

# **BUSINESS LAW**

## **Contracts related to the marketing of goods**

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# International agency contract

- **independent foreign agents** are *intermediaries* who undertake to find buyers for (or seller of) the goods of the *principal*
  - do not take title to the goods
  - do not bear the risk that the buyer may not pay
  - generally do not have the power to bind the principal (with special authorization yes)
  - paid commission (and salary)
- **'sales representatives'** are employees acting in the name and on behalf of the principal
- some legal systems do not make distinction between independent agents and employed agents

# International agency contract

- in national laws usually regulated, if not, rules of agency contract (service contract) apply
- European Union legislation on self-employed commercial agents
  - requires the agency contract to be in writing
  - can be concluded for definite or indefinite period
  - if concluded for indefinite period, it can be terminated by notice, the period of notice shall be one month for the first year of the contract, two months for the second year ...
  - possibility for immediate termination if one of the parties fail to carry out all or part of his obligations
  - enumerates the obligations of the agent: should look after the interests of the principal, act dutifully and in good faith, make proper efforts to find partners, to conclude transactions, and share information with his principal, and to comply with reasonable instructions given by his principal
  - the principal should also act dutifully and in good faith, share information, and pay the agreed remuneration to the agent
  - entitled to commission on commercial transactions concluded

# International agency contract

- right to commission can be extinguished only if and to the extent that: it is established that the contract between the third party and the principal will not be executed, and that is due to a reason for which the principal is not to blame
- agent is entitled to commission on commercial transactions concluded after the agency contract has terminated: 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 a reasonable period after that contract terminated; or if, the order of the third party reached the principal or the commercial agent before the agency contract terminated
- principal may prevent the agent from dealing in competing products during or after the term of the agency contract for maximum two years following the termination of the agreement



# International distribution agreement

- a framework agreement for future purchases (sale contracts) by the distributor from the supplier
- independent foreign distributor buys the goods from the supplier and resells them
- takes title to the goods
- bears the risk of non-payment
- it is usually not regulated in national laws as such, therefore you should pay attention to several issues when drafting a distribution contract.
- if no law is chosen in the European Union, the contract is governed by the law of the country with which the distribution agreement is most closely connected: habitual residence of the party who performs the characteristic performance (distributor)
- we can make distinction between:
  - sole distributorship – only the supplier can sell on a specific territory beside the distributor,
  - exclusive distributorship – even the supplier is barred to sell (not allowed in the European Union).
- if the contract violates competition law provisions, it can affect the validity of the contract

## Why would the principal choose agent rather than distributor?

The principal ...	AGENT	DISTRIBUTOR
can keep control over the terms of the sale	+	-
can choose the customer	+	-
can keep the customer	+	-
can control marketing, IP	+	-
has smaller risk of stock pile	-	+
has bigger profit margin	+	-
has less concern with administration, taxation	-	+

# Reading

**Drafting a distribution contract** (H. van Houtte, *The Law of International Trade*, Sweet and Maxwell, 2002, pp. 181-183.)

# Thank you!



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