

Commercial Agency Contract

CLAIMS OF THE AGENT IN THE CASE
OF TERMINATION OF THE CONTRACT

ALBANIA



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1 Indemnity and/or compensation

ALBANIA



A) General overview

1.1

According to the Albanian Constitution, international rules are applicable in the Republic of Albania only if ratified by the Albanian government. In addition, according to article 121 of the Albanian Constitution, the international instrument should be ratified by the Parliament if it deals with: (i) territory, peace, alliances, political and military issues; (ii) freedoms, human rights and obligations of citizens as are provided in the Constitution; (iii) membership of the Republic of Albania in international organizations; (iv) the undertaking of financial obligations by the Republic of Albania; (v) the approval, amendment, supplementing or repeal of laws.

1. Indemnity and/or compensation

1.2

Directive 86/653/EEC bounds EU Member States to apply it. Since the Republic of Albania is not an EU Member State, such instrument is not formally applicable in Albania. Nevertheless, many of the guidelines of Directive 86/653/EEC have been substantially embodied in the Albanian Civil Code. Moreover, Albania has signed on the 12th of June 2006 the Stabilization and Association Agreement (SAA) with the EU. Consequently, Albania should approximate its legislation with the *acquis communautaire*, in order to meet the conditions set in the SAA.

1.3

According to the Albanian legislation, the commercial agent may be an employee or an independent entrepreneur. The Albanian Civil Code sets the main rules for the agency contract with regard to independent entrepreneur; whilst the Labor Code and Decision of the Council of Ministers No. 254 dated 25.03.1996 regulate the relationship between the Principal and the employed agent.

1.4

The followings are the legislative instruments providing in Albania the framework of the commercial agency relationship:

- Law No. 7850 dated 29.07.1994 "The Albanian Civil Code", as amended;
- Law No. 7961 dated 12.07.1995 "The Albanian Labor Code", as amended;
- Decision of the Council of Ministers No. 254 dated 25.03.1996 "On the employment contract of the commercial agent".

B) The agent as an independent entrepreneur

1.5

Article 950 of the Albanian Civil Code defines the commercial agency as the contract entered between two parties, where one party (the Agent), upon remuneration, has the continuing authority to negotiate and conclude (or only negotiate) different commercial transactions on behalf of the other party (the Principal) in a specific territory. According to the Albanian Civil Code (art. 951), the Principal cannot appoint more than two agents in the same territory for the conclusion of the same commercial transactions, whilst the Agent is bound not to deal business in the same territory for competing principals.

1. Indemnity and/or compensation

1.6

The agency agreement may be entered for limited term or unlimited term. If the parties continue the execution of a limited term agency after its termination, the agreement is automatically converted into an unlimited term agency (article 958).

1.7

Both parties may terminate an unlimited term agency upon a prior notification of: (i) one month for the first year of the agency; (ii) two months for the second year of the agency; (iii) three months for the third year; (iv) four months for the fourth year; (v) five months for the fifth year; (vi) six months for the sixth year and following years. The parties may agree on a longer notification terms, provided that the term to be observed by the Principal should not be shorter than the term to be observed by the Agent.

1.8

Unless differently provided in the agency agreement, the end of the period of notice must correspond with the end of a calendar month.

1.9

In the performance of his duties, the Agent has the obligation to comply with the instructions and guidelines of the Principal, and to submit to the latest information on the market conditions of the territory, on potential clients and their patrimonial conditions, and on any other necessary information for the assessment of the convenience of specific deals. If not expressly provided in the agreement, the Agent is not entitled to deposit or register trademarks or other distinctive signs of the Principal.

1.10

The Agent should make proper efforts to negotiate and/or conclude the transactions he is appointed to conclude, and is liable for damage compensation if he does not immediately notify to the Principal his inability to do so.

1.11

Based on article 956 of the Albanian Civil Code, the Principal must provide to the Agent the necessary information and documents concerning the goods and/or services related to the agency. Furthermore, should the Principal forecast a significant reduction of the volume of commercial transactions, not reasonably expected by the Agent, the latest must be notified. Moreover, the Principal must notify to the Agent, within a reasonable term, the acceptance, refusal, and the non-execution of a commercial transaction procured by the Agent.

1. Indemnity and/or compensation

C) *The agent as an employee*

1.12

Article 16 of the Albanian Labor Code provides the legal framework of the subordinated commercial agent, defined as the employee appointed by the employer for the conclusion of commercial transaction outside the premises of employer's enterprise. Based on such article, independent agents are not regulated by the Labor Code, whilst the Labor Code is applicable also to the so called parasubordinated agents (formally a self-employed agent for tax purposes, substantially operating on the typical obligations of an employee). Furthermore, article 18 of the Albanian Labor Code provides that the Council of Ministers may provide specific rules on employed commercial agents.

1.13

Decision of the Council of Ministers No. 254 dated 25.03.1996 "On the employment contract of the commercial agent" provides that such regulation is applicable only to those employees whose activity as commercial agent is continuous.

1.14

The employment agreement for the commercial agent must be made in writing. The employed agent, if not expressly provided in the employment agreement, is not entitled to conclude commercial transactions but only propose its conclusion and discuss the terms of the transaction with the potential client. If the Agent is authorized to conclude the transaction, he is not entitled to modify the terms and conditions of the transactions without the specific approval of the employer.



2 Conditions of indemnity and/or compensation

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2.2

With regard to the compensation, article 956 of the Albanian Civil Code provides that the Agent is entitled to receive the commission only for regularly executed transactions. If the commercial transaction concluded on behalf of the Principal is partially fulfilled, the Agent is entitled to be remunerated proportionally.

2.2

Such provision is not applicable if the commercial transaction is not fulfilled due to a default of the Principal. If the Principal and the third party agree not to execute, totally or partially the transaction concluded by the Agent, the latest is entitled to receive a reduced commission for the unexecuted part, in the amount provided in the agency agreement.

2.3

If the agency agreement does not provide on the matter, the amount of Agent's commission is set taking into consideration the commercial practice of the sector. If there is no such practice, the commission is set by the Court.

2.4

Unless the agency agreement provides differently, the Agent is entitled to be compensated for transactions concluded directly by the Principal, if the transaction is to be executed in the territory of the Agent.

2. Conditions of indemnity and/or compensation

2.5

The Agent is also entitled to be compensated for the commercial transactions concluded by the Principal after the termination of the agency agreement, provided that such transactions are successfully concluded due to the Agent's efforts before the termination of the agency agreement.

2.6

Furthermore, according to the last paragraphs of article 956 of the Albanian Civil Code, the Principal must notify the amount of the commission (statement of commission), and effectively disburse it to the Agent not later than the last day of the month following the quarter in which the commission became due. The Agent is entitled to request information and receive documents that evidence the amount of his compensation.

2.7

Article 959 of the Albanian Civil Code provides the rules for the indemnity of the Agent after the termination of the agency. Based on such article, with the termination of the agency, the Agent is entitled to receive from the Principal indemnity if Agent has procured to the Principal new clients/customers, or has significantly increased the volume of transactions with existing clients/customers, and the Principal continues to have substantial benefits from the activity of the Agent.

2.8

Agent loses the right to be indemnified for in the above case, if: (a) the agency is terminated by the Principal for good cause due to a default to be attributed to the commercial agent, and the importance of such default may justify the immediate termination agreement; (b) the agency agreement is terminated by the Agent, except for cases where the termination by the Agent is to be attributed to the principal, or on basis of age, infirmity or illness of the commercial agent in consequence of which he reasonably may not be required to carry on the performance of its duties; (c) the Agent, with the agreement of the Principal, transfers and/or assigns the rights and obligations deriving from the agency agreement to a third party.

2.9

The Agent is not entitled to receive the indemnity provided above, if such claim is not forwarder to the Principal within one year from the termination of the agency. The grant of such indemnity shall not prevent the commercial agent from seeking damages.

2.10

Whilst many of the provisions of the Albanian Civil Code, practically adhere to the requirements of Directive 86/653/EEC, no damage compensation cases are provided. Consequently, cases of damage compensation for the agency agreement are to be evaluated according to general damage compensation rules.

2. Conditions of indemnity and/or compensation

2.11

The Albanian Civil Code provides no dispositions for the case of Agent's death.

2.12

With regard to the indemnity/compensation of the commercial agent operating as an employee, Council of Ministries Decision n. 254 provides that the remuneration of the Agent is remunerated with a fixed sum. An additional commission for concluded transactions can be agreed by the parties. The employed agent is also entitled to receive the reimbursement of the expenses made in the performance of its duties. If a commission is agreed, the employed agent is entitled to receive it if the transaction is successfully executed. For partial executions, the Agent is remunerated proportionally.

2.13

If the agent operated under an exclusivity clause, he is entitled to obtain the commission also for transaction concluded directly by the Employer within boundaries of the exclusivity clause or from the of Agent's list of customers.

2.14

If the exclusivity clause is not operations, the Agent is entitled to receive the commission also for cases when the transaction is concluded directly by the Employer with new customers.

2.15

If the employed Agent cannot perform his duties for causes that depending from the Employer, he is entitled to receive the fixed remuneration and an appropriate indemnity for lost compensation. Parties may agree in writing that no indemnity shall be paid by Employer if the lost commission is lower than 1/5 of the fixed wage.

2.16

With the termination of the agreement, the employed Agent is entitled to receive all commissions related to orders regularly transmitted to the Employee, independently from the date of acceptance and execution.

3 Calculation of indemnity and/or compensation

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3.1

With

regard to the calculation of indemnity, in the case of termination of the agency article 959 of the Albanian Civil Code provides that the amount of Agent's indemnity (Agent has procured to the Principal new clients/customers, or has significantly increased the volume of transactions with existing clients/customers) must be equitable, taking into consideration all the circumstances of the case and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

3.2

The same article provides that the amount of the indemnity may not exceed the equivalent of the annual average remuneration of the Agent, calculated over the previous five years. If the term of the agreement was shorter than five years, the indemnity shall be calculated on the average for the period in question.

3.3

For the employed Agent, article 12 of the Council of Ministries Decision no. 254 provides that in cases when the Agent has procured to the Employer a particularly important and continuous portfolio of customer, Agent has the right to receive an appropriate indemnity. Such may not exceed a figure equivalent to three years of remuneration.

3.4

Principal and Agent may agree on a non-competition clause. Based on this clause, the Agent is bound not to deal in the same territory the transactions provided in the agency agreement for a maximum term of 2 years after its termination. Such clause is valid if made in writing.

3.5

Please note that no specific rules are provided for the calculation of indemnity/compensation in specific sectors.

4. Indemnity and/or compensation for distributors and franchisee?

ALBANIA



4.1

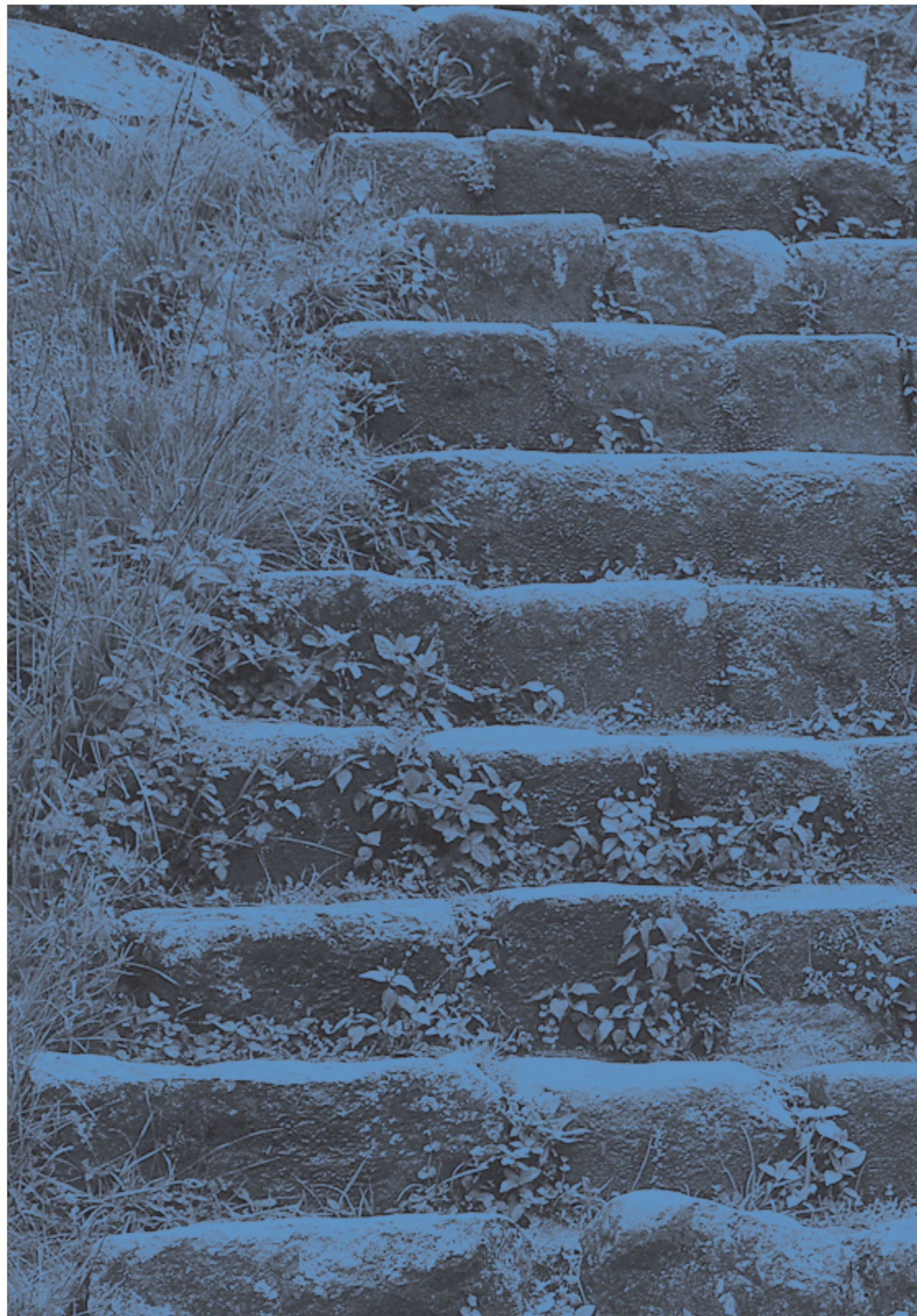
The distribution contract is not one of typical commercial contracts provided by Albanian Civil Code, and the law contains no special provisions related to distributor's indemnity/compensation. Consequently, all indemnity/compensation claims of distributors shall be regulated by the general rules of the Civil Code.

4.2

Differently from distribution contract, the Albanian Civil Code regulates the franchising contract. According to article 1059 of the Albanian Civil Code, the franchising contract should be made in writing.

4.3

As for the case of the agent, the Albanian Civil Code provides a non competition clause is also for the franchising contract. Based on article 1061 of the Albanian Civil Code, franchisor may impose to franchisee restraint to compete in a predetermined territory, up to a maximum of one year after the termination of the contract. If franchisee incurs in a diminution of activity from such non completion restrain, franchisor must pay to franchisee an equivalent indemnity.





CONTACT

Hoxha, Memi & Hoxha is an Albanian law firm focused on business law. The firm was established on December 2003 and since has acquired a reputation of professionalism and diligence. Our attorneys have built substantial knowledge and have wide expertise in offering professional services in the growing Albanian business environment. Our team is composed of 11 professionals, including lawyers, patent & trademark attorneys, certified accountants and economic counsels. Firms attorneys are members of the Albanian Bar and can represent firm's clientele in all levels of the Albanian judiciary.

The services of the firm cover a wide range of fields, which permits us to offer complete and coordinated counsel to clients, based on their specific needs. The approach of the firm is business-oriented, and pro-active to efficiency.

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