



Managing Distribution Channels in Spain

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Agenda

- 1. How to Sell Products in Spain**
- 2. Definitions**
- 3. Legal Basis**
- 4. Drafting Contracts**
- 5. Terminating Contracts**
- 6. Risk of Labor Classification of the Agent**



How to Sell Products in Spain

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1. WITH CLIENT'S OWN STRUCTURE

Subsidiary + Workers + Other fixed costs

Worker

- **Social Security Cost 33% Salary**
- **Severance 33 days of salary per year**

2. THROUGH THIRD PARTIES

- **AGENTS**
- **DISTRIBUTORS**

Definitions



COMMERCIAL AGENT negotiates transactions as an independent **intermediary** on behalf of client and may also carry out such transactions representing the client, if necessary. The agent receives remuneration as payment.

DISTRIBUTOR acquires products from client and sells the products on its own behalf, adding the corresponding profit margin. The distributor usually uses the manufacturer's brand and renders the necessary customer services.

Difference: a commercial agent negotiates on behalf of another, while a distributor acquires and sells products on its own.

Legal Basis



Spanish Agency Contract Law of 27 May 1992 (*Ley sobre el Contrato de Agencia, LCA*).
Transposition of the EU Commercial Agents Directive (86/653/EEC).

There are no specific legal regulations for distributors. Analogous application of the LCA and jurisprudence.

Drafting Contracts



Form of Agency Contracts

- Freedom of form; drafting the contract in writing may be required.
- Some contract conditions must be agreed upon in writing: assumption of the economic risk by the agent; post-contractual non-compete provisions.
- Exclusive rights do not need to be agreed upon in writing but must be verifiably and explicitly granted to the agent.
- Distributor: freedom of form.

Drafting Contracts



Choice of Applicable Law

- Freedom of choice, but the regulations of the LCA are of mandatory application, unless the LCA's provisions establish otherwise.
- Distributor: freedom of contract.

Drafting Contracts



Remuneration of the Agent

- Fixed amount and/or commission.
- All transactions carried out are subject to commissions
 - a) due to the intermediation of the agent with a new customer;
 - b) with a customer procured by the agent in the past; or
 - c) in the case of exclusive rights, in the protected territory or the protected group of customers.

Drafting Contracts

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Covid clauses

- Force majeure
- Rebus sic stantibus

Terminating Contracts



Agent's Entitlement to Indemnity

- **Requirements:**

1. New customers were acquired or the sales with existing customers were significantly increased.
2. Substantial benefits for the business owner after the end of the contract as a result of the agent's intermediation.

- **Distributor:** analogous application of the LCA.

Terminating Contracts



Quantification of the Indemnity

- No legal calculation formula; maximum amount: annual remuneration, calculated based on the average remuneration of the last 5 contract years.
- The calculation of the maximum limit is not to be based on the net profit of the agent, but on the total amount of the remuneration received by the agent for his intermediation.
- Distributor: analogous application of the LCA; the basis for the calculation of the indemnity is the net margin of the distributor.

Terminating Contracts



Compensation for Damages in favor of the Agent

- Unlawful termination of the agency contract without notice by the business owner entitles the agent to receive compensation for lost profit in proportion to the notification period not observed.
- In the case of termination of an indefinite agency contract, the agent may be entitled to compensation for the investments made following the instructions of the business owner, if such investments have not yet been amortized.
- Distributor: in general, same regulations as agent in the case of unlawful termination, but no entitlement to compensation for investments. Obligation to re-purchase any products which could not be sold due to the early termination of the contract at their purchase price.

Risk of Labor Classification of the Agent

- What is this risk? The condition of the Agent as a self-employed person leads to an employment relationship.
- When can this risk arise? When two pieces of circumstantial evidence are proven:
 - Subordination: the agent is part of the disciplinary circle of the business owner
 - Work on another's behalf

Consequences of Labor Classification



1. Labor Perspective

- Permanent employee
- Severance compensation

2. Social Security Perspective

- Unpaid contributions with 20% surcharge
- Fine
- Liability for occupational accidents

3. Tax perspective

- Unpaid tax withholdings
- Fine

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