

Q&A DOCUMENT | 4 October 2021

Q&A on Agency Agreements

Part 1: Introduction

Council Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents (the “Directive”) harmonizes the laws, regulations and administrative provisions of Member States governing the relations between the parties to commercial agency agreements.

As the Directive constitutes a minimum harmonization, the Member States are free to set higher standards applicable to agency agreements. In addition, on various aspects the Directive leaves room for further elaboration in national law.

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of German law (“German Agency Law”). The starting point is always the minimum harmonisation reflected in the Directive. The Q&A then aims to identify any deviations or additions from the regime reflected in the Directive.

Part 2: Legislative framework

Q1. Which rules constitute the transposition of the Directive into German Agency Law (a)? Where available, please also include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and to the English translation of the regulatory framework (c).

a. Legislative framework:

Commercial agency is regulated by Art. 84 – 92c German Commercial Code (“GCC”) with partial additions in the German Civil Code.

b. Link(s) to official publication:

The German version of the German Commercial Code is accessible via this [link](#).

The German version of the German Civil Code is accessible via this [link](#).

c. Link(s) to English translation:

The English translation of the German Commercial Code is accessible via this [link](#).

The English translation of the German Civil Code is accessible via this [link](#).

Part 3: Scope

Q2. The Directive (Art. 1(2)) defines a commercial agent as a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another party (the “principal”), or to negotiate and conclude such transactions on behalf of and in the name of that principal. Is the definition in the German Agency Law the same?

Yes. See Art. 84 para. 1 GCC

Q3. Do other intermediaries fall within the scope of the German Agency Law?

No. According to Art. 84 (1) the following conditions must be met:

- self-employed
- continuing authority
- to negotiate or to conclude transactions on behalf of another entrepreneur

Since Art. 84 (1) GCC provides a legal definition of “commercial agent” no additional requirements can be imposed. Relating jurisprudence has further elaborated on the interpretation of each condition.

Q4. The Directive (Art. 2(2)) entitles the Member States to exclude from the scope of application parties whose activities as commercial agents are considered secondary in nature. Has Germany made use of this possibility?

No. Art. 92b para. 1 GCC states that certain protective provisions (the provision on notice periods and the provision on indemnity after termination of the agency agreement). do not apply to commercial agents who do not exercise their activity on a regular basis. Whether a commercial agent is acting only as a sideline commercial agent (secondary in nature) shall be determined according to the generally accepted view in the trade.

Part 4: Agreemental phase

A. Form of agency agreements

Q5. The Directive (Art. 13) provides that, as a minimum, each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency agreement including any terms subsequently agreed. Does the German Agency Law provide for such obligation?

Yes. See, Art. 85 GCC.

Q6. Are there any (other) requirements under the German Agency Law as to the form of the agency agreement in order for it to be valid and enforceable?

No.

B. Content of agency agreements

B.1 - RIGHTS AND OBLIGATIONS OF PRINCIPAL AND COMMERCIAL AGENT

Q7. The Directive (Art. 3) provides that a commercial agent has the following minimum obligations:

- to look after his principal's interests and to act dutifully and in good faith;
- to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- to communicate to his principal all the necessary information available to him;
- to comply with reasonable instructions.

Are these minimum obligations provided for in the German Agency Law?

Yes. See Art. 86, 86a GCC, Art. 665 German Civil Code.

Q8. Does the German Agency Law explicitly impose any other obligations on the commercial agent that go beyond the aforesaid minimum?

Yes. The obligation to look after the interests of the principal is further substantiated in Art. 86 para. 2 GCC. The commercial agent must inform the principal of every deal that is closed and every case of intermediation. According to Art. 90 GCC a commercial agent is furthermore bound to protect business secrets he or she is entrusted with to the extent of professional standards of a prudent merchant.

Q9. Does the German Agency Law provide that a commercial agent may appoint sub-agents?

Yes. As an independent businessman, the commercial agent must in principle make the decision on the use of third parties whom he uses to perform his obligation independently, but he can commit himself to the personal fulfilment of the contract vis-à-vis his principal. If the commercial agent decides to employ third parties to perform his obligations he or she is responsible for fault on their part to the same extent as for fault on his own part, cf. Art. 278 German Civil Code.

Q10. The Directive (Art. 4) provides that a principal has the following minimum obligations:

- to act dutifully and in good faith;
- to provide his commercial agent with the necessary documentation relating to the goods concerned;
- to obtain the information necessary for the performance of the agency agreement;
- to notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected;

- to inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.

Are these minimum obligations provided for in the German Agency Law?

Yes. See, Art. 86a GCC.

Q11. Does the German Agency Law explicitly impose any other obligations on the principal that go beyond the aforesaid minimum?

No.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the German Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent?

No.

Q13. The Directive (Art. 6(1)) provides that, in the absence of an agreement on the level of the remuneration, the commercial agent is entitled to the remuneration that is customarily allowed in the place where he carries on his activities and, in the absence of such customary practice, to a reasonable remuneration taking into account all the aspects of the transaction. Do these principles also represent the default regime under the German Agency Law?

Yes. According to Art. 87b para. 1 GCC, "where the amount of commission is not specified, the customary rate shall be deemed to be agreed upon". According to settled case law customary practice is determined by the customs of the business sector concerned and the place where the commercial agent has his place of business. Such determination may rely on all relevant aspects of the transaction.

Q14. The Directive (Art. 6(2)) provides that any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission. Does this principle also represent the regime under the German Agency Law?

No. Whilst the principle may achieve the identical results as contract interpretation according to Art. 133 and 157 German Civil Code the principle itself is not directly adhered to by German Courts.

Q15. Does the German Agency Law impose any criteria with regard to the type of the agent's remuneration (i.e. fixed amount or commission)?

Yes. Art. 87 para. 1 GCC stipulates the commercial agent is entitled to a commission for transactions. The commercial agent shall not be entitled to the commission if it is due to the previous commercial agent as provided for in para. 3.

Art. 87a para. 1 GCC states that the commercial agent is entitled to the commission as soon as the transaction

has been executed. If the principal does not execute the transaction or does not execute it according to the initial agreement, the commercial agent is still entitled to the commission as long as the principal is liable, Art. 87a para. 3 GCC. The commission shall be due on the last day of the month in which the claim is to be calculated, Art. 87a para. 4 GCC.

According to Art. 87a para. 2 GCC, the commercial agent is not entitled to any commission and must refund any commission payments received if the third party fails to perform.

Q16. Does the German Agency Law impose any criteria with regard to the calculation of the agent's remuneration?

Yes. Art. 87b para 2-3 provides for criteria with regard to the calculation of the agent's remuneration. However, since Art. 87b is not mandatory but rather the default in absence of contractual provisions, it technically does not impose the entailed criteria.

B.3 - REMUNERATION BY MEANS OF A COMMISSION (DURING)

Q17. According to the Directive (Art. 7(1)) a commercial agent is entitled to a commission during the period covered by the agency agreement:

- where the transaction has been concluded as a result of his action; or
- where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

Are both cases reflected in the German Agency Law?

Yes. See, Art. 87 para. 1 GCC.

Q18. The Directive (Art. 7(2)) provides for an additional case of entitlement to a commission and has left it to the Member States to choose between two options:

- Option 1: the transaction is entered into with a customer belonging to a specific geographic area or group of customers entrusted to the commercial agent; or
- Option 2: the transaction is entered into with a customer belonging to a specific geographical area or group of customers in respect of which the commercial agent enjoys exclusive rights.

Which option has been retained in the German Agency Law?

Option 1. See, Art. 87 para. 2 GCC.

B.4 - REMUNERATION BY MEANS OF COMMISSION (AFTER TERMINATION)

Q19. According to the Directive (Art. 8) a commercial agent is entitled to a commission after the agency

agreement has terminated if:

- the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency agreement and if the transaction was entered into within a reasonable period after that agreement terminated; or
- the order of the third party reached the principal or the commercial agent before the agency terminated and the conditions applicable to entitlement during the term of the agency are met.

Are both cases reflected in the German Agency Law?

Yes. See, Art. 87 para. 3 GCC

Q20. Are there any additional cases provided for in the German Agency Law?

No.

Q21. According to the Directive (Art. 9) a commercial agent is not entitled to the commission, if that commission is payable, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents. Do these principles also represent the regime under the German Agency Law?

Yes. See, Art. 87 para. 1 and 3 GCC.

Q22. According to the Directive (Art. 10(1)) the commission shall become due as soon as and to the extent that one of the following circumstances obtains:

- the principal has executed the transaction; or
- the principal should, according to his agreement with the third party, have executed the transaction; or
- the third party has executed the transaction.

Are these circumstances reflected in the German Agency Law?

Yes. See, Art. 87a para. 1 and 3 GCC.

Q23. Are there any additional circumstances provided for in the German Agency Law?

No.

Q24. The Directive (Art. 10(2)) provides that the commission shall be due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have. Does the German Agency Law apply the same deadline?

Yes. See Art. 87a para. 3 GCC.

Q25. The Directive (Art. 10(3)) provides that the commission needs to be paid no later than on the last day of the

month following the quarter in which it became due. Does the German Agency Law apply the same deadline?

No. Art. 87a para. 4 GCC states that the commission should be paid at the latest on the last day of the month in which pursuant to Art. 87c para. 1 GCC the commission must be calculated. This is usually every month, but can be extended up to three months. The Germany Agency Law tends to be stricter than the Directive in this case.

Q26. The Directive (Art. 10(4)) stipulates that parties cannot by agreement derogate from the principles included in Art. 10(2) and 10(3) to the detriment of the commercial agent. Does the German Agency Law impose the same restriction on the parties?

Yes. See, Art. 87a para. 5 GCC.

Q27. According to the Directive (Art. 11(1)) the right to commission can be extinguished only if and to the extent that:

- it is established that the agreement between the third party and the principal will not be executed; and
- that fact is due to a reason for which the principal is not to blame.

Does the German Agency Law impose these cumulative conditions?

Yes. See, Art. 87a para. 2 and 3 GCC.

Q28. Does the German Agency Law allow for other cases where the agent's entitlement to commission is extinguished?

Yes. Art. 87a para. 2 GCC states that the commercial agent is not entitled to a commission, if it is established, that the third party will not perform.

Q29. According to the Directive (Art. 11(2)) any commission which the commercial agent has already received must be refunded in case the right to it is extinguished. Does the German Agency Law also provide for such an obligation of restitution?

Yes. According to Art. 87a para 2 GCC, any amounts already received shall be returned in case of extinguishment as laid out in 87a para. 2, 3 GCC (=extinguishment in the sense of Directive Art 11 (1)). In this case refunding follows the revocation scheme as laid out in Art. 346 ff. German Civil Code. In case of invalidity of the agency agreement itself refunding follows the restitution scheme as laid out in Art. 812 ff German Civil Code.

Q30. The Directive (Art. 12(1)) provides that the principal must supply his commercial agent with a statement of the commission due. This statement must be supplied no later than the last day of the month following the quarter in which the commission has become due, and shall set out the main components used in calculating the amount of the commission. Do these principles also represent the default regime under the German Agency Law?

Yes. See, Art. 87c para. 1 and 3 GCC.

Q31. Does the German Agency Law impose that the parties cannot by agreement derogate from the principles included in Art. 12(1) of the Directive to the detriment of the commercial agent?

Yes. See, Art. 87c para. 5 GCC.

Q32. Does the German Agency Law impose any additional requirements with regard to the statement of the commission due?

No.

Q33. The Directive (Art. 12(2)) entitles the commercial agent to demand to be provided with all the information, and in particular an extract from the books, which he needs to check the amount of the commission due to him. Does the German Agency Law grant the commercial agent the same right?

Yes. See, Art. 87c para. 2 and 3 GCC.

Q34. Does the German Agency Law broaden this right to information of the commercial agent?

Yes. Art. 87c para. 3 GCC provides that the commercial agent can demand information regarding all matters that are material to the entitlement to commission, its due date and the calculation thereof. In case extract from the books is withheld or reasonable doubt exists as to the correctness or completeness of the calculation or of the extract from the books, the commercial agent can demand that, at the principal's option, either he or an auditor or sworn certified accountant to be designated by him be permitted to inspect the business records or other documents to the extent necessary to determine the correctness or completeness of the calculation or of the extract from the books .

Q35. Does the German Agency Law impose any criteria with regard to the calculation of the commission?

Yes. See Art. 87b para 2 and 3 GCC.

Q36. Do specific rules and/or restrictions apply to:

- non-solicitation clauses;
- minimum sales quota;
- specific sectors?

Yes, specific rules apply regarding specific sectors. Art. 92 GCC provides that insurance agents shall be entitled to commission only for transactions which are attributable to his efforts.

B.5 - NON-COMPETE CLAUSE

Q37. The Directive (Art. 20(2)) provides that a non-compete clause shall only be valid if and to the extent that:

- it is concluded in writing; and

- it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by the agency agreement.

Does the German Agency Law impose these cumulative criteria?

Yes. See Art. 90a para. 1 GCC.

Q38. Does the German Agency Law impose any additional criteria in order for a non-compete clause to be valid?

Yes. According to Art. 90a para. 1 GCC, not only has the non-compete clause to be in writing, but a document signed by the principal and containing the agreed provision has to be handed over to the commercial agent.

Q39. The Directive (Art. 20(3)) provides that a non-compete clause shall be valid for not more than 2 years after termination of the agency agreement. Does the same maximum period apply under the German Agency Law?

Yes. See Art. 90a para. 1 GCC.

Q40. The Directive (Art. 20(4)) provides that national law may impose other restrictions:

- on the validity or enforceability of non-compete clauses, or
- which enable the courts to reduce the obligations on the principal or the commercial agent.

Does the German Agency Law impose any such restrictions?

Yes. The German Agency Law impose restrictions on the validity or enforceability of non-compete clauses.

Art. 90a para 1 GCC provides that the principal shall be obliged to pay the commercial agent a reasonable compensation for the period of the non-compete clause. According to Art. 90a para 2 GCC, the principal can waive the restraint on trade in writing, up until the end of the agency agreement, to the effect that, after the expiry of a six-month period following such declaration, he shall be free of the obligation to pay compensation.

Q41. Does the German Agency Law provide any criteria with regard to the calculation method of the indemnification in case of a violation of the non-compete clause?

No.

B.6 - LIABILITY

Q42. Under the German Agency Law, can the parties agree that the commercial agent shall be liable (in whole or in part) for the breach of third party-customers with whom he/she has negotiated and/or concluded an agreement on behalf of the principal, by including a so-called *del credere* clause?

Yes. See, Art. 86b GCC.

Q43. If yes, are such clauses subject to certain rules and/or restrictions?

Yes. Art. 86b para. 1 GCC states that such right cannot be excluded in advance and that the guarantee may be

undertaken only for a specific transaction or for transactions with specific third parties which the commercial agent negotiates or concludes. Also, the clause must be in writing.

Art. 86b para. 4 GCC further specifies that the *del credere* clause cannot be provided for in cases where the principal or the third party has his establishment/residence abroad, or where the commercial agent has unlimited authority to conclude or execute transactions.

Art. 86b para. 2 GCC states that the entitlement to commission in these cases emerges with the conclusion of the transaction.

Q44. Are there liability-related clauses that must be mandatorily included in agency agreements?

No.

C. Term and termination

C.1 - TERM

Q45. According to the Directive (Art. 14) an agency agreement for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency agreement for an indefinite period. Does this principle also represent the default regime under the German Agency Law?

Yes. See Art. 89 para. 3 GCC.

Q46. Does the German Agency Law contain particular rules and/or restrictions in relation to the term (incl. renewal) of agency agreements?

No.

C.2 - TERMINATION BY NOTICE

Q47. According to the Directive (Art. 15(1)) an agency agreement that is concluded for an indefinite period may by either party be terminated by notice. Does this principle also represent the regime under the German Agency Law?

Yes. See, Art. 89 para. 1 GCC.

Q48. According to the Directive (Art. 15(2)) the notice period is 1 month for the first year, 2 months for the second year commenced, and 3 months for the third year commenced and subsequent years. Do these notice periods also represent the regime under the German Agency Law?

Yes. See, Art. 89 para. 1 GCC.

Q49. According to the Directive (Art. 15(3)) the notice period for the fourth, fifth and sixth year and subsequent years may be respectively 4, 5 and 6 months. Do these notice periods also represent the regime under

the German Agency Law?

No. In Art. 89 para. 1 GCC it is stated that the notice period for the third to fifth year is 3 months, and from the sixth year and subsequent years the notice period is 6 months.

Q50. If yes, can the parties agree to a shorter notice period?

Yes. However, according to Art. 89 para. 2 GCC the notice period of the principal cannot be shorter than that of the commercial agent. If a shorter notice period for the principal is agreed upon, it is replaced by the notice period of the commercial agent.

Q51. According to the German Agency Law, if no notice period has been agreed, is there a notice period that always applies irrespective of the duration of the agency agreement?

No.

Q52. According to the Directive (Art. 15(4)), if a principal and commercial agent agree on longer notice periods than those laid down in Art. 15(2) and (3) of the Directive, the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent. Does the same default regime apply under the German Agency Law?

Yes. See Art. 89 para. 2 GCC.

Q53. According to the Directive (Art. 15(5)), unless otherwise agreed by the parties, the end of the notice period must coincide with the end of a calendar month. Does the same default regime apply under the German Agency Law?

Yes. See Art. 89 para. 1 GCC.

Q54. Does the German Agency Law provide how the termination notice must be notified to the other party?

No.

Q55. According to the Directive (Art. 15(6)), the answers to questions 47 to 53 also apply to agency agreements having a fixed term if they are converted to agency agreements having an indefinite term due to the continuation of the agreement beyond the fixed term, provided that the earlier fixed period must be taken into account in the calculation of the notice period. Does the same default regime apply to agency agreements having a fixed term under the German Agency Law?

Yes. See Art. 89 para. 3 GCC

C.3 - TERMINATION FOR CAUSE

Q56. According to the Directive (Art. 16) an agency agreement may immediately be terminated:

- because of the failure of one party to carry out all or part of his obligations; or

- where exceptional circumstances arise.

Are both termination grounds reflected in the German Agency Law?

Yes. See, Art. 89a para. 1 GCC.

Q57. Are there additional termination grounds provided in the German Agency Law?

No.

Q58. Does the German Agency Law provide that the parties may not derogate from the regime on termination for cause to the detriment of the commercial agent before the agency agreement is terminated?

No.

Q59. Is it possible to terminate the agency agreement based on certain grounds for termination (breach or other) included in the agency agreement?

Yes. According to Art. 90a para 1 GCC both parties can terminate the agency agreement for a compelling reason without observing a notice period. According to established jurisprudence, a compelling reason exists if the terminating party, taking into account all circumstances of the individual case and weighing the interests of both contracting parties, cannot reasonably be expected to continue the agency agreement until the expiry of the ordinary notice period or until the agreed termination of the contract. A compelling reason may be further specified within the agency agreement. However, in accordance with Art. 90a para 1 sentence 2 GCC such specification must not effectively exclude or limit a party's right to termination.

Q60. If yes, is prior judicial intervention required in order for the termination of the agreement to take effect?

No.

Q61. Are there any other particular rules and/or restrictions as regards the termination of the agency agreement (e.g. trial period, etc.)?

No.

C.4 - INDEMNIFICATION

Q62. The Directive (Art 17(2)(a)) provides that the commercial agent is entitled to an indemnification if and to the extent that he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers. Does the German Agency Law provide for this criterion?

Yes. See, Art. 89b para. 1 GCC.

Q63. The Directive (Art. 17(2)(a)) also provides that the commercial agent is entitled to an indemnification if and to the extent that the payment of this indemnification is equitable having regard to all circumstances and, in

particular, the commission lost by the commercial agent on the business transacted with such customers. Does the German Agency Law provide for this criterion?

Yes. See, Art. 89b para. 1 GCC.

Q64. Is under the German Agency Law the application of a non-compete clause a circumstance on the basis of which the commercial agent is presumed to be entitled to an indemnification (cfr. Art. 17(2)(a), second indent of the Directive)?

Yes. See, Art. 90a para. 1 GCC.

Q65. Other than the criteria set forth in Art. 17(2)(a) of the Directive, are there any specific rules or precedents derived from the German case law on the basis of which the indemnification is calculated?

Yes. Art. 89b para. 1 GCC states that the commercial agent is entitled to an “adequate” indemnification.

There is no fixed calculation method, but the German case Law implements a two-step system (which has also been confirmed by the Court of Justice of the European Union).

Step 1 establishes the basis for calculating the indemnification on the “raw” compensation under Art. 89b para. 1 no. 1 and 2 GCC, which reflects the requirements of Art. 17 (2) (a) Directive.

Step 2 establishes the limit of the compensation determined in Step 1, on the basis of Art. 89b para. 2, which reflects the requirements of Art. 17 (2) (b) Directive.

Q66. The Directive (Art. 17(2)(b)) provides that the amount of the indemnification may not exceed a figure equivalent to an indemnification for 1 year calculated from the commercial agent’s average annual remuneration over the preceding 5 years, and if the agreement goes back less than 5 years the indemnification shall be calculated on the average for the period in question. Does the same regime apply under the German Agency Law?

Yes. See Art. 89b para. 2 GCC.

Q67. According to the Directive (Art. 18), indemnification or compensation for damage is not payable where

- the principal has terminated the agency agreement because of default attributable to the commercial agent which would justify immediate termination of the agency agreement;
- 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/she cannot reasonably be required to continue his/her activities; and/or
- with the agreement of the principal, the commercial agent assigns his rights and obligations under the agency agreement to another parties.

Do these principles also represent the default regime under the German Agency Law?

Yes. See Art. 89b para. 3 GCC.

Q68. According to the Directive (Art. 17(5)), a commercial agent may lose his/her entitlement to the indemnification or compensation for damage if within 1 year following termination of the agency agreement he/she has not notified the principal of his/her intention to pursue the entitlement. Does this principle also represent the default regime under the German Agency Law?

Yes. See Art. 89b para. 4 GCC.

C.5 - ADDITIONAL COMPENSATION

Q69. The Directive (Art. 17(2)(c)) provides that the commercial agent, in addition to the indemnification, is entitled to seek damages for breach of agreement, failing to respect the notice period, etc. Does the same regime apply under the German Agency Law?

Yes.

Q70. If yes, do specific rules and/or restrictions apply to the damage that can be compensated in addition to the indemnification under Art. 17(2) of the Directive?

Yes.

Q71. The Directive (Art. 17(3)) provides that the commercial agent is entitled to compensation for damage suffered as a result of the termination of the agency agreement. Does the same default regime apply under the German Agency Law?

No. Art. 89a para. 2 GCC only provides that damage is only compensated if the termination was caused by the other party.

Q72. According to the Directive (Art. 17(3)) such damages shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the commercial agent of the commission which proper performance of the agency agreement would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities; and/or
- which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency agreement on the principal's advice.

Does the German Agency Law take the same circumstances into account?

No.

Q73. Are there any other specific rules or precedents, than the criteria set forth in Art. 17(3) of the Directive,

derived from case law on the basis of which the compensation is calculated?

No.

Q74. The Directive (Art 17(4)) provides that a commercial agent is entitled to indemnification or compensation for damage where the agency agreement is terminated as a result of the commercial agent's death. Is this default entitlement available under the German Agency Law?

Yes. Art. 675, 673 German Civil Code (analogous application).

Q75. The Directive (Art. 19) stipulates that the parties may not derogate from Art. 17 and 18 to the detriment of the commercial agent before the agency expires. Does the German Agency Law impose the same restriction on the parties?

Yes. See, Art. 89b para. 4 GCC.

Q76. Are the parties under the German Agency Law free to opt for either indemnification or compensation?

No.

Q77. Must the commercial agent under the German Agency Law claim the indemnification or compensation within a certain period of time after termination of the agency agreement?

Yes. According to Art. 89b para. 4 GCC, the commercial agent must claim the indemnification within a year after the termination of the agency agreement.

Q78. Are there other specific rules with respect to compensation or indemnification following the termination of the agency agreement?

No.

Part 5: Dispute resolution

Q79. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the German Agency Law?

No.

Q80. Can the parties opt for arbitration?

Yes.

Q81. If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in agency agreements?

No.

Q82. Does the German Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

No. The general statute of limitations applies. According to Art. 199 para 1 GCC, the standard limitation period commences at the end of the year in which: 1. the claim arose and 2. the obligee obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if he had not shown gross negligence. According to Art. 195 GCC the standard limitation period is three years.