

NEW LAW ON INDEPENDENT COMMERCIAL AGENCY CONTRACTS

BBLP Central European Practice Group Newsletter 2000

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The Hungarian Parliament adopted Act CXVII of 2000 on Independent Commercial Agency Contracts ("Act") which will come into force as of February 1, 2001. The Act is harmonized with EU Directive No. 86/653 on independent commercial agency activities.

However, the Act shall be applicable to contracts to be concluded after January 31, 2001, the Act shall also apply as of January 1, 2003 to contracts which will then be still in effect and concluded prior to February 1, 2001.

In terms of the Act, an independent commercial agent will be a person, who as a representative (in the name of the mandator), or as a commission agent (in its own name on behalf of the mandator), intermediates the sale of goods or other transactions with respect to goods between third parties and the mandator, on the basis of a long-term private law contract concluded with the mandator, provided that the mandator shall pay a countervalue for such services. The Act contains specific regulations on both forms of agency (i.e., representation and commission agency).

The underlying regulation of the Act is the Civil Code of Hungary (Act IV of 1959) with respect to matters not specified in the Act. The Act contains certain strict regulations the application of which is mandatory, e.g. with respect to certain obligations of the agent (among others the obligation of the agent pursuant to which the agent must inform third parties on the fact that he is acting as an agent) or the mandator (among others the obligation to pay some kind of agency fee for the services of the agent). Unless otherwise regulated explicitly by the Act, the parties may diverge from the provisions of the Act.

The Act contains detailed regulations on the forms of the agency fee, i.e. commission, including "incasso" commissions, when the obligation of the agent includes the collection of funds to the benefit of the mandator, as well as "del credere" commissions, when the agent undertakes a liability for the performance of obligations of third parties vis-a-vis the mandator. The Act further regulates when the commission becomes due during the term of the contract, and even certain cases when the agent will be entitled to reimbursement following the termination of the contract.

The Act requires that the parties specify in the agency contract the scope of territory of the agency activity. The Act also sets forth specific regulations on the term, termination and breach of an agency agreement.

Additionally, the Act sets forth the conditions of validity of the application of non-competition clauses in an agency contract. Under the Act, a clause which restricts the activity of the agent following the termination of the contract shall be deemed a non-competition clause. A non-competition clause shall only be valid, if in writing, for a maximum period of two years and exclusively with respect to a scope of activity identical with the activity of the agent under the

relevant contract, and further provided that the agent shall receive extra remuneration for such restriction.

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