the day in which notice of the granting of the petition for bankruptcy or insolvent liquidation petition in Post- och Inrikes Tidningar.

### **Section 28**

Upon termination of the agency agreement, the agent shall be entitled to severance compensation if, and to the extent, that:

1. the agent has provided the principal with new customers or has significantly increased trade with the existing group of customers, and the principal will derive a significant advantage from such development; and
2. severance compensation is reasonable given the totality of the circumstances, and in particular the loss to the agent of commission in respect of contracts with the customers referred to in the first paragraph.

The provisions of the first paragraph shall apply mutatis mutandis where the agency relationship is terminated as a result of the death of the agent.

The severance compensation shall not exceed a sum corresponding to the remuneration for one year, calculated according to the average annual remuneration during the last five years or during the period in which the agent performed the agency, whichever is shorter.

The agent shall not be bound by contractual terms which are less advantageous to him than the provisions of this section.

### **Section 29**

The agent shall not be entitled to severance compensation under section 28 where:

1. the principal terminates the agency agreement as a result of the intentional or negligent failure of the agent materially to perform his duties towards the principal, and where the failure is of such nature that the principal is entitled to terminate the agreement with immediate effect, in accordance with section 26, first paragraph, subsection 1; or
2. the agency agreement is terminated as a result of the bankruptcy or insolvent liquidation of the agent; or 3. the agent and the principal agree to transfer the agency to another party.

The agent shall not be bound by contractual terms which are less advantageous to him than the provisions of this section.

### **Section 30**

Where the agent terminates the agency agreement, he shall be entitled to severance compensation under section 28 only where:

1. the termination is due to a circumstance attributable to the principal, the nature of which is such that the agent is entitled to terminate the agreement with immediate effect, in accordance with section 26, first paragraph; or
2. 2. as a result of the agent's age, sickness, or suchlike circumstances, he cannot reasonably be required to continue with his activities.

The agent shall not be bound by contractual terms which are less advantageous to him than the provisions of this section.

### **Section 31**

The agent shall forfeit his right to severance compensation where he fails to notify the principal of his claim to severance compensation within one year from the date of the termination of the agreement.

The agent shall not be bound by contractual terms which are less advantageous to him than the provisions of this section.

### **Section 32**

Where the agency agreement has been terminated, the agent shall, until the principal is able to safeguard his own interests, take such measures as are required in order to protect the principal against loss, provided that the agent does not thereby incur significant costs, inconvenience or financial risk. The agent shall be entitled to reasonable compensation for the measures taken.

### **Section 33**

Upon termination of the agency agreement, the agent shall return to the principal goods, materials and documents which he has received in order to perform the agency. The agent shall, however, be entitled to retain property belonging to the principal as security for claims, in accordance with the provisions of section 15, and to sell such property in accordance with the provisions of section 16. Damages

### **Section 34**

Where either the agent or the principal fails to fulfil his contractual or statutory obligations, he shall be liable to compensate the other party for damage so caused, unless he can show that the failure was not due to his own negligence.

Where the agency agreement is terminated as a consequence of the bankruptcy or insolvent liquidation of one of the parties, the other party shall be entitled to compensation for damage resulting therefrom.

A party claiming damages shall notify the other party without unreasonable delay after such time as he became aware, or should have become aware, of the circumstance on which the claim is predicated. Should he fail to do so, he shall forfeit his right to damages, save where the other party has acted with gross negligence or in bad faith.

The agent shall not be bound by contractual terms which are less advantageous to him than the provisions of this section. Competition clauses

### **Section 35**

An agreement between the agent and the principal that the agent shall not engage in business after the termination of the agency agreement (non-competition clause) shall be binding on the agent only, and to the extent that the non-competition clause:

1. is in writing;
2. refers to the area or the group of customers allotted to the agent; and
3. refers to the same kind of goods as the agency agreement.

A non-competition clause relating to a period of more than two years after the termination of the agency agreement shall not be binding on the agent.

The provisions of this section do not preclude the application to a non-competition clause of the provisions of the Contracts Act (SFS 1915:218) Notices

### **Section 36**

Where a notice from the agent under sections 16, 31 or 34, or from the principal under sections 18, 19, 22, 23 or 34, or from a third party under section 21, is forwarded in a suitable manner, such notice may be invoked notwithstanding that it arrives late, is mutilated, or fails to arrive. Entry into force and transitional provisions 1991:351

1. This Act shall enter into force on 1 January 1992.
2. With respect to agency agreements entered into prior to the entry into force of the Act, the provisions regarding commercial agents in the Commissions, Commercial Agency and Commercial Travel Act (SFS 1914:45) shall apply until the end of 1993. 1998:170

This Act shall enter into force on 1 July 1998.

The repealed section shall, however, continue to apply to agency agreements entered into prior to the entry into force of the Act, 2005:64

This Act shall enter into force on 1 April 2005.