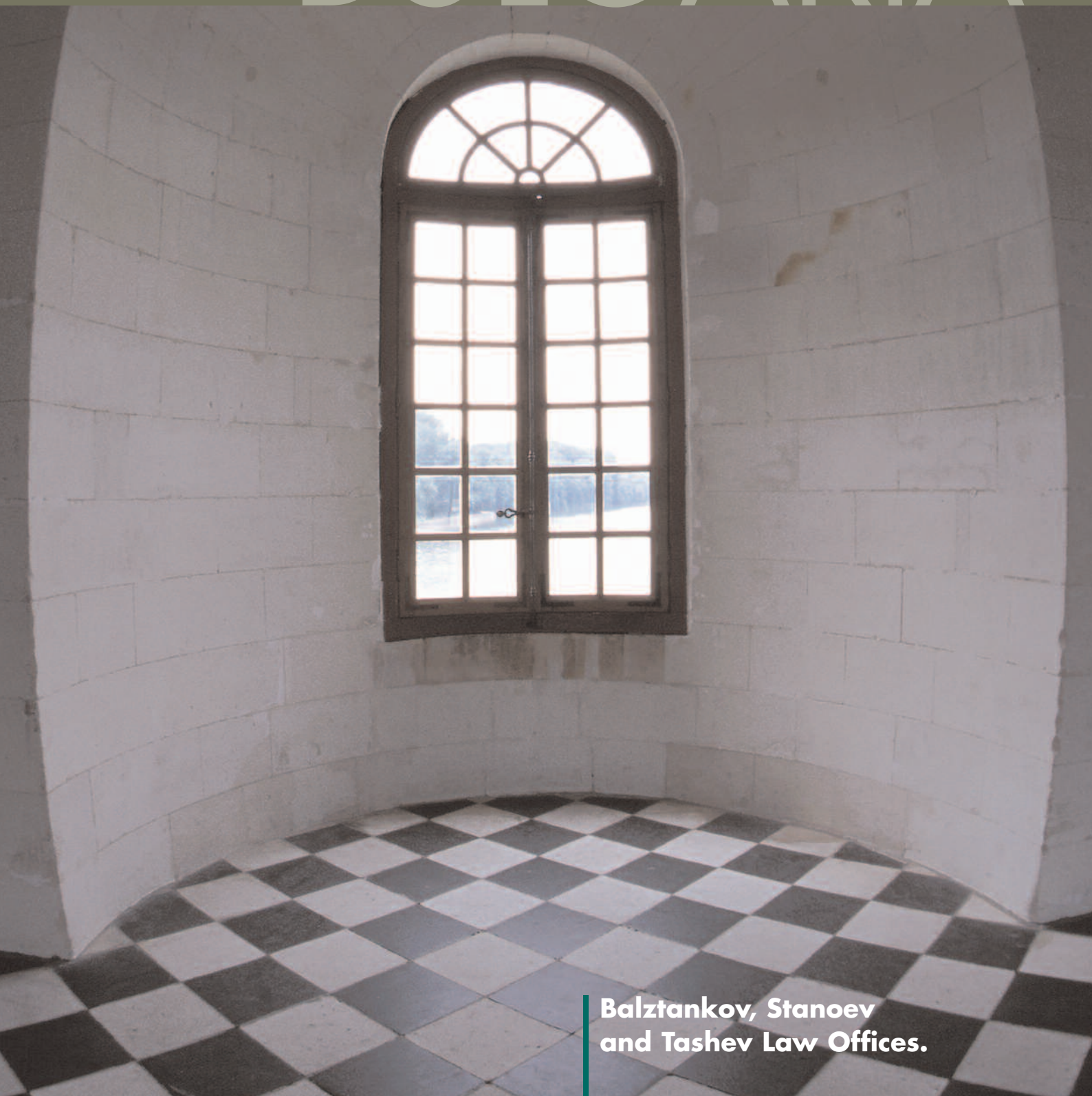


Commercial Agency Contract: BULGARIA



**Balztankov, Stanoev
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BULGARIA

1.1 Introduction

According to the provisions of the Bulgarian Constitution international rules (treaties and conventions) have to be ratified by the Parliament, promulgated in the State Gazette and entered into force for the Republic of Bulgaria, in order to be part of the domestic law of the country.

The Directive 86/653/EEC - EC Directive on Commercial Agents (hereinafter referred as "Directive") bounds the European Union Member States. As Bulgaria is a candidate Member State and it is expected to be accepted in the European Union on the 1st of January 2007 the Directive will be applicable in Bulgaria. In order to adjust Bulgarian legislation to the *acquis communautaire* and to fulfill the conditions set in agreements with EU, Bulgarian Parliament amended a lot of laws. Regarding this the guidelines of the Directive have been substantially implemented in the Bulgarian Commercial Act. This Law (provisions 32 and the following) is the legislative instrument providing the framework of the commercial agency relationship. The rules of the Commercial Act have an imperative nature.

1. Introduction

According to the Bulgarian legislation a commercial agent **shall be a person engaged independently and by occupation in assisting the business of another merchant. A commercial agent may be authorized to effect transactions in the name of the merchant**, or in its own name but on the behalf of the merchant. The contract between the merchant and the commercial agent shall be executed in writing.

The commercial agent

- shall cooperate or effect transactions with due care, taking into consideration the merchant's interests;
- shall forthwith notify the merchant of any transaction effected by it;
- shall execute merchant's instructions and provide him with the whole information concerning agent's activity.

The merchant shall provide the commercial agent with all relevant information and documents concerning the conclusion and performance of the imposed transaction. A merchant shall forthwith notify the commercial agent whether he accepts a transaction effected without authorization, as well as whether he (the merchant) concluded the transaction.

Scope of Agency: The subject and territory of a commercial agent shall be determined by the agency agreement.

The internal relationship between the commercial agent and the merchant shall be governed by the agreement between them. Absent any other provision, a commercial agent shall arrange for its own premises. If the compensation is not indicated in the agreement, the customary compensation for the type of representation shall be due.

Representation under the preceding paragraph may not be delegated to another party in the same territory.

Where the commercial agent agreement has been concluded for an indefinite term, during the first three years following the date of conclusion each of the parties may terminate it with a monthly notice and, after the end of the third year, with a three months' notice. When a longer term notice is stipulated between the parties this term has to be the same for the both of the parties.

An agreement which has been concluded for a definite period may be terminated before its expiration if the party wishing to terminate it compensates the other party for the damages caused.

If both parties continue the execution of their obligations under a limited term contract after its termination the contract shall be automatically converted into an unlimited term one.

The provisions of the Commercial Act shall not apply to persons engaged as representatives or brokers in stock exchange transactions, or as representatives of persons engaged in auction operations.



2 Indemnity and/or compensation

BULGARIA

According to the Directive the Member States have to implement regulations ensuring that after termination of the agency contract commercial agents are indemnified as stipulated in Article 17 (2) of the Directive and/or compensated for damages as stipulated in Article 17 (3) of the Directive.

Whilst many of the provisions of the Bulgarian Commercial Act, 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.

Upon termination of the agreement the commercial agent may claim compensation for already concluded or pending contracts.

The agent's right to indemnity is stipulated in Section 40 of the Commercial Law. The regulation set out in Section 40 of the Commercial Law is in accordance with Article 17 (2) of the Directive.

With the termination of the agency contract the agent is entitled to receive from the merchant indemnity if the agent has procured to the merchant new clients/customers, or has significantly increased the volume of transactions with existing clients/customers, and the merchant continues to have substantial benefits from the activity of the agent;

The agent loses the right to be indemnified, if

2. Indemnity and/or compensation

(a) the agency contract 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 merchant, 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 merchant, transfers and/or assigns the rights and obligations deriving from the agency agreement to a third party

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;

The agent has to assert his claim for indemnity within a period of 1 year after the termination of the contract; otherwise his right to indemnity is precluded

In case the agent dies his heirs are entitled to indemnity.

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

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3 Indemnity and/or compensation for distributors and franchisee?

BULGARIA

The distribution and the distribution contract is not one of typical commercial contracts. The Bulgarian 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 legislation.

According to the Bulgarian legislation the rules on indemnity applies to insurance agents.





CONTACT

This Law Office was founded in 1991 in the city of Plovdiv by the lawyers Nikolay Bazlyankov and Dessislav Tashev. In 1996 the office expanded when Boyan Stanoev joined the Office as a partner – lawyer and a full member.

At the present BST is one of the biggest law firms in Bulgaria with offices throughout the country and is a member of the Association of European Lawyers.

BST is a nationally recognized multipartite law firm with a long record of excellence and professional leadership. BST lawyers have established a diverse practice in areas of Civil Law, Commercial Law, Administrative law, Taxation, Litigation, Trust management of capital and capital markets, and legal services oriented towards the developing of foreign investments in Bulgaria.

The Firm provides quality legal services to Bulgarian and foreign citizens, legal entities, companies, branches and representative offices in Bulgaria, public authorities, and non-profit organizations.

The BST Law Office provides services in English, Spanish, Italian and Russian languages.

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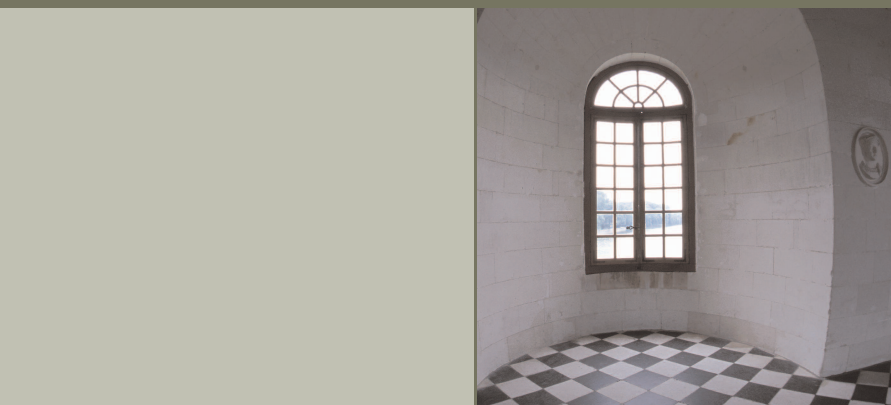
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