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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 Latvian law ("Latvian 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 Latvian 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 Part A, Section VI Commercial Law (Art. 45-63).

b. Link(s) to official publication:

Publication in the Latvian Official Gazette is available via this link.

c. Link(s) to English translation:

English translation is available 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 Latvian Agency Law the same?

No. Art. 45 provides a definition of the term “commercial agent” as follows:

“A commercial agent is a merchant who has been authorised to permanently conclude transactions with third parties in the name and to the benefit of another party (principal) or also to prepare transactions for concluding.”

The definition under the Latvian scope is similar in scope, but not identical to the definition under the Directive.

The definition under the national law does not specify that an agent is “self-employed”, but provides that an agent is a “merchant”. Under Latvian law the term “self-employed” denotes a mode of taxation, whereas “merchant” denotes registration within the Latvian commercial registry (the Register of Enterprises). It follows from the definition that under Latvian law “commercial agents” are not only natural persons, but could also be commercial entities (capital companies, partnerships).

Other key parts of the definition under the Directive are covered by the national law even though the wording is not identical.

The first part of the definition under the national law (“has been authorised to permanently conclude transactions with third parties in the name and to the benefit of another party (principal)””) corresponds to the second part of the definition under the Directive (“[..] to negotiate and conclude such transactions on behalf of and in the name of that principal”).

The second part of the definition under the national law (“or also to prepare transactions for concluding”) corresponds to the first part of the definition under the Directive (“has continuing authority to negotiate the sale or the purchase of goods on behalf of another party (the “principal”)).

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

No.

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 Latvia made use of this possibility?

No.

Part 4: Contractual 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 Latvian Agency Law provide for such obligation?

Yes. Art. 46 Commercial Law requires a written form for commercial agency agreements.

Q6. Are there any (other) requirements under the Latvian 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 Latvian Agency Law?

Yes. See, Art. 47 Commercial Law.

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

Yes. Art. 47(2) Commercial Law additionally requires that a commercial agent immediately informs the principal about closing a transaction or about having "prepared" (negotiated) the transaction.

Further, pursuant to Art. 47(4) Commercial Law, the commercial agency agreements which are contrary to those minimum obligations (which are in line with Art. 3 Directive plus the requirement under Art. 47(4)) are invalid.

Art. 60 Commercial Law stipulates that a commercial agent must keep the principal's commercial secrets also post-termination.

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

No. The national law does not specifically regulate appointment of sub-agents by commercial-agents, but this does not prohibit sub-agency as such.

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 Latvian Agency Law?

No. The Latvian law does not expressly stipulate an obligation for the principal “to obtain the information necessary for the performance of the agency agreement”.

Further, there is no express requirement for the principal “to act dutifully and in good faith” under the Commercial Law, but such a requirement to act in good faith (for any party to a transaction, thus also including principals in commercial agency agreements) stems from the Latvian Civil Law.

All other requirements under Art. 4 Directive are covered by Art. 48 Commercial Law.

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

Yes. Art. 52 Commercial Law prescribes the principal’s requirement to calculate the commercial agent’s commission on a monthly basis.

“Commission” is the part of the commercial agent’s remuneration which varies with the number or value of business transactions

The law provides that the period for calculating the commission cannot be extended beyond three months and the calculation must be made promptly and not later than one month following the end of the calculation period.

Upon receiving the calculation of the remuneration from the principal, the commercial agent may request from the principal an extract from the accounts regarding all transactions for which the agent has the right to commission. The agent may also request information which is important in regard to the agent’s rights to receive a commission, the pay-out term and the calculation of the commission.

If the principal refuses to provide the extract from the accounts or if the commercial agent has reasonable doubts as to the correctness or completeness of the calculation of the provision or the extract from the accounts, the commercial agent may request that the principal shows accounting and other documents which are necessary to verify the correctness or completeness of the calculation of the provision or the extract from the accounts. The principal may choose whether to show those documents to the commercial agent or to a sworn auditor designated by the commercial agent.

Any agreement between the commercial agent and the principal which goes against the mandatory provisions on the calculation of the commission is invalid.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

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

No. The national law does not regulate and hence does not limit the freedom of the parties to fix the level of remuneration of the commercial agent.

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 Latvian Agency Law?

Yes. See, Art. 49(1) Commercial Law.

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 Latvian Agency Law?

Yes. Such a definition of the “commission” is provided in Art. 49(2) Commercial Law.

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

No.

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

Yes. See answer to Question 11.

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 Latvian Agency Law?

Yes. See, Art. 50(1) Commercial Law.

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 Latvian Agency Law?

Option 1 is provided in Art. 50(2) Commercial Law.

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 Latvian Agency Law?

Yes. Both cases are provided in Art. 50(3) Commercial Law.

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

Yes. This is provided in Art. 50(4) Commercial Law.

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 Latvian Agency Law?

Yes. This is provided in Art. 51 Commercial Law.

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

Yes. Art. 51(1) Commercial Law provides that the commercial agent and the principal may decide on other terms for payment of the commission. However, in any case, at the moment when the principal has performed the transaction the agent must be paid an adequate advance payment not later than on the last day of the next month. Such an agreement does not alter the right of the agent to commission as soon as and to the extent the third party has performed the transaction.

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 Latvian Agency Law apply the same deadline?

Yes. See, Art. 51(1) and 51(3) Commercial Law.

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 Latvian Agency Law apply the same deadline?

Yes. This stems from Art. 51 and 52 Commercial Law.

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 Latvian Agency Law impose the same restriction on the parties?

Yes. It follows from Art. 51(1) that the agent has the right to a provision as soon as and to the extent a third party has executed the transaction (in line with the requirements under Art.10(2) Directive). Art. 51(1) is a mandatory law provision in the sense that the Commercial Law does not provide for options to derogate from this obligation.

Art. 51(5) provides that if the agreement between the agent and the principal is contrary to the principles of paragraphs 3 and 4 of Art. 51 (which mirror the requirements under Art. 10(2) and 10(3)), such an agreement is invalid. Paragraph 3 of Art. 51 entails the right of commission in case of non-performance by the principal (Art.10(2) Directive). Paragraph 4 of Art. 51 mirrors the requirements under Art.10(3) Directive.

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 Latvian Agency Law impose these cumulative conditions?

Yes. This is reflected in Art. 51(2) Commercial Law.

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

No.

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 Latvian Agency Law also provide for such an obligation of restitution?

Yes. See, Art. 51(2) Commercial Law.

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 Latvian Agency Law?

Yes. Art. 52(1) Commercial Law provides that the obligation to provide a statement of the commission applies on a monthly basis. However, this calculation period may be extended not longer than up to three months.

Q31. Does the Latvian 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. This is provided in Art. 52(4) Commercial Law, which stipulates that such a derogation is invalid.

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

Yes. Art. 52(2) and 52(3) Commercial Law provide for additional requirements.

Upon receiving the calculation of remuneration from the principal, the commercial agent may request from the principal an extract from the accounts regarding all transactions for which the agent has the right to commission. The agent may also request information which is important in regard to the agent's rights to receive a commission, the pay-out term and the calculation of the commission.

If the principal refuses to provide the extract form the accounts or if the commercial agent has reasonable doubts as to the correctness or completeness of the calculation of the provision or the extract from the accounts, the commercial agent may request that the principal shows accounting and other documents which are necessary to verify the correctness or completeness of the calculation of the provision or the extract from the accounts. The principal may choose whether to show those documents to the commercial agent or to a sworn auditor designated by the commercial agent.

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 Latvian Agency Law grant the commercial agent the same right?

Yes. This is provided in Art. 52(2) Commercial Law.

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

Yes. See answer to Question 32.

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

No.

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

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

Art. 60 Commercial Law provides that the agent also post-termination of the agreement must not use or disclose to third parties commercial secrets which the agent was entrusted with or learned due to its activity as a commercial agent.

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 Latvian Agency Law impose these cumulative criteria?

Yes. This is provided in Art. 61(1) and 61(2) Commercial Law.

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

Yes. Art. 61 Commercial Law provides for additional criteria regarding compensation during the non-compete.

As a rule, the principal must pay an adequate compensation to the agent during the non-compete (Art. 61(3)).

The principal may waive the non-compete obligation at any time prior to termination of the agency agreement, in which case the obligation of the principal to pay the compensation for non-compete terminates within six months after notifying the agent of waiving the non-compete. If the principal terminates the agreement with the agent due

to a cause which is the agent's fault, the agent loses its right to receive the compensation during the non-compete term (Art. 61(4)).

If a commercial agent has cancelled the agency agreement due to such a significant cause which is the principal's fault, the agent may in writing waive the restrictions on competition within one month after the notice of cancellation of the agency agreement (Art. 61(5)).

A non-compete clause that contradicts any of these provisions is void if it worsens the situation of the agent (Art. 61(6)).

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 Latvian Agency Law?

Yes. This is provided in the second sentence of Art. 61(2) Commercial Law.

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 Latvian Agency Law impose any such restrictions?

No.

Q41. Does the Latvian 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 Latvian 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. This is regulated by Art. 53 Commercial Law.

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

Yes. Art. 53 Commercial Law provides that a commercial agent who undertakes to guarantee performance of obligations of a third party (the other party to a transaction) has the right to a special remuneration (*del credere*).

An agency agreement that revokes these rights for the future is void (1). The guarantee may only pertain to specific transactions, or to such transactions with specific third parties which the commercial agent has concluded or the concluding of which he/she prepared. A guarantee contract shall be concluded in writing (2). The right of a

commercial agent to a *del credere* remuneration arises at the moment of concluding the relevant transaction (3).

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 Latvian Agency Law?

Yes. See, Art. 57(4) Commercial Law.

Q46. Does the Latvian 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 Latvian Agency Law?

Yes. See, Art. 57(1) Commercial Law.

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 Latvian Agency Law?

Yes. See, Art. 57(1)(1), 57(1)(2) and 57(1)(3) Commercial Law.

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 Latvian Agency Law?

No. Art. 57(1)(4) provides that a term is four (4) months for the fourth and subsequent years is guaranteed.

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

No. See, Art. 57(2) Commercial Law.

Q51. According to the Latvian 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 Latvian Agency Law?

Yes. See, Art. 57(2) Commercial Law.

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 Latvian Agency Law?

Yes. See, Art. 57(3) Commercial Law..

Q54. Does the Latvian 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 Latvian Agency Law?

Yes.

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 Latvian Agency Law?

No. Art. 58(1) Commercial Law provides for the right to immediately terminate an agency agreement only when there is “an important cause”.

“An important cause” is a general clause, thus even though the grounds in Art. 16 Directive are not expressly provided in national law, they are covered by Art. 58(1) Commercial Law.

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

No.

Q58. Does the Latvian 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. Though this is not explicitly formulated, it stems from Art.58(1) Commercial Law. Both parties, thus also the principal, must abide by the regime on termination except when there is “an important cause” in which case the agreement may be terminated immediately. An agreement that terminates or restricts the rights to terminate the agreement for “an important cause” is void.

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

Yes. The regulation on agency agreements does not stipulate specific grounds for termination of the agency agreements (i.e., grounds which allow to derogate from the derogation regime which provides for the right to terminate the agreement without any specific cause if the termination periods are respected).

However, based on the freedom of contract principle and general provisions of commercial and civil law the parties may expressly include in the agency agreement the specific grounds for termination (e.g. specify the grounds which the parties consider to be “important causes” for terminating the agreement).

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 Latvian Agency Law provide for this criterion?

Yes. See, Art. 59(1) and 59(2) Commercial Law.

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 Latvian Agency Law provide for this criterion?

Yes. See, Art. 59(1)(2) and 59(1)(3) Commercial Law.

Q64. Is under the Latvian 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. The agent has the right for an indemnification during a non-compete. See answer to Question 38.

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 Latvian case law on the basis of which the indemnification is calculated?

No.

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 Latvian Agency Law?

Yes. See, Art. 59(3) Commercial Law.

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 Latvian Agency Law?

Yes. See, Art. 59(4) Commercial Law.

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 Latvian Agency Law?

Yes. See, Art. 59(5) Commercial Law.

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 Latvian Agency Law?

Yes. See, Art. 59(3[1]) Commercial Law.

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?

No.

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 Latvian Agency Law?

Yes. This is reflected in Art. 59(3[1]) Commercial Law.

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 Latvian Agency Law take the same circumstances into account?

Yes. The first circumstance is covered by Art. 59(1) Commercial Law which defines such payment as “indemnity” (not damages).

The second circumstance is reflected in Art. 59(3[1]) Commercial Law which defines such payment as “compensation” (not damages).

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 Latvian Agency Law?

No. This provision of the Directive is not expressly reflected in the national law, likely because the “commercial agent” is a party registered in the Commercial Registry, and thus may be both a legal and a natural person.

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 Latvian Agency Law impose the same restriction on the parties?

Yes. Such derogation is prohibited by Art. 59(5) Commercial Law.

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

No.

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

Yes. Art. 59(5) Commercial Law provides that the commercial agent must claim the compensation or damages within one year following the termination of the commercial agency agreement.

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

Yes. Pursuant to Art.59(1)(3) Commercial Law, following the termination of the agency agreement, the agent may request an indemnification if, “taking into account all circumstances, [indemnification] shall be expected from the principal on the basis of fairness”.

Part 5: Dispute resolution

Q79. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the Latvian 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 Latvian Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

Yes. Pursuant to Art. 55 Commercial Law, the statute of limitations for claims arising from a commercial agency agreement is four years starting from the end of the calendar year during which the claim arose. This is an exception to the standard statute of limitations applicable to commercial transactions, which is three years.