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STATUTORY INSTRUMENTS

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**1993 No. 3053**

**The Commercial Agents (Council Directive) Regulations 1993**

**PART III**

**REMUNERATION**

**Form and amount of remuneration in absence of agreement**

6.—(1) In the absence of any agreement as to remuneration between the parties, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carries on his activities and, if there is no such customary practice, a commercial agent shall be entitled to reasonable remuneration taking into account all the aspects of the transaction.

(2) This regulation is without prejudice to the application of any enactment or rule of law concerning the level of remuneration.

(3) Where a commercial agent is not remunerated (wholly or in part) by commission, regulations 7 to 12 below shall not apply.

**Entitlement to commission on transactions concluded during agency contract**

7.—(1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract—

- (a) where the transaction has been concluded as a result of his action; or
- (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

(2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract where he has an exclusive right to a specific geographical area or to a specific group of customers and where the transaction has been entered into with a customer belonging to that area or group.

**Entitlement to commission on transactions concluded after agency contract has terminated**

8. Subject to regulation 9 below, a commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated if—

- (a) the transaction is mainly attributable to his efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or
- (b) in accordance with the conditions mentioned in regulation 7 above, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

### **Apportionment of commission between new and previous commercial agents**

9.—(1) A commercial agent shall not be entitled to the commission referred to in regulation 7 above if that commission is payable, by virtue of regulation 8 above, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

(2) The principal shall be liable for any sum due under paragraph (1) above to the person entitled to it in accordance with that paragraph, and any sum which the other commercial agent receives to which he is not entitled shall be refunded to the principal.

### **When commission due and date for payment**

10.—(1) Commission shall become due as soon as, and to the extent that, one of the following circumstances occurs:

- (a) the principal has executed the transaction; or
- (b) the principal should, according to his agreement with the third party, have executed the transaction; or
- (c) the third party has executed the transaction.

(2) Commission shall become due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have.

(3) The commission shall be paid not later than on the last day of the month following the quarter in which it became due, and, for the purposes of these Regulations, unless otherwise agreed between the parties, the first quarter period shall run from the date the agency contract takes effect, and subsequent periods shall run from that date in the third month thereafter or the beginning of the fourth month, whichever is the sooner.

(4) Any agreement to derogate from paragraphs (2) and (3) above to the detriment of the commercial agent shall be void.

### **Extinction of right to commission**

11.—(1) The right to commission can be extinguished only if and to the extent that—

- (a) it is established that the contract between the third party and the principal will not be executed; and
- (b) that fact is due to a reason for which the principal is not to blame.

(2) Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

(3) Any agreement to derogate from paragraph (1) above to the detriment of the commercial agent shall be void.

### **Periodic supply of information as to commission due and right of inspection of principal's books**

12.—(1) The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due, and such statement shall set out the main components used in calculating the amount of the commission.

(2) A commercial agent shall be entitled to demand that he be provided with all the information (and in particular an extract from the books) which is available to his principal and which he needs in order to check the amount of the commission due to him.

- (3) Any agreement to derogate from paragraphs (1) and (2) above shall be void.
- (4) Nothing in this regulation shall remove or restrict the effect of, or prevent reliance upon, any enactment or rule of law which recognises the right of an agent to inspect the books of a principal.