



**- AGENCY AGREEMENT IN ITALY -**

**ITALIAN RULES GOVERNING AGENCY AGREEMENT**

by

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**Agency rules as part of mandate rules**

Under Italian laws, agency agreement rules are part of the mandate regulation (section 1703 of Italian Civil Code). Considering that the mandate is an agreement by which one contractual party undertakes to perform one or more transactions on behalf of another party (mandato, concerning also the power of attorney), the agent has a general commitment empowering him to perform those transactions he has been specifically authorized to do and all other actions that are adequate to perform the mandate (section 1708 of Italian Civil Code).

**Consequences of divergence from instructions of principal**

The agent in Italy is personally liable if he shall act exceeding the powers conferred upon him by principal, however, principal may then confirm these acts of the agent (section 1711 of Italian Civil Code).

**Permitted divergence from instructions of principal**

Under paragraph 2 of section 1711 of Italian Civil Code, the agent in Italy may divert from the instructions received from principal in case he shall have to face any unforeseen circumstances unknown to principal and such as they cannot be communicated to principal in time, on assumption that principal would have given his approval.

**Appointment of sub – agents**

The agent in Italy is not allowed to appoint third person for the performance of his mandate without previous authorization of the principal, and, if he does it, he shall be responsible for acts of such substitutes (section 1717 of Italian Civil Code).

**Termination of agent mandate**

As per section 1722 of Italian Civil Code, the mandate of the agent terminates when:

- the duration of it has expired;

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- the object of it has been achieved;
- the principal has revoked it (in this case principal shall be liable for damages to agent if revocation was unjustified);
- it has been renounced by the agent (in this case agent shall be liable for damages to principal if renunciation was unjustified);
- principal has died or has become incompetent;
- agent has died or has become incompetent.

### **Requirements of the power of attorney of an agent in Italy**

As per section 1392 of Italian Civil Code, in case an agent in Italy has been authorized to act in name of the principal, the formal requirements of the power of attorney must comply with the requirements of the transaction to set up.

### **Execution abroad of the power of attorney of an Italian agent**

If the power of attorney of an agent has to be executed abroad, it may be necessary to authenticate and legalize or apostille it under the Hague Convention rules (Hague Convention of 5th October 1961 abolishing the requirement of legalisation for foreign public documents).

### **Mandate in the interest of the agent**

As per paragraph 2 of section 1723 of Italian Civil Code if the mandate has been conferred also in the interest of the agent or of third parties it is not revocable by principal.

### **Commercial agent discipline of the Italian Civil Code**

The Legislative Decree No. 65 of Feb. 15th 1999 is the Italian law complying with CEE Directive No. 86/653 posing norms on commercial agency which modified any sections of the Italian Civil Code concerning agency commercial agreement (sections from 1742 to 1753).

Under section 1742 C.C. the commercial agency agreement in Italy is characterized by the task of the agent to permanently promote making of contracts for account of principal within specified territory, also, the agreement shall be done in written form and exclusivity is implied if not expressly excluded.

### **“Star del credere” clause**

Any agreement stating liability of the agent for default by any third party is not allowed pursuant to Law No. 526 of Dec. 21, 1999 which modified paragraph 3 of section 1746 C.C. (so called Star del credere clause). Only exceptionally parties may agree, time by time, that the agent has to grant a

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specific guarantee to principal for the fulfilment of any third party, against payment of an additional commission by principal.

### **Agent severance allowance upon termination**

Under section 1751 of Italian civil Code the commercial agent is entitled to severance allowance upon termination for an amount not exceeding one year of commissions computed on average of last five years or of years of life of contract if less.

### **Non competition clause after termination**

Under section 1751 bis of Italian Civil Code parties may agree a non competition clause to be performed by agent after termination of the agreement. This clause must be in written form, it shall refer to same territory, clients and products of the terminated agreement, it shall be in force for no more than two years after termination of the agreement. For this aim, agent shall be entitled to benefit of an additional commission paid by principal.

### **Register of professional agent**

Commercial agency agreements may be entered into only with such persons or companies enlisted on register of professional agents (so called Agenti o rappresentanti di commercio). This register is kept by appropriate Chamber of Commerce. (C. C. 1742-1753, Legislative Decree No. 303 of Sept. 10, 1991 and Law No. 204 of May 3, 1985 as subsequently amended and supplemented).

### **Contract of Commission**

The Contratto di Commissione is ruled by sections 1731 to 1736 of Italian civil Code, it arises when an agent is appointed with the task to purchase or sell any products for account of the principal and in name of agent.

The main effect of this agreement is that third persons could not sue principal and vice versa. The principal (committente) must pay to agent (commissionario) a commission (provvigione) which is a percentage on business transacted.

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