



Appointing a Sales Agent

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Principles & Agents

Why appoint an agent?

Commercial agents are self-employed intermediaries who have continuing authority to negotiate the sale or purchase of products and services on behalf of another person (the Principal). As agents don't have the same rights as employees and you generally don't pay them unless they make sales, they can be a cost-effective/low-hassle way of boosting your sales (particularly in a country where you don't have any experience of operating).

Advantages	Disadvantages
<ul style="list-style-type: none"> • Lower overheads than using an employee 	<ul style="list-style-type: none"> • An agent may not sell your product and services in the way you would like
<ul style="list-style-type: none"> • Agents are easier to recruit and have the relevant sales expertise and territorial know-how (local knowledge and experience) 	<ul style="list-style-type: none"> • They might sell to unsuitable customers who might undermine the integrity of the product and services
<ul style="list-style-type: none"> • Cost effective way of reaching a wide variety of markets 	<ul style="list-style-type: none"> • An agent may not fully understand your product and services
<ul style="list-style-type: none"> • Agents can help you to develop your business and contact list 	<ul style="list-style-type: none"> • They can be entitled to compensation on termination of the contract even if they have breached the agreement

If you do engage agents, you must make sure that you have a workable agency agreement in place to define:

1. where the agent can sell your products and services,
2. what they are expected to sell and
3. who they are expected to sell to.

The agreement should be clear on the relationship of the agent and principal and also deal with things such as payments, duration and termination.

Agents operating in the European Economic Area are protected by the Commercial Agents (Council Directive) Regulations 1993 (the Regulations) and similar legislation in other countries. These laws put in place some protection that you cannot contract out of.

For example:

1) Duties

Principal's duties to an agent	Agent's duties to a principal
<ul style="list-style-type: none"> To act dutifully and in good faith when dealing with the agent; 	<ul style="list-style-type: none"> To make proper efforts to negotiate and conclude transactions
<ul style="list-style-type: none"> To provide necessary documentation relating to the goods 	<ul style="list-style-type: none"> To communicate to the principal all the necessary information available to him
<ul style="list-style-type: none"> To obtain for the agent all information necessary to perform the agency contract 	<ul style="list-style-type: none"> To comply with the principal's reasonable instructions
<ul style="list-style-type: none"> To notify the agent of any anticipated drop in volume of transactions 	<ul style="list-style-type: none"> To act in the best interests of the of principal and act dutifully and in good faith
<ul style="list-style-type: none"> To notify the agent of any refusal or non-execution of a transaction by the principal which the agent has procured. 	

2) Payment

- If there is no agreement, an agent is entitled to the type of payment usually allowed to the same kind of agents in the area where the agent works. If there is no such customary practice, the agent is entitled to "reasonable" payments.
- Where payment is commission based, an agent is entitled to commission where sales result from his actions.

3) Termination

Where there is a contract for an indefinite period, either party may terminate by giving notice. The periods are outlined in the Regulations and cannot be shortened, however longer periods may be agreed. (Note: the notice period does not apply for termination due to breach).

Notice periods outlined in the Regulations

1 month for the first year

2 months for the second year

3 months during the third and later years

The Regulations provide that on termination, an agent is entitled to a payment which is assessed either as compensation or an indemnity). If the agency agreement does not provide otherwise, the compensation method applies.

(Note: the agent loses his right to claim if he fails to notify the principal within a year of the end of the contract that he intends to make a claim.)

What is compensation?

The calculation of compensation is complicated and the guidance we have from the courts hasn't helped a great deal in clarifying the situation

They have ruled that (in England) the agent should be compensated for any goodwill he has built up through the years and any continuing benefits the principal continues to enjoy after termination. In essence, the compensation payable is the value of the agency business as though it were on the market ignoring the fact that it has come to an end..

What is indemnity?

An agent will only be entitled to an indemnity if it has brought in new customers or significantly increased the volume of business with existing customers and

the principal continues to derive substantial benefits from business with such customers. The amount of indemnity is whatever is equitable having regard to all circumstances and in particular, the commission lost by the agent on the business transacted with those customers. Calculating indemnity is also very complicated but it is capped to one year's average annual commission calculated over the last five years of the contract (or over the whole contract if less than five years).

When do you not have to pay the agent?

The Regulations require such a payment to an agent even if the contract has been terminated lawfully and on proper notice, however you don't have to pay in the following circumstances:

1. when the principal terminates the agreement and he can justify immediate termination due to the agent's breach; or
2. when the agent terminates where he has no right to do so; or
3. where the agent terminates as (owing to age, infirmity or illness) he cannot reasonably be expected to carry on; or
4. If the agent assigns the agreement to another person.

If you would like any further advice on how to appoint a Sales Agent, please contact David Miller on 01332 340 211 or at david.miller@flintbishop.co.uk

Questions for
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