

## **DISTRIBUTION, AGENCY AND COMMISSION AGREEMENTS**

### **Agency agreements**

An agent is defined as a party who on behalf of another person or company (the Principal) enters into contracts in the name of and on the account of the Principal or submits offers for the Principal and receives a remuneration for its service.

A party meeting the definition above will be considered an agent regardless of how the parties have named the contract or the title of the parties.

### **Are commercial agents protected by law?**

Commercial agents are comprised by the Danish Commercial Agents Act (the "Commercial Agents Act", in Danish: "Handelsagentloven") which implements the EC Directive on Commercial Agents. Since the Commercial Agents Act only applies to the sale of goods, other types of agents, such as travel agents etc., are not comprised by the Commercial Agents Act.

The Commercial Agents Act contains a number of mandatory provisions in favour of the commercial agent, including provisions on termination notices and remuneration following termination and the relationship between the commercial agent and a third party.

### **Commission agreements**

A commission agent enters into contracts in his or her own name, but on account of the consignor.

### **When are commission agreements typically applied?**

The Danish Act on Trade Commission (the "Trade Commission Act", in Danish: "Kommissionsloven") regulates commission. The Act contains mandatory provisions on the commission agent's right to contract on his or her own account, but otherwise only contains optional provisions.

Although commission is rarely used in Denmark, it is still often used in the trading of securities and other financial instruments where the commission agent is typically allowed to contract for his or her own account by the consignor. The Danish Securities Trading Act (in Danish: "Værdipapirhandelsloven") contains a number of consignor safeguard regulations which complement The Trade Commission Act in these particular situations.

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### **Distribution agreements**

The distributor enters into contracts in his or her own name and on his or her own account and is solely responsible for the performance of the contract.

A distribution agreement contains provisions regarding the continuous obligations of the parties in addition to the obligation in the main agreement concerning sale and purchase of the goods. A distribution agreement could, for example, contain an exclusive right for the distributor within his territory.

### **In which way are distribution agreements regulated?**

Distribution agreements are not subject to special legislation, although general provisions of Danish law, including competition law, apply. A distribution agreement is therefore entered into under the general principles of freedom of contract.

A distribution agreement should usually include provisions on:

- duration
- termination
- exclusivity
- product specification and performance
- price and price adjustment
- territories
- purchase volumes and stock
- liability
- customers

The International Chamber of Commerce (ICC) and the Danish Chamber of Commerce have issued standard distribution agreements that may constitute a basis for an agreement between the parties.

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