
Agent/Distributor Rights:

- **German Commercial Code -GR**

For the rights of the Agency/Agent, the German Commercial Code should be examined.
Please consider Article-89

Article-89:

Where the agency contract is entered into for an indefinite period, it can be terminated during the first year of the contract by giving one month's notice of termination, during the second year of the contract by giving two months' notice of termination and during the third to the fifth year of the contract by giving three months' notice of termination. After a contract period of five years, the agency contract can be terminated by giving six months' notice of termination. Notice of termination is only permitted with effect to the end of a calendar month, unless otherwise agreed by the parties.
(2)The periods of notice under subsection (1), first and second sentences, can be extended by agreement; the period of notice to be observed by the principal may not be shorter than that to be observed by the commercial agent. If a shorter period of notice for the principal is agreed upon, the period of notice for the commercial agent shall apply.
(3) An agency contract entered into for a fixed period which continues to be performed by both parties after such agreed period has expired shall be deemed to be extended for an indefinite period. As regards the determination of the periods of notice under subsection (1), first and second sentences, the total duration of the agency contract shall be determinative.

- The German Commercial Code (Article 89) provides for an agency agreement with an indefinite term that either party may terminate the agreement by giving to the other a prior notice of the termination. The period of notice depends on the duration of the contract. Unless otherwise agreed by the parties, any termination is valid only to the end of a calendar month. The parties may agree on a longer notice period as provided for by the German Commercial Code but may not shorten it. If German is applicable and the commercial agent is performing its activities outside the territory of the European Union, exceptions apply.

Article-89-b:

(1) The commercial agent shall be entitled to demand a reasonable ***indemnity*** from the principal, after termination of the agency contract, if and to the extent that

- The commercial agent is entitled to an indemnity at the end of the agreement pursuant to Article 89b of the German Commercial Code, which complies with *EC Directive 86/653/EEC* on the harmonization of legislation of EU member States for independent commercial agents if certain requirements are met.
- If the commercial agent has generated **new customers for the principal's business, or has significantly increased the extent of business with already existing customers and the principal continues to derive substantial benefits from business with said customers**.

Under certain circumstances the commercial agent is not entitled to an indemnity,

- If the contract is terminated for cause due to culpable conduct of the commercial agent or if the commercial agent terminates the agency agreement neither justified by age or health reasons nor by the behavior of the principal.etc..

If the commercial agent has so significantly increased the volume of business with a customer that it is economically equivalent to the acquisition of a new customer, it shall be deemed equal to the acquisition of a new customer.

(2) The indemnity shall amount to not more than one year's commission or other annual remuneration calculated on the basis of the commercial agent's average earnings for his activities over the preceding five years; if the agency contract goes back less than five years, the average for the period of activity shall be determinative.

Article 89-B of the German Commercial Code (Handelsgesetzbuch / HGB) is analogously applied to distributors if certain requirements are met. Hence, upon termination of the distribution agreement the distributors acquires a claim for an indemnity, provided the relationship with the principal exceeds the usual seller-buyer relationship and further requirements are satisfied, e.g. the payment of indemnity is just and equitable having regard to all the circumstances.Under certain circumstances the distributor is not entitled to an indemnity if, e.g. the contract is terminated for cause due to culpable conduct of the distributor. The payment of the indemnity does not deprive the distributor from claiming compensation for damages based on other causes of action.

- **Turkish Commercial Code-TR**

For the rights of the Agency/Agent, the Turkish Commercial Code should be examined.
Turkish Commercial Code consists of 6 books. Agency/Agent information has been arranged after Article 107, 121-122-123.

Agency contracts portfolio management: In spite of the lack of regulation, Turkish Higher Court has implemented portfolio compensation for the agency agreements dissolved without the fault of the agent. Taking into consideration the regulation
in Swiss Law and the decisions of Turkish jurisprudence, TCC enforces a specific norm for portfolio compensation, namely Art. 122 TCC. According to this regulation, in the event that

1. The agency contract has not been dissolved on the basis of the fault of the agent,
2. That the mandator acquires eminent benefits from this dissolution.
3. That the agent is deprived of putting forward a legal claim, which he is entitled to put forward under normal circumstances and
4. That the principle of equity necessitates the payment of such a compensation, the agent may ask for a portfolio compensation, which shall balance the enrichment of the mandator thanks to the clients acquired by the agent for the mandator and the loss faced by the agent because of the dissolution of the contract without the fault of the agent.

TCC advances to release a concrete norm which allows the portfolio compensation for other similar types of agreements such as exclusive sales agency agreements.

The right to remuneration ("commission") of the agent has been regulated in a more detailed manner in the TCC. Pursuant to Article 113/1, in addition to the transactions performed directly by the agent, he shall be entitled to commission for the transactions made with the new customers gained by the principal as a result of the agent's efforts during the period covered by the agency contract. Therefore, the agent is not required to conclude a contract in order to receive a commission. If, for instance, he negotiates and then convinces a customer to conclude a contract with the principal, he shall be entitled to commission. Furthermore, the exclusive right of the agent has been maintained in Article 113/2; however, it is also stated that the exclusivity can be granted for a group of customers instead of a specific geographical area. Moreover, according to Article 113/3, the agent shall be entitled to commission on transactions concluded after the agency contract has terminated

(i) if the transaction is mainly attributable to the agent's efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or

(ii) if, in accordance with the conditions mentioned in Articles 113/1 and 113/2, the order of the third party reached the principal or the agent before the agency contract terminated. Finally, the term of "collection commission" has been introduced to Turkish Law (Article 113/4). In general, collection of the fees indicated in the contract is not the agent's duty. Accordingly, if the collection is not a part of the agency contract, the agent shall be entitled to receive the collection commission if the principal instructs him to collect the fee.

Article 114 regarding the due date of the commission has also been regulated in detail. Unless otherwise agreed, the commission shall become due as soon as and to the extent that either the principal or the third party has executed the transaction. When the principal has carried out the transaction, the agent shall be entitled to receive a reasonable advance payment at the latest on the last day of the following month. In any case, the agent shall be entitled to commission as soon and insofar as the third party has executed his part of the transaction. The right to commission shall be extinguished if it is established that the third party will not execute the contract. In this case, the commission shall be refunded. The agent shall be entitled to commission even if it is determined that the principal will not execute the contract in whole or in part, as he should have. However, if it is ascertained that the contract will not be executed due to a reason for which the principal is not to blame, the commission shall be extinguished. For instance, the destruction of the principal's production facilities by force majeure is a reason for which the principal is not responsible.

Non-Compete Obligation Of The Commercial Agent -TR

Non-compete obligation of the commercial agent is assessed under two headings under Turkish Law. Firstly, we address the non-compete obligation of the agent during the term of the agency agreement. Pursuant to Article 104 of Turkish Commercial Code numbered 6102 (“TCC”), entitled “Exclusivity”, an agent should not act on behalf of different principals who work within the same geographical area or territory, and who are in competition with each other. This obligation results from the agent’s duty of loyalty. Secondly, there are non-competition agreements which cover the period subsequent to the termination of the agency agreement. Non-competition agreements are regulated under Article 123 of the TCC. According to the legislative justification of the TCC, the ratio legis of the relevant disposition is protection of agents against non-competition agreements that are usually concluded upon the request and under pressure of the principal, by introducing the time and subject limitation, the written form requirement and compensation requirement for the prohibition of competition.

Non-Compete Obligation during the Term of the Agency Agreement-TR

The right to exclusivity regulated under Article 104 of the TCC is qualified as either “monopoly right” or “exclusivity” by doctrine, and in practice. The TCC adopts the “one agent – one principle” rule, even though the parties are free to agree otherwise. The non-compete obligation of the agent during the term of the agency agreement is known as the monopoly right of the principal. This monopoly right of the principal means that unless otherwise agreed in writing, as per the duty of loyalty of the agent, the agent shall not act on behalf of several competing commercial enterprises that are located in the same geographical area or territory. Within this framework, we see that the non-compete obligation of the agent is limited with time, scope and area.

With respect to the wording of Article 104 of the TCC, various scholars defend that “competitors” should be interpreted in the strictest sense, and be understood as “competitors active in the same commercial fields of activity.” In other words, an agent can act on behalf of several commercial enterprises active in different commercial fields of activity. The fact that agents are independent commercial auxiliaries is one of the reasons why an agent can act on behalf of several commercial enterprises. Geographical limitation is determined in accordance with agreement between the parties. In addition, exclusivity can be provided for a specific product or group of customer so long as it is determined for a certain geographical area or territory.

The agent may act on behalf of competing commercial enterprises provided that the principal gives its consent, accordingly. Written form is a validity condition for this agreement. However, within the scope of the agent’s obligation to protect its principal’s interests, which is one of the of the agent’s duties of loyalty, even though the agent is allowed to compete through an agreement, the agent should not harm the principal’s interests. In such a case, an abuse of the right to compete shall be in question[4]. In other words, the fact that the agent is released from a non-compete obligation by an agreement does not mean that the agent is also released from its other legal obligations against the principal. In any event, the agent is obliged to protect its principal’s interests.

Breach of Non-Compete Obligation-TR

A non-compete obligation is a liability for an agent since he/she cannot establish an agency relation with the competitors of the principal. Any non-compliance with this liability either may result in compensating the principal, or may cause in the principal to terminate the agency agreement.

Non-Competition Agreements-TR

Article 123 of the TCC regulates the contractual non-compete obligation for the period subsequent to the termination of the agency agreement. In principle, parties are free to continue working together after the termination of the agency agreement. However, non-competition agreements are used to be executed for the purposes of the protection of trade secrets shared during the term of work between the parties, the loyalty obligation of the agent, and the avoidance of any conflict of interest. Under Turkish legislation, the provision regulating the latest agreement for the first time in the TCC originates from the German Commercial Code. Before the adoption of the TCC, the provisions pertaining to the service contract under the abolished Code of Obligations numbered 818 were applied when necessary to the agency agreements, and the non-competition agreements were also treated accordingly.

Pursuant to Article 123 of the TCC, the agreement by which the agent’s conduct of business is restricted after the termination of the contractual relationship between the parties shall be made in writing. In addition, the principal must deliver a signed document comprising of the terms and conditions of the non-competition agreement to the agent. Written form is required for the validity of this agreement.

Scope of Application-TR

Subject of the non-competition agreement is the limitation of the agent’s activities with a non-compete obligation for the agent. The wording of the relevant article refers to “restricting the activities of the

agent after the termination of agency agreement." Therefore, scope of the non-compete obligation is determined in accordance with the agent's activities conducted for the principal[8]. Thus, the scope of the non-compete obligation shall be determined primarily according to the provisions of the agency agreement. However, the expression, "activities of the agent" shall be strictly interpreted, and the agent shall be allowed to continue its activities in other fields. There is a tendency to broadly interpret this expression, in practice. Therefore, it is defended that the scope of the below-mentioned compensation should also be broader.

The time limitation for the agreement is set forth by law. Pursuant to Article 123 of the TCC, non-competition agreements should be concluded for a maximum of two years, starting from the termination of the agency agreement. This two-year period is definite and shall neither be extended, nor shall it be suspended or interrupted. The agreements stipulating a non-compete obligation for a period longer than two years shall be deemed partially null and void, and the restriction shall ipso jure not procure any effect after the termination of this two-year period.

Timing of the Non-Competition Agreements-TR

As stated in Article 123 of the TCC, the timing of non-competition agreements is essential. As a result of the purpose regarding the protection of the agent, non-competition agreements shall only be concluded along with the agency agreement, or during the term of the agency agreement. However, it is unclear whether the non-competition agreements concluded after the termination of the agency agreement fall within the scope of Article 123 of the TCC. However, principals may require the agents, during the term of the agency agreement, to conclude future-dated non-competition agreements, and eliminate the protection laid down in Article 123 of the TCC. In order to eliminate this outcome, some scholars argue that Article 123 of the TCC should also be applied to the non-competition agreements concluded after the termination of the agency agreements. Moreover, pursuant to Article 14 of Law numbered 6103 on the Entry into Force and Application of the Turkish Commercial Code, non-competition agreements concluded before the entry into force of the TCC, and still in force on 01.07.2012 (which is the date of entry into force of the TCC) are within the scope of Article 123 of the TCC.

Compensation for Non-Compete Obligation-TR

Pursuant to Article 123/1 of the TCC, the principal shall compensate the agent for valid non-competition agreements. The lawmaker does not provide a specific amount here, but refers to an "adequate compensation." The obligation of compensation payment arises directly out of the law, and does not need to be stated specifically in a non-competition agreement.

The amount of the compensation shall be determined, considering the objective conditions. However, it must be mentioned that in any case the compensation shall not exceed the value of the contract. Various of the scholars state that the compensation as related to a non-competition agreement should be determined considering the calculated goodwill compensation, and according to the average commission/remuneration of the agent for the last five years corresponding to the period of non-competition, since the agent is prevented from acting on behalf of other competing enterprises in the same territory.

Pursuant to Article 123/2, the principal may renounce the non-competition agreement until the termination of the agency agreement. In that case, the principal is released from its obligation to compensation payment for non-competition after six months as of the date of the declaration related to the renouncement of the latest.

Invalidity-TR

Article 123 of the TCC regulating the non-compete obligation is mandatory; therefore, any disposition to the detriment of the agent is null and void. The right for an adequate compensation is also deemed mandatory, that is why any disposition providing non-adequate and low compensation is deemed null and void, as well.

Conclusion-TR

In conclusion, the non-compete obligation of the agent may be determined for the period of agency agreement, or after termination of the agency agreement. The non-compete obligation of the agent provided in Article 104 of the TCC is set forth in order to protect the agent considering the subject, time and geographical limitations. However, under Turkish Law, an agent's non-competition with its principal is the rule; otherwise, shall be only agreed upon in writing. The non-compete obligation for the period after the termination of the agency agreement is provided by non-competition agreements. Such agreements are also concluded in writing, and a signed copy that included the terms of the related agreement by the principal should be delivered to the agent. Non-competition agreements shall be concluded for a maximum of two years, and considering the purpose of the provision, it is more appropriate to state that such agreements shall be concluded along with the agency agreement or during the period of agency agreement. As mentioned in detail, above, since non-competition agreements are synallagmatic, the principal shall adequately compensate the agent in exchange for its non-compete obligation, if any.

Portfolio Compensation-TR

The provisions regarding portfolio compensation, which had been recognized by the Turkish case law, is regulated in the TCC Article 122 titled "equalization claim" as an imperative provision under the law and the parties of the contract cannot agree upon otherwise. The TCC rules that if the agent (or the exclusive distributor/seller as the case maybe) terminates the contract without a wrongful act on the part of the principal rendering the termination just, or if the contract has been terminated with just cause by the principal due to the agent's fault, the agent will not be entitled to raise an equalization claim. The agent may claim appropriate compensation upon the expiry/ termination of the contract if:
The Principal obtains significant interests, following the expiry/ termination of the contractual relationship, through the new client generated by the agent ;as a consequence of the expiry/termination of the contract, the agent loses its right to claim remuneration that it would earn if the contractual relationship was not terminated, in consideration of the work carried out or to be carried out in the near future with the new client acquired by the agent to the Principal's portfolio; and The payment of the equalization claim is deemed fair and equitable, when all aspects of the situation are taken into consideration.

In Turkish legal practice "portfolio compensation" is a monetary consideration paid by the principal to the agent subject to certain conditions due to agent's efforts on increasing the customer portfolio of the principal in the relevant market.
As per Article 122(4) of TCC, it is not possible to waive the equalization claim in advance. Accordingly, such provision is seen as an imperative provision under the law and the parties of the contract cannot agree upon otherwise.
According to the applicable provisions of the TCC, the compensation amount may not exceed the average of the commission and other payments received by the agent as a result of last five years work. If the contract continued for less than five years, the average of the commission and other payments received by the agent during the continuation of the work will be taken as the basis. However, the legal formula represents the minimum for the compensation amount payable to the agent, and other formulas that grant the agent a greater claim may be agreed by contract.
The equalization claim must be raised within one year following the termination of the contractual relationship.

- **Belgian Code of Economic Law-BEL**

Belgium has, unlike most other EU countries, a specific legislation regulating the situation of a manufacturer or supplier willing to terminate an exclusive distribution agreement. These provisions were initially inserted in the Act of 27 July 1961 on the unilateral termination of exclusive distribution agreements of undetermined duration. Since 31 May 2014, they constitute Chapter 3 of Book X of the Code of Economic Law.

Under Belgian law, an Agency Agreement can be executed both verbally or in writing. There are no special formalities to take into account. Oral agreements are deemed of indefinite term. Upon request of either party however, the other party has to cooperate in formalising the content of the agreement in writing.

Moreover, the Belgian Code of Economic Law (Book X, Title 2) imposes to disclose certain information regarding the contract and the contract parties, one month before the execution of a "commercial cooperation agreement". This information must be disclosed together with a copy of the cooperation agreement.

Commercial cooperation agreements are all agreements where one party grants the other party the right to use its commercial formula when selling products or delivering services. A commercial formula can consist of either the use of a trade name or logo, a transfer of know-how or a technical or commercial assistance. An Agency Agreement can fall within the scope of this obligation if the Principal grants the agent the right to use its commercial formula when selling the products or delivering the services.

Contracts executed in disrespect of this obligation can be declared null and void upon request of the party that is granted the right to use the commercial formula.

Unless otherwise agreed, the Commercial Agent can claim a commission fee if:
- The transaction has been concluded as a result of its action;
- The transaction has been concluded with customers that where exclusively assigned to the Agent;
- The transaction has been concluded within a territory that was exclusively assigned to the agent;

- The transaction has been concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

After termination-BEL

Unless otherwise agreed, the Commercial Agent is entitled to a commission if:

- The transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency contract and if the transaction was entered into within six months after that contract terminated; or
- The order of the third party reached the Principal or the commercial agent before the agency contract terminated.

Duration of the Agency Agreement-BEL

Parties are free to decide on the duration of the agreement. Agreements of definite duration are converted to agreements for indefinite duration if they continue to be performed after the fixed term.

Termination of the Agency Agreement-BEL

Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

Notice period-BEL

Minimum notice periods must be respected. During the first year, one month’s notice must be given, during the second year two months’ notice must be given, three months’ notice must be given during the third year, four months' during the fourth year, five months' during the fifth year and during the sixth and any subsequent years a six months’ notice must be given.

Goodwill or other Compensation-BEL

A Commercial Agent is entitled to make an appropriate goodwill compensation claim after termination of the contractual relationship if and to the extent that:

- The Commercial Agent has brought the Principal new customers or has significantly increased the volume of existing business; and
- It is to be expected that the Principal or its legal successor will be able to derive considerable benefits from this volume of business even after termination of the Agency Agreement; and
- The amount of the compensation may not exceed a figure equivalent to one year's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

If the Commercial Agent can claim goodwill compensation and this compensation does not cover its actual damage, the Commercial Agent can also claim compensation for any actual damage above the amount of the compensation for goodwill.

In which cases compensation does not apply?-BEL

No compensation is due when:

- The Principal has terminated the Agency Agreement because of default attributable to the Commercial Agent which would justify immediate termination of the Agency Agreement under national law;
- The Commercial Agent has terminated the Agency Agreement, unless such termination is justified by circumstances attributable to the Principal or on grounds of age, infirmity or illness of the Commercial Agent in consequence of which he cannot reasonably be required to continue its activities;
- The Commercial Agent assigns its rights and duties under the Agency Agreement to another person with the consent of the Principal.

The Commercial Agent loses the compensation claim if it has not notified to the Principal within one year after termination of the Agency Agreement that it wishes to claim its rights for compensation.

Given the recent judgment of the European Court of Justice in the Corman-Collins case as well as the new "Brussels Ibis" EU Regulation Nr 1215/2012 which will be applicable as of 10 January 2015, it seems interesting to examine the applicability of these Belgian provisions in an international context (below at par. 5 ff). The scope and effect of these provisions will first be briefly recalled. Belgian provisions on the termination of exclusive distribution agreements are mandatory and interfere significantly with the parties' contractual freedom to terminate such agreements. They are intended to protect Belgian distributors, who have often spent years developing a local market only to have the foreign supplier terminate the distribution agreement so it can take over the clients or the successful distribution network itself.

The provisions of Book X of the Code do not apply to all categories of distribution agreements but only to:
- Distribution agreements of undetermined duration(1);
- Which provide exclusivity(2) or impose substantial obligations on the distributor;
- Which are unilaterally terminated without any fault of the distributor.

In such cases, the agreement can only be terminated with a reasonable notice period, failing which the distributor may claim compensation in lieu of notice. Under Belgian case-law, this compensation tend to be rather large. Depending on the circumstances, the courts have held that notice periods ranging from 3 to 42 months were "reasonable".

Notice is "reasonable" if it allows the distributor to find a source of income of equal importance. To determine what is "reasonable", the courts take into account all aspects of the distributorship. The most significant elements are the duration of the terminated distribution agreement, the prominence of the brand, the number of manufacturers or importers who supply similar products, the extent of the territory, the importance of the distributorship within the distributor's business, the profits generated by the distributorship, whether the parties had a good working relationship and the distributor's obligation to invest, etc.

Further, the distributor is entitled to additional compensation in case of termination. The additional compensation is due regardless of whether sufficient notice was given. Such additional compensation comprises, among others, a goodwill payment for the acquired clientele. This is the main difference between the reasonable notice and the general rules on contract law. The goodwill payment is due if the distributor proves that there was a notable increase in customers during the distributorship, that this increase was obtained through the distributor's marketing efforts, and that the customers will continue to buy the supplier's products after termination. This part of the compensation can be very important (6 months to 2 years), especially for agreements which have been going on for a long time and where the distribution of the product was started by the distributor at stake.

- **The Netherlands _ Dutch Civil Code -NL**

  Article 7:428 of the Dutch Civil Code defines a commercial agency contracts as:

  a contract whereby one party, the principal, instructs the other party, the commercial agent, and whereby the latter binds himself, for a fixed or indeterminate term and for remuneration, to act as an intermediary in the conclusion of contracts, and, as the case may be, to enter into such contracts in the same and for the account of the principal, without being his servant.

A commercial agency agreement can be entered into for a fixed period or for an indefinite period. If the commercial agency agreement has been entered into for a fixed period, termination during the course of that period can only occur if such a prior termination has been agreed to in the commercial agency contract. If and when a commercial agency agreement, entered into for a fixed period, continues after that fixed period (and no other arrangements are made between the principal and the agent), the agreement will be considered to have become an agreement for an indefinite period by operation of law.
A commercial agency agreement for an indefinite period typically has an arrangement regarding termination. In most cases such termination provisions include regulate the observance of a termination notice period. Under Dutch commercial agency law, the minimum notice period varies from one to three months, depending on the duration of the agency contract.

If parties have not agreed to a notice period, the Dutch Civil Code provides that this termination notice period varies from four to six months, depending on the duration of the agency agreement. If the principal unilaterally terminates a commercial agency agreement and the agent is a natural person (and not a legal entity), and the termination is not for urgent cause, Dutch law provides that such a termination can only be successfully done on the basis of a permit from the Dutch authorities (UWV). Please note, that such a permit can also be required even if Dutch law is not governing the agency agreement in other respects.

After the termination of the distribution agreement the distributor may claim compensation for investments made by the distributor. Possible investments could be advertisements, severance pay for employees, investments in showrooms and training costs for employees. These investments will have to be written off by the distributor. However the distributor may only claim compensation for investments insofar the costs of his investments are not covered by the financial gains made during the notification period. Under both German and Belgian law, distributors are also entitled to goodwill compensation. However this is not the case in the Netherlands where goodwill compensation can only be claimed after the termination of agency agreements.

Goodwill Compensation Upon Termination Under Agency Law In The Netherlands-NL

Under agency law in the Netherlands, the principal may be held to pay to the commercial agent a goodwill compensation upon termination. In accordance with the commercial agency provisions in the Dutch Civil Code, this goodwill compensation shall not exceed the sum of the average yearly commission during the course of the previous five years (or, if the agency agreement has not run for five years, the yearly average during the actual period).

Termination For Urgent Cause Of An Agency Agreement Under Dutch Law-NL

Termination of a commercial agency agreement under Dutch law can be effected immediately if there is urgent cause. However, if the Dutch court finds that there was no such urgent cause, damages could be payable by the terminating party.
