



Regulations governing the mandatory application of indemnification in the event of wrongful termination by the principal of a commercial agent's contract

Glossary of terms:

with offices in : **Commercial agent:** Self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person, **the principal**, or negotiate and conclude such transactions on behalf of and in the name of that principal.

Andorra

Argentina

Austria

Belgium

Brazil

Canada

Chile

China

Costa Rica

Cyprus

France

Germany

Israel

Italy

Netherlands

Poland

Portugal

Spain

Switzerland

U.K.

Uruguay

There are two types of compensation which may fall due to the commercial agent where his contract is wrongfully terminated by the principal (if an asterisk in the table, please refer to this definition):

*** Compensation for damages:**

This is calculated by reference to the damage suffered by the agent as a result of the termination of their relationship with the principal.

2 possible scenarios in which damages will fall to be paid: 1- where the agent is deprived of commission which he would otherwise have received

2-where the commercial agent has not been able to amortize costs incurred when performing the agency contract on the advice of his principal

*** Compensation for the clientele/Indemnification:**

This will fall due if the agent proves that he has brought new customers to the principal, or has significantly increased his commercial operations with existing customers and that his previous activity will continue producing benefits to the principal. The courts will take into account the existence of agreements between the agent and the principal limiting the agent's right to competition, the commissions the agent is set to lose and any other circumstances that have concurred. Indemnification will be available where it is deemed equitable when considering all the relevant circumstances.

This right to compensation also exists in the event where the contract is extinguished due to the death of the agent.

The amount of indemnification should not exceed a figure equivalent to **an indemnity for one year** calculated from the commercial agent's average annual remuneration over the preceding five years, or if the contract is for a lesser period, on the average for that period.

In general, there exists a lot of case law in each country regarding the evaluation of the compensations described above. It is thus recommendable to seek for legal advice for the calculation of such compensation.



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	Specific regulation on commercial agents	Indemnification in case of termination by principal (except if caused by the serious negligence of the agent)	Is indemnification considered as a mandatory rule?	Is it possible to have the case ruled by a jurisdiction which is not located in the territory where the agent is established?
Austria	Art 24 HVertrG "Handelsvertretergesetz"	Yes: Compensation for the clientele*	Yes	No
Belgium	Yes, by law of 13/04/1995 & amendments	Yes: Compensation for the clientele* If agent proves that he has suffered an additional damage, he can ask an extra compensation.	Yes, as far as this item is concerned, the law is imperative.	Yes, if specifically agreed by contract (and except if both parties are established in Belgium)
Brazil	Yes, Law 4.886/65 and amendments	Yes. - In case of agreements executed by indeterminate period, the indemnification can not be less than one-twelve of the total amount received by the agent during the period in which the agreement was in force. - In case of determinate term agreements, the indemnity shall be equivalent to the monthly average payments received by the agent until the rescission date, multiplied by half of the remaining months of the period stated in the contract.	Yes.	No.
Canada	No	No, but usually you will find some clauses in the contract regarding the payment of an indemnity in case of termination by principal.	No, depends on the contract's clauses.	Yes, if it is specifically indicated in the contract.
Chile	No			
Costa Rica	Yes, Law # 6209, its amendments and bylaws.	Yes, article 4 determines the causes for termination of the contract with responsibility for the principal.	No.	A provision for arbitration is set forth in the law, to be held in Costa Rica, unless one of the parties objects. Also, jurisdiction can be agreed upon by the parties.
Cyprus	Yes, the Regulation of Relations between Commercial Agents and Principals Law of 1992, N. 51(I)/92 as amended, implementing the European Council Directive 86/653/EEC.	Yes: Compensation for the clientele* and compensation for damages*: the grant of the first does not prevent the commercial agent from seeking compensation for damages.	Yes	Yes (provided that Cyprus law is applicable)
France	Yes article L 134-1 and following of the French Commercial Code	Yes : Compensation for damages* which is generally equal to two years of commissions	Yes	Yes
Germany	Yes Sec. 84 et seqq. HGB (German Commercial Code)	Yes if and to the extent that: - the principal derives substantial benefits from the business generated by the agent with new customers	Yes	Yes



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		<p>after termination of the agency agreement; and</p> <ul style="list-style-type: none"> - termination of the agreement deprives the agent of commission with respect to transactions concluded or to be concluded with customers procured by the agent and to which he would be entitled if the agency agreement had remained in place; and - payment of compensation is equitable taking into account all relevant circumstances. <p>Compensation is within the limit of compensation for clientele*</p>		
Israel	No.	No. If nothing is written in the agreement and the agreement is for a non definitive period, the Israeli courts rule that if a reasonable advanced notice regarding the termination of the contract is given to the commercial agents then they no longer have the right to indemnification in case of termination.	No.	Yes.
Italy	Yes. Art. 1742- 1753 Italian Civil Code, Collective Contracts, EEC Directive n° 86/653	Yes, art. 1751 Italian Civil Code and Collective Agreements.	Yes, under Collective Agreement.	Yes, if specifically agreed by contract.
Netherlands	Yes, article 7:428 – 7:455 of the Dutch Civil Code.	Yes: Compensation for the clientele*	Yes	Yes.
Poland	Yes, Civil Code, article 758 - 764 ⁹	Yes: Compensation for the clientele*	Yes.	Yes.
Portugal	Yes, Decree Law 178/86, of 3 July	Yes: Compensation for the clientele*	Yes.	Yes
Spain	Yes, by Law 12/1992.	Yes: Compensation for the clientele* and compensation for damages*: the grant of the first does not prevent the commercial agent from seeking compensation for damages.	Yes.	No (according to the Additional Provision of the Law 12/1992).
Switzerland	Yes, by Code des Obligations, art. 418a	Yes: Compensation for the clientele*.	Yes	Yes
United Kingdom	Yes - Commercial Agents (Council Directive) Regulations 1993, as amended.	Yes: Compensation for the clientele* However, except where the agency contract otherwise provides, commercial agents are entitled to be compensated for damages rather than indemnified.	Yes.	Yes – where the parties have agreed that the agency contract is to be governed by the law of another EC member State (reg. 1(3)).



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Lamy Lexel is member of PLG from 1991.

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