

Cyprus

| | |
|---|--------|
| Introduction..... | CYP/1 |
| General Environment for Agents and Distributors | CYP/2 |
| What Is an ‘Agent’?..... | CYP/2 |
| Future Prospects..... | CYP/5 |
| General Business Climate..... | CYP/6 |
| Import Regime, Customs and Duties | CYP/6 |
| Exchange Control | CYP/6 |
| Tax Regime..... | CYP/7 |
| Formation of Agency Relationship | CYP/7 |
| Creation of Contract | CYP/7 |
| Capacity..... | CYP/8 |
| Agent’s Rights and Duties | CYP/8 |
| Express or Implied Authority | CYP/9 |
| Mandatory, Prohibited or Reserved Activities or Purposes | CYP/10 |
| Operational Aspects | CYP/11 |
| Actual (Express) or Implied Authority | CYP/11 |
| Disclosed and Undisclosed Agency..... | CYP/13 |
| Commission on Sales..... | CYP/13 |
| Reimbursement of Agent’s Expenses | CYP/17 |
| Agent’s Accounting Duties..... | CYP/18 |
| Sales Quotas | CYP/19 |
| Failure to Exploit Agency and Indemnity..... | CYP/19 |
| Termination..... | CYP/19 |
| Fixed or Indefinite Term, Renewal of Term and Breaches..... | CYP/19 |
| Termination Indemnity | CYP/23 |
| Commission on Post-Termination Sales..... | CYP/26 |
| Goodwill Payments..... | CYP/27 |
| Return of Stock, Publicity Material, Accounts, Books and Other Documents | CYP/27 |
| Agent’s Rights in Principal’s Bankruptcy | CYP/28 |
| Principal’s Property Held by Agent and Agent’s Bankruptcy ... | CYP/28 |
| Intellectual Property..... | CYP/28 |
| Domestic Law..... | CYP/28 |
| International Conventions..... | CYP/29 |
| Trade Marks and Service Marks..... | CYP/29 |
| Patents..... | CYP/31 |
| Designs | CYP/32 |

| | |
|---|--------|
| Trade Names | CYP/34 |
| Copyright | CYP/35 |
| Competition Law | CYP/36 |
| Litigation Issues | CYP/36 |
| Agent Able to Receive Process for Principal..... | CYP/36 |
| Agent’s Authority to Initiate Suits on Behalf of Principal..... | CYP/36 |
| Arbitration | CYP/37 |
| Foreign Jurisdiction | CYP/37 |
| Applicability of Foreign Law | CYP/37 |
| Product Liability | CYP/37 |
| Distributorship | CYP/41 |

Cyprus

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Introduction

The strategic location of Cyprus between three continents has always been considered ideal for trading purposes. Recently, and particularly since joining the EU in May 2004, Cyprus has shown appreciable growth as an international business and financial center.

The country has a free-market, open economy. The authorities have implemented simple administrative procedures to expedite matters for foreign entrepreneurs, reflecting the importance Cyprus attaches to the development of its potential as an international business center. The attraction of foreign capital has always been among the primary objectives of the island's development policy as it contributes to the introduction of high technology and increased export prospects.

The Constitution guarantees the right of private property and does not discriminate between Cypriots and non-Cypriots. Nationalization has never been part of government policy, nor is it contemplated in the future. Cyprus is a signatory to the Multilateral Investment Guarantee Agency Agreement and the Convention for the Settlement of Disputes between States and Nationals of Other States.

The legislation of Cyprus encourages foreign investment and the establishment of corporate bodies in Cyprus. The tax reforms of 2002 created a favorable business climate with the lowest rates of corporate tax and VAT in the EU. The Cyprus tax regime, which fully complies with EU and OECD guidelines, combined with an extensive network of tax treaties, makes cross-border operations highly tax-efficient.

EU accession has removed barriers to trade, resulting in an increase in imports and exports. The adoption of the fundamental principles of free movement of goods, services and persons which lie at the heart of the Single Market was a landmark development, not only for the law but also for the economy of Cyprus.

Cyprus is essentially a common law country. Most statutes relating to business matters and procedures are modeled on English law, and English case law is closely followed. The continental system of administrative law according to

which the legality of administrative decisions can be judicially controlled has been introduced and applied by virtue of the Constitution.

The administration of justice is exercised by the judiciary, which is a separate and independent body. There are six District Courts which exercise civil jurisdiction, and recourse for judicial review is to the Supreme Court. The Supreme Court hears all appeals and is empowered to pronounce final judgment in all cases of constitutional and administrative law.

General Environment for Agents and Distributors

Although agency and distribution law are relatively new areas of Cyprus law, the continuous development of the island's economy has made them very significant.

Sections 142–198 of the Contract Law, Cap. 149 (“the Contract Law”) are the general legislative provisions governing this area of the law and essentially reflect common law. English common law principles are applicable where no express statutory provisions are made and also offer guidance in interpreting the provisions of the Contract Law.

The legal framework with respect to commercial agents has been improved by two further pieces of legislation which are in line with EU legislation, namely:

- The Commercial Agents Law (“the Commercial Agents Law”), as amended by Laws 21(I) of 1994 and 148(I) of 2000; and
- The Regulation of Relations between Commercial Agents and Principals Law, Number 51(I) of 1992 (“the Regulation of Relations Law”), as amended by Law 149(I) of 2000.

These are supplemented by the Commercial Agents (Formation and Functioning of the Board, Registration of Members and Charges) (Amending) Regulations of 2003, which came into force on 1 May 2004.

What Is 'Agent'?

In General

At common law the word “agency” is used to describe the body of general rules under which one person, the agent, has the power to change the legal relations of another, the principal.

Section 142 of the Contract Law defines an agent as: “a person employed to do any act for another, the principal, or to represent the principal in dealings with third parties”.

The most important areas of law dealing with the power of the agent to bind the principal are the law of contract and the law of property. An agent may have power to bind his principal by contract and by acts connected with the performance of a contract, or he may have power to receive property for his

principal or make a valid disposition of his principal's property. Similar reasoning may appear in areas such as torts or evidence.

The legal doctrines that have developed can be divided into two broad categories. The first category relates to the agent's power to bind his principal and is of great importance to third parties dealing with such agents. The second category concerns the rights and liabilities of the principal and the agent *inter se* and imposes fiduciary duties on the agent, and regulates his rights to remuneration and indemnity. The first category concerns the external aspects of agency, whereas the second regulates the internal aspects of agency.

Where the agent's authority results from a manifestation of consent that he should represent or act for the principal, expressly or impliedly made by the principal to the agent himself, the authority is called actual authority, express or implied.

Where the agent's authority results from such a manifestation made by the principal to a third party, the authority is called apparent authority.¹

Section 147 of the Contract Law provides that implied authority may be inferred from the circumstances of the case. Any written or oral evidence or the usual business practice may be regarded as circumstances of the case. As a result, the agreement between agent and principal need not be contractual. An agent can act gratuitously. The consent may also be given subsequently by ratification. Cyprus law recognizes seven categories of agents:

General Agent

A general agent has authority to act for his principal in all matters concerning a particular trade or business, or to do some act in the ordinary course of his trade, profession or business, for example, as a solicitor or factor.

Special Agent

A special agent is an agent who has authority only to do some particular act or to represent his principal in some particular transaction not being in the ordinary course of his trade, profession or business as an agent.

Sub-Agent

A sub-agent is defined under section 151 of the Contract Law as “a person competent to contract, employed by and acting under the control of the original agent in the course of business of the agency”.

Section 152 provides that if a sub-agent is properly appointed, the principal is, as far as third parties are concerned, represented by the sub-agent and is bound by and accountable for his acts as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent,

¹ *Bowstead on Agency*, 14th Edition.

and the sub-agent is responsible for his acts to the agent, but not to the principal except in case of fraud or willful wrong.²

Section 154 clearly states that where an agent appoints without authority a person to act as a sub-agent, the agent is liable for his acts both to the principal and to third persons. The principal is not represented by or liable for the acts of the sub-agent, nor is the sub-agent liable to the principal.³

Mercantile Agent

The definition of a mercantile agent can be found in section 2(1) of the Sale of Goods Law, Law 10(I) of 1994. He is the person who has in the customary course of his business as such agent authority either to sell goods, or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.⁴ The significance of the term “mercantile agent” has been greatly reduced nowadays and has become very scarce.

Canvassing Agent

A canvassing agent is a person who represents others, such as an estate agent or an insurance agent, in order to introduce business. Strictly speaking, canvassing agents are not agents in the legal sense but certain doctrines established by the law of agency, especially those relating to the fiduciary obligations they owe to the principal, are applicable.

Distributors and Franchises

Franchise holders and distributors of particular products are often referred to as agents. Though it is possible that such persons are agents in the sense that their obligation to their principal is that of an agent, even though they deal with the outside world in their own name, such persons are regarded at common law as purchasers for resale and agency principles are not applicable.

Commercial Agent

A “commercial agent” is defined by section 2 of the Commercial Agents Law, as amended, as:

Every legal or natural person who, by his capacity as an independent intermediary, has the permanent authority to negotiate on behalf of another person, the principal, the sale or purchase of goods or negotiate and conclude such actions in the name and on behalf of the principal.

Officers of companies or associations, partners, administrators appointed by the Court, insolvency practitioners, and liquidators are expressly excluded from the

2 Contract Law, Cap 149, ss 151–152.

3 Contract Law, Cap 149, s 153.

4 Sale of Goods Act, Cap 267.

ambit of the definition. It should be noted that, prior to the amendment of the Commercial Agents Law which took place in 1994, the definition of commercial agent covered distributors as well; Law 21(I) of 1994 amended the definition to exclude distributors.

Future Prospects

The 1986 Law and its amending laws were enacted to align domestic law with European Union law, and contain similar provisions to those of the European Community's Council Directive 86/653/European Community ("the 1986 EEC Directive").

Section 3 of the Commercial Agents Law establishes a Council responsible for the registration of commercial agents and sets the qualifying conditions for registration. Under section 4, a register of commercial agents is established. Section 5 empowers the Council to remove the name of a commercial agent from the register in accordance with its provisions and also empowers it to issue regulations. Breach of any of the provisions of the Commercial Agents Law is an offence punishable by up to six months' imprisonment or a maximum fine of €519, or both.

The 1992 Law regulating relations between commercial agents and their principals was enacted to align domestic law with Community law. It covers the duties of agent to principal and *vice versa*, remuneration and commission, termination of the contract and rights to indemnity and compensation upon such termination, and restraint of trade clauses.

Together, these laws incorporate verbatim the text of the 1986 EEC Directive on the coordination of the laws of member states relating to self-employed commercial agents. Consequently, any interpretation of the laws given by the European Court of Justice is likely to be followed by the Cyprus courts regardless of whether it follows common law principles.

Implementing regulations governing, *inter alia*, the procedure of registration and renewal of the commercial agent's annual license were passed in January 1988.

The Cyprus National Committee of the International Chamber of Commerce (ICC) has implemented a firm policy to educate and train Cypriot businessmen on issues relating to the smooth conduct of international trade.

The ICC has prepared a model form of international commercial agency contract and distributorship contract to assist business people engaged in international trade. The model form of international commercial agency contract was prepared specifically to cover only international agency agreements with self-employed commercial agents acting for the sale of goods.

The model form of a distributorship contract is intended to apply only to international agreements where distributors act as buyers or re-sellers and as importers in their own country. The set of uniform contractual rules devised by the ICC seeks to strike a balance by protecting the interests of both exporters and importers. At the same time, it attempts to provide flexibility by allowing

the insertion of a choice of law clause. The ICC model form of contracts may offer useful guidance if adopted to meet the parties' specific requirements and the particular circumstances.

General Business Climate

As noted above, Cyprus has an open, free-market, economy. It is service-based with some light manufacturing. According to the latest IMF figures, Cyprus's *per-capita* GDP at purchasing power parity (PPP) was \$28,256, placing it thirtieth in the world. The United Nations Human Development Index for 2010 ranks Cyprus thirty-fifth in the world as regards quality of life.

The government's economic policy is aimed at promoting and maintaining favorable investment conditions and supporting private initiatives. Foreign participation in the economy has been officially encouraged and liberalized for some time. Administrative procedures have been simplified, and in all but a few strategic industries such as banking there are no limits on foreign investment. This has led to a growing awareness among foreign corporations and individuals of the particular advantages of using Cyprus as a business base for both inward and outward investment. In recent years, the inflow of approved foreign investment has increased considerably.

Cyprus has 24 bilateral treaties for the encouragement and reciprocal protection of investments and more are under negotiation. The purpose of the treaties is to create and maintain favorable conditions for investments made by nationals of one treaty state in the other treaty state for their mutual benefit on a long-term basis, to guarantee the protection of such investments (including the repatriation of profits) and to establish procedures for settling any disputes that may arise. Cyprus is a signatory to the convention which in 1988 established the Multilateral Investment Guarantee Agency, a member of the World Bank Group.

Import Regime, Customs and Duties

As an EU member, Cyprus is a member of the European Customs Union and applies the Community Customs Code. The EU and the neighboring Middle Eastern countries absorb the majority of Cyprus's exports.

Cyprus imports large quantities of durable consumer goods, capital equipment and raw materials, mainly from the European Union, and oil from the neighboring Middle East countries in order to satisfy its growing domestic market and industrial needs.

Exchange Control

Following the abolition of exchange controls on 1 May 2004, both residents and non-residents of Cyprus, whether individuals or corporate bodies, may hold and manage assets and liabilities in any currency and in any country, including freely convertible and transferable balances with banks on the island. There is

no distinction between nationals of Cyprus, nationals of other EU member states or third-country nationals.

Tax Regime

In General

The Director of Inland Revenue, who also is the Commissioner of Income Tax and is responsible for tax policy and tax collection, administers the tax system in Cyprus.

Cyprus has a modern tax system which is among the world's most business-friendly. It is fully compliant with EU and OECD best practice and Cyprus is on the OECD's "white list" of jurisdictions complying with the global standard for tax cooperation and exchange of information.

Cyprus residents are taxed on the basis of worldwide income, irrespective of whether it is remitted to Cyprus. The tax year is the calendar year. An individual is resident in Cyprus if he is physically present for more than 183 days in the tax year. For companies, the test for residence is the locus of management and control. A company is regarded as resident in Cyprus if it is managed and controlled in Cyprus. Mere registration or incorporation in Cyprus may not be enough to render a company liable to tax in Cyprus.

Non-resident individuals and companies are subject to tax on income accruing or arising from sources in Cyprus. There is a comprehensive participation exemption and a wide network of double tax treaties offering attractive tax planning opportunities. Combined with one of the lowest corporate tax rates in the EU and low rates for individuals, these make the Cyprus tax regime one of the most attractive in the EU.

Value Added Tax

The value-added tax (VAT) registration threshold is €15,600 *per annum*. Cyprus's standard rate of 19 per cent is among the lowest in the EU and reduced rates of five per cent and nine per cent apply to certain goods and services. Businesses that do not have trading activities within the EU need not register for VAT but, if they do not, they will be unable to recover input tax.

Formation of Agency Relationship

Creation of Contract

A contract of agency may be created by:

- Express appointment;
- Implication of law from the conduct or situation of parties or from the necessity of the case; or
- Subsequent ratification by the principal.

The actual relationship of the parties is determined by all the circumstances of each case and not merely from the use of the word 'agent' or 'agency' in an agreement. The relationship of principal and agent can only be established by the consent of both parties. An agency relationship usually arises by way of an agreement. However, this need not be in writing.

Capacity

Section 143 of the Contract Law provides that any person who has capacity to contract may appoint an agent. Section 11 provides that any person of sound mind whose capacity to contract is not restricted by reason of any other law has capacity to contract. The law applicable in England concerning contracts concluded with minors is applicable in Cyprus in contracts concluded with any person under the age of 18.

Under the Companies Law, Cap. 113 (“the Companies Law”), which closely resembles the United Kingdom Companies Act 1948, a company registered in Cyprus has capacity to enter into any contract or to do any act provided for in its memorandum of association.

Agent's Rights and Duties

Under section 171 of the Contract Law, it is an agent's duty to conduct the business of his principal in accordance with the directions given by the principal. If the agent encounters difficulties, he is obliged to communicate with the principal and seek to obtain his instruction.⁵ In the absence of any such directions, the agent is bound to conduct the business according to the prevailing trading customs of the particular business at the place where the agent conducts such business.

If the agent does not comply with these requirements and any loss or damage results, the agent is liable to compensate the principal. If any profit accrues, the agent must account to the principal for it.⁶

Section 172 places agents under a duty to conduct the business of the agency with the skill and diligence generally possessed by persons engaged in similar business.

An agent must exercise reasonable care in the execution of his duties. What is reasonable will depend on the circumstances of the given case and trade practice. If direct and foreseeable losses result from the agent's negligence, want of skill or misconduct, the agent is liable to compensate the principal. However, an agent is not liable if the damage is unforeseeable or too remote. The agent must submit proper accounts to the principal upon request.

Section 3 of the Commercial Agents (Amendment) Law 1994 (“the 1994 Law”), which amended section 4 of the Commercial Agents Law, sets out the

⁵ Contract Law, Cap 149, ss 172 and 174.

⁶ Contract Law, Cap 149, s 171.

minimum qualifications for becoming a commercial agent. The individual concerned:

- Should not have been convicted within the last 10 years from the date of the submission of the application of any offence under the Exchange Control Law, or the Customs and Consumption Taxes Law or any other offence which entails immorality or dishonesty;
- Should never have been declared bankrupt; and
- Should be a high school graduate.

Section 3 of the Regulation of Relations Law places a commercial agent under a general duty to act according to the law and in good faith *vis-à-vis* the principal and act in the best interests of the principal. Specifically, every commercial agent is under a duty to put every possible effort to negotiate or conclude the transactions entrusted to him and pass to the principal all necessary information he has acquired.

Under section 9 of the Commercial Agents Law, breach of any of the provisions of the law renders commercial agents liable to a fine of up to €519, up to six months' imprisonment or both.

Under section 182 of the Contract Law, the principal is obliged to indemnify the agent against the consequences of every legal act of the latter within the authority conferred on him. The principal must indemnify the agent under the consequences of any act performed under his instructions by the agent in good faith even if they harm third parties' rights. However, the principal is not liable as against his agent to indemnify him for any act entailing criminal liability even if performed under his command. Under section 185, the principal is under a duty to compensate the agent for damage or any loss incurred by the agent as a result of the principal's omission or lack of skill.

The principal has the right to repudiate the agency agreement if the agent, in the course of conducting the agency business, transacts for his own benefit and without the principal's consent, provided that it is obvious either that the agent dishonestly failed to disclose to the principal any material fact or that the transactions of the agent have damaged the principal. In such case, the principal may claim from the agent any profit the latter has acquired from such transactions.

Express or Implied Authority

The authority of an agent may be express or implied. If there is an express agreement between principal and agent, this agreement will regulate their relationship. The scope of the agreement is determined by applying the ordinary principles of the construction of contracts, including any proper implications from any express words used, trading customs and the course of business between the parties.⁷

⁷ Contract Law, Cap 149, s 146.

The agreement may be contractual, in which case the relations between principal and agent are regulated by the law of contract.

However, an agency may be implied where each party has acted in a way that would be reasonable for the other to infer from his conduct that they have consented to an agency relationship.

A contract entered into through an agent, and any obligations arising from the acts of the agent, may be enforced in the same manner and will have the same legal consequences as if the contract had been entered into and the acts done by the principal in person.⁸

An agent having authority to do an act has authority to do every lawful thing that is necessary to complete such an act. An agent having authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business. In an emergency, an agent has authority to do whatever is necessary to protect his principal from any loss.⁹

If an agent appoints and delegates the execution of acts and duties to a sub-agent, without express or implied authority to do so, the agent is liable for the sub-agent's acts both to the principal and to third parties.

The principal is not represented by the sub-agent nor is he responsible for the acts of the sub-agent, nor is the sub-agent accountable or liable to the principal. Where an agent has express or implied authority to appoint a person to act for the principal in the business of the agency, such a person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him. So long as the agent exercises the diligence of a man of ordinary prudence in selecting a sub-agent, the agent is not responsible to the principal for the acts or negligence of the selected sub-agent.¹⁰

Section 14 of the Regulation of Relations Law provides that the parties to a commercial agency agreement must conclude and sign a written contract which will determine the terms of the commercial agency agreement and any other terms which are to be agreed on subsequently.

Section 15 provides that where the parties to a commercial agency agreement of a defined duration continue to assume obligations after its expiry, the agreement is transformed into a commercial agency agreement of indefinite duration.

Mandatory, Prohibited, or Reserved Activities or Purposes

Section 156 of the Contract Law provides that where one person acts on behalf of another without that person's knowledge or authority, the latter may elect to

8 Contract Law, Cap 149, s 186.

9 Contract Law, Cap 149, ss 148–149.

10 Contract Law, Cap 149, ss 153–155.

ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed with his authority.

Ratification may be express or may be implied by the conduct of the person on whose behalf the acts are done, but there can be no valid ratification by a person whose knowledge of the facts of the case is materially defective.¹¹

An authorized act done by one person on behalf of another which, if done with authority, would have the effect of subjecting a third person to damage, or of terminating any right or interest of a third person, cannot by ratification be made to have such an effect.

Operational Aspects

Actual (Express) or Implied Authority

An agent who is appointed by a contract must act in accordance with the terms of that contract and may not exceed his authority. The authority of an agent may be actual (express or implied) or apparent. Actual authority is the authority which the principal has given the agent wholly or in part by means of words or writing (express), or is regarded by the law as having been given to him because of legal interpretation or the relationship and dealings of the two parties (implied).

An actual authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usage of the trade, or the course of the business and the parties. Where the express authority is not clear the court will interpret it.

Apparent authority involves the assumption that there is no authority at all. Under this doctrine, where a principal represents that another person has authority, he may be bound as against a third party by the acts of that person within the authority which that person appears to have; in such a case the principal may be bound although he had not given that person such authority or had limited that authority by instructions not made known to the third party. The authority, express or implied, of every agent is confined within the limits of the powers of his principals.

If an agent deals on his own account in the business of the agency without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate any transaction in respect of which any material fact has been dishonestly concealed from him by the agent, or where the dealings of the agent have been disadvantageous to him. The principal is also entitled to claim from the agent any benefit that may have resulted to the agent from the transaction.

¹¹ Contract Law, Cap 149, ss 157–158.

Contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person. If an agent exceeds his authority and the authorized and unauthorized elements can be separated from each other, then the authorized element will be binding upon the principal. The principal may choose to affirm or reject the unauthorized element.¹²

However, where the unauthorized act cannot be separated from the authorized act, the principal is not bound to recognize the transaction. Any notice given, or information obtained by the agent, in the course of the business transacted by him for the principal, will have the same legal consequences as between the principal and third parties.¹³

Unless it is a term of any contract, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor do they personally bind him. Such a term will be presumed to exist where:

- The contract is made by an agent for the sale or purchase of goods to a merchant who is residing abroad; or
- The agent does not disclose the name of his principal; or
- The principal, though disclosed, cannot be sued.¹⁴

Where an agent, acting without authority, assumes obligations on behalf of his principal towards third parties, the principal is bound by such acts or obligations if his words or his conduct had induced third parties to believe that such acts and obligations were within the agent's authority.

Similarly, misrepresentations made or frauds committed by an agent, acting in the course of his business for his principal, have the same effect on agreements made by the agent as if they had been made or committed by the principal. However, where the agent has made misrepresentations or committed fraud in matters which do not fall within his authority, the principal is not liable.¹⁵

Under the Regulation of Relations Law,¹⁶ the commercial agent must, during the exercise of his duties, act according to the law and in good faith towards the principal and safeguard the principal's interests. Every commercial agent is under a statutory duty to:

- Make proper efforts to negotiate and, where appropriate, conclude the transactions appointed to him; and
- Communicate to his principal all the relevant information available to him.

12 Contract Law, Cap 149, ss 186–187.

13 Contract Law, Cap 149, s 190.

14 Contract Law, Cap 149, s 190.

15 Contract Law, Cap 149, ss 197–198.

16 Law Number 51(I), 1992, s 3(1) and (2).

Disclosed and Undisclosed Agency

A 'disclosed principal' is a principal, whether identified or unidentified, whose existence as principal is known at the time of the transaction to the person dealing with the agent (namely, the third party). An 'undisclosed principal' is a principal whose existence as principal is not known at the time of the transaction to the person dealing with the agent.

In cases of undisclosed agency, the principal may usually bring an action as well as the agent, unless the contract includes some express or implied provision that precludes the principal from doing so. The doctrine of undisclosed agency has been severely criticized as being anomalous as it is in breach of the rules of privity (since it allows the bringing of an action by someone who was not a party to the contract) and is unfair to the contracting party who is not aware of the identity of the person with whom he is contracting. It is, however, often justified on the basis of commercial interests.

Commission on Sales

It is the duty of the principal to pay his agent any commission or other remuneration agreed on. Where there is an express term as to payment, this will determine the basis and amount of remuneration. There is an implied agreement to pay remuneration whenever a person is employed to act as agent in circumstances which raise the presumption that he would, to the knowledge of his principal, have expected to be paid.

In *Tsamkoshoglou Trading Company v Cytechno Limited*,¹⁷ it was held that an agent is entitled to his commission at the time he earns it. An agent has earned his commission when the agent has brought about the event on which commission is to be paid. The question whether the event has happened is a matter of interpretation of the mandate given to the agent.

The case of *Kokkinomilos v Kalisperas*¹⁸ decided the issue as to when the principal must pay an agreed commission to the agent, despite the fact that the sale was effected after the termination of the agency contract. The judgment is based on the construction of the agency agreement and does not create any new principles.

As established under common law, subject to any special term in the contract, the agent will not be entitled to commission unless he can show that the transaction which the third party entered into was due to his direct intervention. The agent is still entitled to his commission if the principal contracts at a lower price or on terms other than those the agent was authorized to offer, provided that the contract as finally concluded is merely a different way of carrying out the same contract the agent was employed to arrange.

¹⁷ *Tsamkoshoglou Trading Company v Cytechno Limited* (1974) 11 JSC 1124.

¹⁸ *Kokkinomilos v Kalisperas* (1967) 19 JSC 1999.

However, in such a case, the terms of the agency contract will be strictly scrutinized to ascertain whether the agent was the effective cause. In *Socrates Eliades v Pantelis Petrides*,¹⁹ it was held that contracts under which a principal is bound to pay commission for an introduction which does not result in a sale must be expressed in clear language.

An agent is entitled to remuneration for his services as agent, if either the express or implied terms of any agency contract so provide. Where the contract contains express terms, the agent cannot claim remuneration other than in accordance with those terms.

In the absence of express terms, the right to claim any remuneration and the amount and terms of payment are determined by such terms as may be implied. In deciding what terms are to be implied the court must consider:

- All the circumstances of the case;
- The nature and duration of the services;
- The express terms of the contract; and
- The customs and usage of the particular trade.²⁰

In the absence of any factors to the contrary, a term will be implied to hold that the agent is entitled to reasonable remuneration. These principles were applied in the following cases:

- *JF Aho Et Fils Trading Under the Style Societe BEPIN and Another v Photos Photiades & Co*; and
- *Ioannis Patsalides v Georghios Th. Takkas*.

In *JF Aho Et Fils Trading Under the Style Societe BEPIN and Another v Photos Photiades & Co*,²¹ the court held that the contract should be interpreted and applied as if the parties had made it, if made at all, and the court should not tailor the contract for the parties or reconstruct an agreement on equitable principles.

Where the agent is to be remunerated on the happening of an event, the question whether that event has occurred depends on the facts of the case and the express or implied terms of the agency contract. In *Ioannis Patsalides v Georghios Th. Takkas*,²² Artemis DJ said:

The obligation of the principal to pay remuneration (commission) to the agent exists only where it has been created by an express or implied agreement and such obligation arises mainly where the agent has earned it.

An agent is entitled, from the sums received on account of the principal, to retain any remuneration due to him for acting as agent, as well as advances he

19 *Socrates Eliades v Pantelis Petrides* (1972) 1 CLR 5.

20 *Read v Rann*, 1830, 10 B&C 438.

21 Civil Appeal Number 4704-1968.

22 *Ioannis Patsalides v Georghios Th Takkas*, 1974.

has made or expenses incurred by him in conducting the agency business. Subject to these deductions, the agent must pay to his principal all sums received on account.²³

As previously stated, when there is an express contract providing for the remuneration of the agent, the amount of remuneration and conditions under which it becomes payable must be ascertained from the terms of the contract. In the absence of any special contract (which includes a contract arising by implication from custom or usage), payment for the performance of any act is not due to the agent until the completion of the act.

However, an agent may hold back moneys received by him on account of goods sold, even though the whole of the goods consigned to him for sale may not have been sold, or the sale may not be actually complete. Further, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal until the amounts due to him for commission, disbursements and services have been paid or accounted for.²⁴

If services are rendered by the agent not pursuant to a contract, but the principal with full knowledge freely accepted them, the courts may award a reasonable sum to the agent as remuneration on a *quantum meruit* basis.²⁵

If an agent is guilty of misconduct in the business of the agency, he is not entitled to any remuneration with respect to delinquent business. In *Socrates Eliades v Pantelis Petrides*, the court stated that:

A principal is entitled to have an honest agent and it is only the honest agent who is entitled to any commission; if an agent directly or indirectly colludes with the other side and so acts in opposition to the interest of his principal, he is not entitled to any commission.

Part III of the Regulation of Relations Law reflects the above principles and provides that, in the absence of an agreement between the contracting parties in relation to the amount of the remuneration, the commercial agent is entitled to a remuneration according to the trade customs which prevail in the place where he carries on his business. In the absence of such trade customs, the commercial agent is entitled to a reasonable remuneration, taking into consideration all the material facts of the commercial transaction.²⁶

According to the Regulation of Relations Law, every part of the remuneration that fluctuates according to the number and the value of the transactions will be considered as constituting commission. The remuneration may be in the form of commission or fixed amount or both.

In cases of remuneration in the form of commission, the Regulation of Relations Law sets out the circumstances in which the commercial agent is entitled to a

23 Contract Law, Cap 149, ss 177–178.

24 Contract Law, Cap 149, ss 179–181.

25 *Tsamkoshoglou Trading Company v Cytechno Limited* (1974) 11 JSC 1124.

26 Law 51(I) of 1992, s 5.

commission in respect of transactions contracted during the commercial agency agreement and those contracted after expiration of the commercial agency agreement. An agent is entitled to commission during the agreement where:

- The transaction was secured by the mediation of the commercial agent;
- The transaction was contracted with a third party which the commercial agent had secured earlier as a client for transactions of a similar kind; or
- The agent was appointed to cover a particular geographical area and/or particular group of people, and the transaction was contracted within the same geographical area, or with a person belonging to the specified group even if, for the transaction, negotiations were carried out by another person than the commercial agent or a different agreement was contracted by the commercial agent.

An agent is entitled to commission after expiration of the agreement:

- If the transaction is mainly due to the activity he developed himself during the duration of the agreement; or
- If the order of the third party came to the commercial agent or the principal before the expiration of the commercial agency agreement.

In all cases, the test is whether, as a matter of construction of the agency contract, the parties intended that the agent was entitled to be paid commission after termination. The older authorities held that there must be clear and unequivocal words to entitle the agent to such commission, but this has been doubted; it seems that the normal rules of the implication of terms into a contract must be applied. Commission may be shared between the previous and the present commercial agent, if it is just and right in the circumstances.

According to section 11 of the Regulation of Relations Law, a right to commission arises as long as one of the following requirements is met:

- The principal executed the act;
- The principal ought to have executed the act or the agreement which was contracted with the third party; or
- The third party executed the act.

The right to commission is created, at the latest, when the third party executes his part of the transaction or the part he should have executed if the principal had executed his part of the act. The commission is payable on the last day of the month following the three-month period during which the relevant right arose. The agent loses his right to commission if:

- It is proved that the agreement between the third party and the principal will not be executed; and
- The non-execution is not due to the principal's fault.

Where the agent's right to commission is lost, he must return any commission he has already received. In estimating the amount of commission due, the principal must provide the commercial agent with an account of outstanding commissions by the last day of the month following the three-month period during which the relevant commissions arose.

This account should contain all the relevant data on the basis of which the amount of the commissions has been calculated. Further, the commercial agent is entitled to demand that all information be supplied to him and particularly an extract of the books which are at the disposal of the principal and which he needs to verify the amount of the commissions owed.²⁷

The Regulation of Relations Law does not permit the parties to deviate from the statutory provisions relating to commission to the detriment of the commercial agent.

Reimbursement of Agent's Expenses

Every agent has a right against his principal to be reimbursed for all expenses and to be indemnified against all losses and liabilities incurred by him in the execution of his authority. Where the agent is sued for money due to his principal, he has a right to set off the amount of any such expenses, losses or liabilities unless the money due to the principal is money which was deposited with the agent for a specific purpose which has failed, or is the balance of money so deposited which remains after such purpose has been fulfilled.

The Contract Law makes provision for an agent to retain, out of any sums received on account of the principal, all moneys due to him with respect to advances made, expenses properly incurred and any remuneration due to him for acting as agent in conducting the business of the agency. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.²⁸

Where the agency agreement is contractual, in the absence of an express agreement to reimburse and indemnify, such a term may be implied, unless it is explicitly excluded.

No agent is entitled to reimbursement of expenses incurred by him, or to indemnity against losses or liabilities:

- With respect to any unauthorized act or transaction not ratified by the principal;
- Resulting from his own negligence, default, insolvency or breach of duty; or
- With respect to any act or transaction which is obviously, or to his knowledge, unlawful.

²⁷ Law Number 51(I) of 1992, s 13.

²⁸ Contract Law, Cap 149, ss 177–178.

It should be borne in mind that the right to reimbursement of expenses would not usually arise because any expenses are included in the agent's remuneration.

Agent's Accounting Duties

An agent is bound to render proper accounts to his principal on demand.²⁹ If an agent fails to keep proper accounts or fails to pay his principal money or receives a secret profit or bribe, he is liable to his principal in an action to account for profits.

In such an action, the agent will be allowed to deduct all reasonable expenses incurred on his principal's behalf, unless such deduction is contrary to the terms of the agency agreement.

An agent will usually be held to be bound by his own accounts; thus, if they show that he has credited his principal with money received, the agent will be presumed to have received that money and will be liable for it to his principal. However, the agent will not be liable if the account shows that the money has not, in fact, been received or if the principal's accounts show that the agent has not received the money.

If an account is agreed, the principal can sue on an account stated. This may be a mere acknowledgment of a debt, in which case the agent may show that no such debt in fact existed or that there is an account containing debts on both sides in which the parties have agreed that the debts of one should be set against the debts of the other and only the balance paid. It is the duty of every agent to:

- Keep the money and property of his principal separate from his own and from that of other persons;
- Maintain at all times proper accounts of all his dealings and transactions in the course of his agency; and
- Produce for inspection, to the principal or to a proper person appointed by the principal, all books and documents in his hands relating to the principal's affairs.

Every agent is under an obligation to keep an accurate account of all transactions entered into on his principal's behalf and must be ready at all times to produce it to his principal. If he fails to keep and preserve correct accounts, there is a presumption against him.

The relevant provisions of the Regulation of Relations Law set out under the sub-heading "Commission of Sales" are applicable to this section and must be referred to.

²⁹ Contract Law, Cap 149, s 173.

Sales Quotas

There is no law in Cyprus regulating sales quotas, but the parties may agree such a provision. It is common for the principal to quote a minimum sales volume which would impose an obligation on the agent to cover at least the specified quotas. In any agreement there will usually be a term (express or implied) that the agent will take whatever steps are necessary to promote, advertise and market the product.

Responsibility for the expenses incurred in doing so is determined by agreement between the parties, who are also obliged to ensure the advertising material used in promoting the product and the description given to the goods comply with local standards and laws. Any such agreement is subject to national competition law.

Where there is no express agreement to reimburse and indemnify, such a term may be implied, unless this is explicitly excluded. Thus, there is no difficulty in such cases in holding that the principal is liable to reimburse and indemnify the agent for all payments made and liabilities incurred within the agent's express or implied authority.

Failure to Exploit Agency and Indemnity

The right to recover any losses arising from either party's failure to exploit the agency will depend on the circumstances of the case. An agent's failure to exploit an agency may entitle the principal to terminate the agency agreement under the general principles of contract law, and the principal may be able to claim damages for any loss suffered.

Termination

Fixed or Indefinite Term, Renewal of Term and Breaches

Section 161 of Cap 149 provides that an agency is terminated by any of the following:

- The principal revoking his authority;
- The agent renouncing the business of the agency;
- The business of the agency being completed;
- Either the principal or agent dying or becoming of unsound mind; or
- The principal being adjudicated bankrupt or insolvent under the provisions of any law relating to bankruptcy or insolvency.

Bowstead on Agency sets out the following circumstances in which the actual authority of an agent is revoked; they are often cited by courts in Cyprus:

- By agreement between the parties;

- If the agency is for a limited period, by the expiration of that period or, in any case, after a certain time has elapsed which is reasonable in all the circumstances;
- By the occurrence of an event, on the occurrence of which it is agreed between the principal and the agent that the authority shall determine or on the occurrence of which the agent should reasonably infer that the principal does not or would not wish the authority to continue;
- By the destruction of the subject matter of the agency; or
- By the happening of any event rendering the agency or its objects unlawful or impossible or otherwise frustrating the agency or its objects.

Section 162 of the Contract Law provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Subject to this provision, the principal may revoke the agent's authority any time before the authority has been exercised so as to bind the principal. If the agent's authority was partly exercised, the principal cannot revoke the agent's authority concerning acts and obligations arising from acts already undertaken by the agent.

The Contract Law provides that where there is an express or implied contract that the agency should continue for any period of time, the parties must compensate each other (as the case may be) for any premature revocation or renunciation of the agency (which may be express or implied by the conduct of the principal or agent), without sufficient cause.

The parties are obliged to give each other reasonable notice of such revocation or renunciation and unless they do so any resulting damage must be made good to the one by the other.³⁰ The termination of the agent's authority does not take effect until it becomes known to him and until it becomes known to third parties. When an agent's authority is terminated, it also brings about the termination of authority of all sub-agents appointed by him.

If the agency is terminated because of the principal's death or unsoundness of mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps to protect and preserve the interests entrusted to him.

Part IV of the Regulation of Relations Law regulates the execution and expiration of commercial agency agreements. It imposes an obligation on both parties to contract and sign a written agreement which determines the terms of the commercial agency agreement and any other subsequent terms which are to be agreed.

³⁰ *Kazinos & Co v Letraset (Export)*, 1982.

It is important to note that the Regulation of Relations Law will govern commercial agency agreements which were not in writing and which were agreed before the Regulation of Relations Law came into force.

The following will determine whether the contract between principal and agent will fall within the ambit of the Regulation of Relations Law:

- The Contract Law and the principles of common law will apply to an agreement made in writing prior to July 1992;
- All of the provisions of the Regulation of Relations Law will apply to an agreement made prior to July 1992 but not in writing; and
- The Regulation of Relations Law will apply to a written agreement made after 1992.

Where the parties continue to implement a fixed-term commercial agency agreement after its expiration, this is considered as becoming a commercial agency agreement of an indefinite duration.

If a commercial agency agreement is for an indefinite period, either party may terminate it on account of the failure of the other party to perform all or any of its obligations, by giving written notice. The period of this notice must be the same for both parties and is specified in the Regulation of Relations Law as being one month for the first year of the agreement, two months for the second year, three months for the third year, four months for the fourth year, five months for the fifth year and six months for the sixth and subsequent years.

When calculating the above period of notice for termination, any previous fixed term is also taken into account. It is not possible for the parties to agree to a shorter period for notice of termination, but they can agree to longer periods provided the notice to be given by the principal is not shorter than that to be given by the commercial agent. Unless the parties have agreed differently, the notice period must expire at the end of a calendar month.

There have been no reported cases concerning the Regulation of Relations Law. However, because it incorporates verbatim the text of the 1986 EEC Directive, any interpretation given by the European Court of Justice may be relied on as useful guidance.

Where the Regulation of Relations Law is inapplicable (for example, because of its narrow definition section), the courts will apply the Contract Law and the principles of common law to determine what would constitute a 'reasonable period of notice'. In applying these principles a judge would, of course, exercise his discretion and much will depend on how he views the merits of the case as a whole.

The general principle that may be deduced from the authorities is that the question of length of notice depends on the facts existing at the date notice is given. A weighty factor to be considered is the expense incurred in establishing and running an agency.

In *Kazinos & Co v Letraset (Export) Ltd*,³¹ the District Court of Nicosia held that:

Primarily, the matter is governed by sections 165 and 166 of the Contract Law, Cap 149. Section 165 provides that the principal is bound to compensate the agent where there is an express or implied contract that the agency should be continued for any period of time and the agent's authority was previously revoked without sufficient cause. Section 166 provides that reasonable notice must be given of such revocation, otherwise the principal is liable to make good the damage suffered by the agent. It is to be noted that both provisions are modeled on sections 205 and 206 of the Indian Contract and Specific Relief Acts of 1872 respectively.

In the present situation, where the contract made no provision for termination, it was conceded that the agreement was terminable upon reasonable notice. For a discussion of the principles involved in the termination of contracts of indefinite duration, see *Staffordshire Area Health Authority v South Staffordshire Area Waterworks Co*,³² in which the authorities were reviewed.³³

The court took into account the fact that the agents had spent more than CYP 30,000 (approximately €52,000) on advertising, employed six extra salesmen and moved into new premises to cope with the work, as well as the fact that at the time notice was given, practically the whole of their business derived from the agency agreement. It went on to find that reasonable notice was nine months in the circumstances.

In *Panayides Ltd v Karatsi Ltd*, the court decided that for a five-year contract, the reasonable notice period was 10 months. In this case, the plaintiffs, who were producers of shoe polish and detergent, brought an action for a debt, and the defendants, who were the agents for distribution of these products, counterclaimed for breach of the agency agreement. The parties had had dealings since 1957 in their personal capacity, but in 1979 the defendants incorporated a limited company, as did the plaintiffs in 1983. The main issues were:

- Whether an exclusive agency agreement existed between the parties;
- Whether the plaintiffs had lawfully terminated the agreement; and
- The amount of compensation to which the defendants were entitled if termination of the contract was found.

In 1987, the parties entered into an oral arrangement under which the defendants would pay each invoice within four to six weeks. The relations between the parties were excellent until 1987, when differences arose relating to the mode of payment that led to the termination of the agency agreement. The judge found that there was an exclusive agency agreement for distribution.

31 *Kazinos & Co v Letraset (Export) Ltd* (1985), 2 JSC, p 443.

32 *Staffordshire Area Health Authority v South Staffordshire Area Waterworks Co* (1978) 3 All ER 769.

33 For a fuller exposition of the law, see *Halsbury's Laws of England* (3d ed) vol 8, para 267 at p 156.

Termination was held to have taken place on 7 December 1987 when the plaintiff sent two letters to the defendants and made a public announcement that the relationship had ended. The District Judge stated that the court had to decide whether:

- The termination was lawful, as alleged by the plaintiffs who argued that they were entitled to terminate due to the breach of agreement by the defendants regarding the mode of payment; or
- Whether the termination was unlawful, as claimed by the defendants.

The court applied the general principles of English contract law and the Cyprus Sale of Goods Law. On the basis of the evidence adduced, the judge found nothing which made the mode of payment a condition of the agreement between the parties and decided that the agreement was terminated illegally without reasonable notice which, in the court's opinion, should have been 10 months on the basis of a five-year contract.

Termination Indemnity

Subject to the Cyprus laws already discussed, every agent has a right to be indemnified by his principal against all losses and liabilities incurred by him in the execution of his authority.

In *Kazinos & Co v Letraset (Export) Ltd*, the plaintiffs, a general partnership registered in Cyprus, claimed more than CYP £50,000 (approximately €86,000) from the defendants, a London-based company, as damages for breach of an agency agreement. The plaintiffs carried on business mainly as commission agents acting as representatives of foreign manufacturers and the defendants were producers and exporters of graphic supplies. The court considered whether the agency agreement could be terminated and, if so, what was the appropriate notice in the circumstances.

The contract made no provision for termination, and the court concluded that the agreement was terminable on reasonable notice. The court emphasized that the question of length of notice depends on the facts existing at the date notice is given.

In reaching its decision on the appropriate length of notice the court attached considerable weight to the expense incurred by the plaintiffs in establishing and running the agency.

Taking this and other relevant factors into account, the court found that reasonable notice ought to have been nine months. The plaintiffs were entitled to damages on the basis of the amount they would have earned if reasonable notice had been given.

The pecuniary loss caused to the plaintiffs through the loss of the goodwill of a customer was considered to be too remote and therefore irrecoverable. In the same case, nine months before termination, the defendants stopped supplying the plaintiffs with their products. The plaintiffs' claim for damages estimated on

the plaintiffs' net annual earnings was not explicitly claimed, and any loss suffered was held not to be part of the general damages; moreover, the court wanted evidential proof of the loss so as to enable it to make a precise calculation. This part of the claim was dismissed.

In *Pipis & Another v Constantinidou & Another*,³⁴ the court held that reasonable notice must be given of the revocation or renunciation of authority, otherwise any damage caused to the principal or the agent, as the case may be, must be made good.

It was held that damage may be recovered if it flows naturally from the breach of the contract or if it is of a type that could reasonably be said to have been within the contemplation of the parties as likely to result if either party is in default.

In this case, the court assessed the damage suffered by the aggrieved party by using as a measure the market value of the property which was the subject of the agency agreement, at the date of the breach. The object of the award was to restore the plaintiffs to the position they would have been in had the contract been performed. Therefore, the damages to which the innocent party was entitled were calculated on the basis of the market value of the property on the date of the breach, less the contract price.

In *Scandia Company Ltd v Schneider Rundfundmerke GmbH & Co of the Federal Republic of Germany and Pambos Papadopoulos of Limassol*, 1984, the court took the view that the recognized measure of damages is the loss of profit which the plaintiffs would have earned during the period of the notice which they were entitled to receive from the manufacturers. The opinion of the court found support in the following extract from *Bowstead on Agency*:³⁵

Where the contract is terminated without giving sufficient notice the innocent party is entitled to damages as to the amount he would have earned if reasonable notice had been given (less expenses and amount earned in substitution).

The court decided that the plaintiffs were entitled, under the circumstances, to compensatory damages; namely, recovery of damages for loss of profit that the aggrieved party would have earned but for the breach of contract by the other contracting party. However, the court noted that this amounted to a claim for recovery of special damages, and it should have been specifically pleaded.

The plaintiffs in this case did not specifically plead this element of damages, but they instead claimed CYP £20,000 as expenses incurred for advertising and promotional purposes, for participation in exhibitions and for special display and demonstration arrangements. The court took the view that the measure of damages in the present case was not the expenditure incurred by the plaintiffs.

³⁴ *Pipis & Another v Constantinidou & Another* (1981).

³⁵ *Bowstead on Agency*, 13th Edition, p 20.

As stated by the court, before the plaintiffs could succeed in recovering their actual expenditure as damages, they must first show that such expenditure was wasted as a result of the breach and that it was reasonably in the contemplation of the parties that such expenditure would be wasted if the contract was broken. The plaintiffs did not satisfy the court of these two matters, but evidence for loss of profits was adduced by the plaintiffs and accepted by the court.

The court also considered the plaintiff's entitlement to exemplary damages and, in applying the case *Addis v Gramophone Co*,³⁶ it decided that exemplary damages are not recoverable in cases of breach of contract, regardless of the motive or the conduct of the party breaking the contract, or any malice, fraud or violence on his part.

In *Yiannis Panayides Ltd v Costa Karatsi Ltd (1993)*, the court again applied section 73(1) of the Contract Law and referred to *Hadley v Baxendale* and other authorities in determining the level of damages to be awarded on termination of an agency agreement. The criteria considered by the court included:

- The duration of the agreement;
- The volume of work involved; and
- Whether the agent had incurred expenses in accordance with the agreement in introducing the principal's product in the market.

These factors also are considered when deciding the reasonable notice period required for the termination of an agency agreement. Furthermore, it was confirmed that damages would be calculated for the period that the court deems to constitute a reasonable notice period, namely, the profits which the agent would have made during that period. The conclusion reached in all cases is dependent on the facts and circumstances of each case.

Under section 18 of the Regulation of Relations Law, the commercial agent is entitled to deductible damages if and to the extent that:

- He has introduced to the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- The payment of this indemnity is fair and equitable, having regard to all the circumstances and, in particular, the commissions lost by the commercial agent on the business transacted with such customers.

These circumstances include the application or otherwise of a restraint of trade clause. The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and, if the contract goes back less than five years, the indemnity is calculated on the average for the period in question.

³⁶ *Addis v Gramophone Co*, 1909, Ac 488.

The award of such damages does not prevent the commercial agent from claiming damages for loss suffered.

Furthermore, the Regulation of Relations Law states that the agent is entitled to compensation for the damages he suffers as a result of termination of his relations with the principal and, in particular, when the termination takes place in circumstances which have:

- Deprived the commercial agent of the commission which proper performance of the agency contract would have procured him while providing the principal with substantial benefits linked to the commercial agent's activities; and/or
- Prevented the commercial agent from amortizing the costs and expenses that he had incurred during the performance of the agency contract on the principal's advice.

It is important to note that the agent's right to claim indemnity and damages is lost if he does not notify the principal, within one year following termination, of his intention to pursue his claims. The Regulation of Relations Law does not allow the parties to contract out of these provisions to the detriment of the commercial agent. It also sets out the circumstances in which damages are not due:

- Where the principal terminates the commercial agency agreement due to the agent's fault, which would justify, according to the Law, an immediate termination;
- Where the commercial agent terminates the commercial agency agreement, unless the termination is due to the fault of the principal or is justified due to the age, physical fitness or infirmity of the agent, as a result of which it is not possible to reasonably request him to continue his activities; or
- Where, after an agreement with the principal, the commercial agent assigns to a third party the rights and obligations which he has undertaken by virtue of the commercial agency agreement.

Commission on Post-Termination Sales

In all cases, the test is whether, as a matter of construction of the agency contract, the parties intended that the agent should be entitled to commission after termination.

The older authorities support the view that the agent is entitled to commission only if the words used in the contract clearly and unequivocally provide for this. However, this view has frequently been questioned and it now seems that the normal rules as regards implying terms into a contract must be applied.

In *Sellers v London Counties Newspapers*,³⁷ it was held that the principal was obliged to account to the agent for commission earned before termination of the

³⁷ *Sellers v London Counties Newspapers*, 1951, 1 KB 784.

agreement that became payable only after termination. The intention to pay commission after termination can be more readily inferred in cases where the agent is an independent contractor rather than an employee.

A further indication is, perhaps, that the right to be paid may accrue until a considerable time after the right to receive payment has ceased. In such a case, it may be said that it is likely that the contract has been terminated at some point between these two events. A similar situation may arise where the commission is received over a long period, as in the case of a hire purchase contract.

Even if the contract provides for commission on repeat orders placed by customers introduced by the agent, there may still be no right to receive commission after termination. The parties may have intended to refer only to repeat orders taken while the agency subsisted. However, if the court finds that the parties did intend that commission should be paid on certain transactions regardless of whether the agency still existed, it will award damages or order an assessment of damages.

Section 9 of the Regulation of Relations Law provides that if an agency agreement falls within its scope, the commercial agent is entitled to receive commission for commercial transactions which were concluded after the termination of the agreement if:

- The transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency agreement and the transaction was entered into within a reasonable period from the expiration of the agreement; or
- The order of the third party was placed either with the commercial agent or with the principal prior to the expiration of the agency agreement.

Goodwill Payments

An agent has a right to be indemnified if the contract expires or is terminated for reasons other than his default. Such indemnity may be construed as compensation for the goodwill created by the agent which accrued to the principal after the end of the contract or as a compensation for the loss suffered by the agent (an example would be the commissions he would have earned had the contract lasted for a longer period, or the investments he would have amortized if the contract had not been terminated), as a consequence of the expiration or termination of the contract.

Goodwill is one of the criteria that the court takes into account when assessing the amount of damages on the expiration of the contract or on its termination for reasons other than the agent's default.

Return of Stock, Publicity Material, Accounts, Books and Other Documents

On termination of the agency, the principal is entitled to have delivered up to him all documents concerning his affairs that have been prepared by the agent.

In every case, it is necessary to decide whether the document in question came into existence for the purpose of the agency relationship or for some other purpose, for example, in pursuance of a duty to give professional advice. The Regulation of Relations Law and the Contract Law do not contain any specific provisions on this point.

Agent's Rights in Principal's Bankruptcy

The Contract Law provides that an agency may be terminated where the principal is declared bankrupt or insolvent under the provisions of any bankruptcy or insolvency law.

The question whether the authority of an agent is revoked by his bankruptcy depends on the nature and terms of his employment.³⁸ The agent will rank with all other unsecured creditors.

Principal's Property Held by Agent and Agent's Bankruptcy

No person may become a commercial agent if he has ever been declared bankrupt. However, an agent's bankruptcy will not necessarily end the relationship. This will depend on the agency agreement and the individual circumstances of the case.

The trustee in bankruptcy or receiver of the agent will not be entitled to property of the principal, subject to the doctrine of reputed ownership.

Intellectual Property

Domestic Law

Statutory legislation and the general principles of common law regulate intellectual property in Cyprus. The most important statutes are:

- The Patents Law 16(I) of 1998, as amended, together with the Patent Regulations of 1999 and 2013 (“the Patents Law”);
- The Trade Marks Law Cap 268, as amended, and the Regulations of 1951 to 2013 (“the Trade Marks Law”);
- The Partnerships and Trade Names Law, Cap 116, as amended;
- The Protection of Industrial Designs and Samples Law 4(I) of 2002, as amended; and
- The Rights of Intellectual Property and Related Rights Law of 1976 to 2012, as amended.

These are generally modeled on their English counterparts and are tailored to promote and provide sufficient protection to proprietors.

38 *Bowstead on Agency*, 14th Edition, for example, *re: Douglas exp. Showball*, 1872.

International Conventions

Cyprus is a party to a number of international conventions providing reciprocal arrangements to protect intellectual property rights. These conventions, and the laws ratifying them, are as follows:

- Paris Convention for the Protection of Industrial Property (Lisbon Act and Stockholm Act) (Law Number 63/65 and Law Number 66/83, respectively);
- Convention establishing the World Intellectual Property Organization (Law Number 36/84);
- Berne Convention for the Protection of Literary and Artistic Works (Paris Act 1971) (Law Number 86/79);
- Universal Copyright Convention (Law Number 151/90);
- Nairobi Treaty on the Protection of the Olympic Symbol;
- Geneva Trade Marks Law Treaty 1994 (Law Number 12(III)/96);
- Patent Cooperation Treaty, 1970 (Law Number 27(III)/97);
- European Patent Convention (Law Number 26(III)/97);
- The Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplications of Their Phonograms (Law Number 21(III)/92);
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (Law Number 16(III)/95);
- The European Convention relating to Questions on Copyright Law and Neighboring Rights in the Framework of Transfrontier Broadcasting by Satellite (Law Number 29(III)/95);
- The Rome Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organizations of 26 October 1996 (Law Number 14(III)/99);
- The Madrid Agreement concerning the International Registration of Marks of 14 April 1891, revised at Stockholm 14 July 1967 and as amended 28 September 1979 (Law Number 3(III)/2003); and
- The Protocol relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989 (Law Number 4(III)/2003).

Trade Marks and Service Marks

Registration

The Trade Marks Law governs the registration and protection of marks in relation to goods and services.³⁹ Goods and services are categorized into 34

³⁹ Cap 268, as amended by Law Numbers 63/62, 69/71 and 206/90 and by the Regulations of 1951–1992.

classes and 11 classes, respectively, in line with the ninth edition of the Nice Classification.

For a mark to be registrable and protected it must be original, not a copy of another existing mark, and distinctive. This means that it must not refer to the quality and the nature of goods or services.

Application for Registration

To register a mark a lawyer authorized to practice in Cyprus must file with the Registrar of Trade Marks on behalf of the applicant:

- A fully completed application containing all relevant details; and
- A form signed by the applicant authorizing the lawyer to file the application.

On receipt of the application forms, the Registrar allocates a filing date and a number to the mark and conducts a search to determine whether the mark is registrable. If the Registrar decides that the mark is not registrable (for example, because a confusingly similar mark has been registered prior to the applicant's application in respect of the same class of goods or services), the Registrar may either object to registration or impose conditions.

The applicant has the right to present his case and his arguments prior to the Registrar deciding on the application.

In the event of the Registrar not consenting to the registration, the applicant may apply for judicial review of the decision by the Supreme Court of Cyprus (in its revisional jurisdiction under article 146 of the Constitution).

Protection against Infringement

If a person infringes the registered mark of another person and continues to do so after the infringement has been drawn to his attention, an action can be brought to restrain infringement.

Duration of Registration and Protection

Trade marks and service marks are registered for an initial period of seven years, which may be renewed on application for 14 years periodically.

Assignment

Registered Marks. Under section 24 of the Trade Marks Law, a registered mark is assignable on transfer of a business either with the entire or the residual goodwill. A registered mark is assignable in respect of either all or some of the goods or services it covers.

Section 26 of the Trade Marks Law gives the registered proprietor of a mark the power to assign it and to give effectual receipts for any consideration for an assignment thereof.

Unregistered Marks. According to section 24(3) of the Trade Marks Law, an unregistered mark is assignable as a registered mark provided that, at the time of its assignment, the unregistered mark is used in the same business as the registered mark and is assigned at the same time and to the same person as the registered mark.

Licensing

Section 29 of the Trade Marks Law contains provisions for the registration of persons other than the proprietor as users of registered marks and provides that, where this is done, the mark is to be treated as still used only by the proprietor. As regards licensing of unregistered marks, this is permissible and places the mark in the same position as a registered mark.

Patents

Registration

The Patents Law provides for a Register of Patents to be maintained to record the names and addresses of the patentees, as well as any other information that is considered necessary by the Registrar for the identification of the owner of the patent.

To register a patent, an applicant or lawyer to practice law in Cyprus must file a full application using the prescribed form P9 with the Patent Registrar on behalf of the applicant.

Protection against Infringement

Once a patent has been registered and a certificate of registration is granted and published, any persons other than the patentee are expressly prohibited from manufacturing, selling, importing or otherwise commercially exploiting either the patented product or the product obtained by a patented process. Currently, the period of patent protection is 20 years from the date of filing the application, as long as the annual renewal fees (which are modest) are paid.

In the event of infringement the patentee may commence an action in court seeking an injunction, damages or both. The most important grounds on which any action for infringement of a patent may be defended or a patent may be invoked are the following:

- The patent is not for an invention within the meaning of the law;
- The invention was not novel;
- The invention was obvious;
- The invention is not capable of industrial application;
- The invention belongs to a category of excluded subject matter, such as methods of treating humans and animals;

- The claims of the complete specification are ambiguous;
- The complete specification is insufficiently explicit; and
- The application for the patent was not in order.

Assignment

Patent rights can be sold by the patentee to anyone who is willing to buy them.

Compulsory Licensing

Compulsory licensing constitutes a major advancement in the approach made by European law. An application for a compulsory license can now be filed with the Registrar after the expiration of four years from the date the patent was granted (or after a period determined by the Registrar).

When making its decision, the patent office must consider the need to work inventions as well as the need for the inventor to receive remuneration.

Supplementary Protection Certificate

The Patent Law provides for an application of a supplementary protection certificate for pharmaceutical products. The certificate confers the same rights as the basic patent.

The length of the period of protection offered by the certificate is calculated in relation to the period for which protection was lost due to the authorization process, but it cannot exceed five years.

Designs

Eligibility for applications for industrial design protection is available to:

- Individuals who are residents of, or have their usual residence in, Cyprus or in another EU member state; and
- Companies or other legal entities that have their actual industrial or commercial establishment in Cyprus or in another EU member state.

To register a design or sample, a lawyer licensed to practice in Cyprus must file with the Registrar on behalf of the applicant:

- A fully completed application (in Greek) containing all relevant details, including full name, nationality and address of the applicant;
- The specification of the article to which the design or sample is to be attached; and
- A written or photographic representation of the design or sample that can be produced.

As with Community Trade Marks, since 1 May 2004 it has been possible to file applications for the registration of Community designs directly with the Registrar of Industrial Designs in Cyprus, while all Community designs registered, protected or applied for before the date of accession will be automatically extended to Cyprus (Council Regulation 6/2002 on Community Designs, Commission Regulation 2245/2002 implementing Council Regulation 6/2002 and Commission Regulation 2246/2002 on the fees payable to the Office of Harmonization in the Internal Market (Trade Marks and Industrial Designs) in respect of Community Designs).

Protection

The protection of an industrial design or sample grants to its proprietor the exclusive right to use the design or sample, and prohibits others from using it without his consent. The Law itself defines the term "use" as including manufacture, offer, marketing, import and export and use or possession for these purposes of a product incorporating or applying the said design or sample. The above rights are not infringed by:

- Private acts done for non-commercial purposes;
- Acts done for experimental purposes; and
- Acts done to reproduce the design or sample for educational reasons.

The following are not entitled to protection under the Law:

- A design or sample that is contrary to public order or public morality;
- A product whose characteristics of appearance derive exclusively from its technical function; and
- A design or sample whose characteristics of appearance must necessarily be reproduced identically for interconnection with another product so that they will enable the latter to perform its function. However, a design or sample that enables the multiple assembly or connection of interchangeable products inside a modular system does not fall under this exclusion as long as it satisfies the criteria of novelty and individual character.

Duration of Registration and Protection

Registration and protection of designs lasts for five years from the original date of application. It may be extended for four further five-year periods up to a total of 25 years by paying the relevant fees. As in the case of patents, the renewal fees are modest.

Assignment

Any person registered as the proprietor of a registered design has the power to assign it and to give effectual receipts for any consideration in respect of such assignment.

Licensing

The registered proprietor of a registered design may grant licenses under the design and give effectual receipts for any consideration. Due to the lack of any special provisions as to the form of licenses of registered designs, the granting of licenses may be oral or in writing. Licenses may be registered.

Trade Names

Registration

Trade names may be registered in Cyprus under the provisions of the Partnerships and Trade Names Law, Cap 116. Registration of a trade name is made by sending to the Registrar of Companies, within one month of the date the business in Cyprus is commenced, an application containing the following particulars:

- The business name;
- The general nature of business;
- The principal place of business in Cyprus;
- The date of commencement of the business; and
- The name, residence and nationality of the applicant.

The Registrar may refuse to register a business name that is comparatively similar to an existing one or is considered to be misleading or confusing. After the name is entered into the Register, it is published in the *Official Gazette*.

Protection against Infringement

In the event of infringement of the business name by a third party, no statutory remedies are provided and the only remedy is an action for passing off under section 35 of the Civil Wrongs Law, Cap 148. The available remedies are damages, an injunction or both.

Duration of Registration and Protection

Once registered, a trade name remains on the Register until the trader files an application for removal. Section 57 of the Partnerships and Trade Names Law, Cap 116, provides that, where a firm, individual or corporation, has registered a trade name and ceases to carry on business, the Registrar must be informed within one month after the business has ceased to operate. The Registrar will then remove the trade name from the Register.

Assignment

Generally, the rights in a trade name pass with the goodwill of business as a whole and cannot be assigned.

Copyright

Copyrights in Cyprus are regulated by the Right of Intellectual Property Law, as amended ("the Intellectual Property Law"). Rights are recognized under the Intellectual Property Law for every protected object whose beneficiary, or, if there is more than one beneficiary, any one of them, is, at the time of the creation of the right, or, if it is a broadcast, the time of the transmission of the broadcast, a qualifying person, namely:

- A person who is a citizen of the Republic of Cyprus or who habitually resides there;
- A legal person, established in accordance with the laws of the Republic; or
- A citizen of another member state of the European Union.

Registration

There is no system of copyright registration in Cyprus. Copyright is conferred on works once created, as of right. Copyright law protects Cyprus nationals for their works which are published anywhere in the world, and foreign nationals for their works published in Cyprus.

Protection

The Right of Intellectual Property Law provides remedies for copyright infringement including damages, destruction or delivery of infringing copies and the equipment by which copies are produced, an account of profits and an injunction.

In addition, the court may order the offender to destroy any copies of the work in his possession or to deliver them to the copyright owner. It also establishes a number of criminal offenses, punishable by fines or imprisonment for up to four years.

Duration

The duration of copyright protection is:

- Scientific works, literary works including computer software, musical works, artistic works including photographs and an original database for a period of 70 years, commencing from the death of the author.
- Films, for a period of 70 years, commencing from the death of the last survivor of the following, irrespective of whether they have been appointed conventionally, or are considered by law as co-creators, namely, the producer, primary director, script writer, screenplay writer and composer of any music specially composed for the film.

The 2002 amendment of the Intellectual Property Law harmonizes domestic legislation with EU Copyright Directive 93/98, which itself harmonized the term of protection of copyright and certain related rights. At the same time, it

implements other EU directives on the legal protection of software, rental and lending rights, copyright, and rights related to copyright applicable to satellite broadcasting and cable retransmission and the legal protection of databases.

Competition Law

Section 6 of the Protection of Competition Law (Law 13(I) of 2008, prohibits the abuse of a relationship of economic dependence whether as a client, supplier, producer, agent, distributor or commercial co-operator, even when involving a specific type of product or services and not providing an equivalent alternative.

The abuse of exploitation could be the imposition of arbitrary terms in a transaction, the implementation of discretionary treatment, the termination of commercial relations by the transfer of enterprises in a way which affects competition adversely or a sudden and unreasonable termination of prolonged commercial relations.

Litigation Issues

Agent Able to Receive Process for Principal

Order 5, rule 8 of the Civil Procedure Rules provides that where a contract has been entered into in Cyprus by or through an agent residing or carrying on business in Cyprus on behalf of a principal residing or carrying on business outside Cyprus, a writ of summons in an action relating to or arising out of such a contract may, by leave of the court or a judge given before the determination of such agent's authority or of his business relations with the principal, be served on the agent. Notice of the order giving such leave, together with an office copy thereof and of the writ of summons, must immediately be sent by prepaid double-registered post letter to the defendant or defendants at their address out of the jurisdiction.

It is the agent's duty under section 189 of the Contracts Law and under common law to communicate relevant information to his principal, and he will be deemed to have done so: this principle is reflected in the provisions of Order 5, rule 8, above.

Agent's Authority to Initiate Proceedings on Behalf of Principal

An agent is entitled to initiate proceedings against third parties on behalf of the principal.⁴⁰ However, the usual practice is that such actions are brought by both the principal and the agent.

Where the principal is undisclosed, the agent may sue third parties in his own name, despite the fact that ultimately it is the principal that will be entitled to any damages or relief.

40 *Lavan v Walsh*, 1964, Ir. R 87; 99 ILTR; *Brandt v Morris*, 1917, 2 KB 784, 8.

Arbitration

Cyprus courts will usually give effect to any valid term in an agency agreement or in a written agreement between the principal and the third party to the effect that any dispute is to be referred to arbitration, and will stay any proceedings before them which are subject to the arbitration clause. English common law principles are applicable in this area of law.

The Cyprus Law on International Commercial Arbitration 1987, Law 101 of 1987 (“the ICA Law”) regulates international commercial arbitration. The ICA Law defines the words 'international arbitration' as arbitration between two parties who have their place of business in different states. The word 'commercial' is defined as referring to matters 'arising from relationships of a commercial nature' and so may be widely interpreted.

There is little, if any, case law on matters of international commercial arbitration in Cyprus. Common law principles are applicable and courts are likely to use English or Commonwealth cases for guidance and as reference.

Foreign Jurisdiction

It has been firmly established by case law that principles of private international law form part of the law of Cyprus, but only insofar as they form part of the common law of England. Therefore, although no cases concerning choice of law clauses have been reported, Cyprus courts are likely to follow their English counterparts and uphold choice of law clauses.

The courts have the power to restrain by injunction the institution or continuance of proceedings in a foreign court brought in breach of an arbitration or a jurisdiction clause in favor of Cyprus. However, this power is exercised with great caution.

Applicability of Foreign Law

Cyprus courts will usually uphold a choice of law clause. If no such clause is inserted, Cyprus law will normally be applied unless the circumstances indicate that another law is applicable.

However, it should be borne in mind that it has been specifically held by the Supreme Court of Cyprus that a party which argues that a foreign law is applicable to its case must provide expert evidence of that foreign law to the satisfaction of the court, failing which Cyprus law will be applied.

Product Liability

The Trade Description Law, Law 5 of 1987 (“Trade Description Law”), as amended, protects consumers from inaccurate or misleading trade descriptions. It prohibits any person carrying out a trade, business or profession from applying an inaccurate trade description to goods, or from supplying or offering

to supply goods to which an inaccurate trade description has been applied. The law extends to advertisements that are misleading or inaccurate.

Section 5 of the Trade Description Law prohibits the importation or supply within Cyprus of any goods which are not labeled or accompanied in an obvious and clear manner with an indication of the country of production or manufacture.

Section 14 of the Trade Description Law empowers the Minister of Trade, Industry and Tourism to make an order for the labeling of any goods or an order that certain goods must be accompanied by clear indication of certain information.

Section 16(1) of the Trade Description Law provides for a fine not exceeding €1,700, imprisonment not exceeding 12 months, or both, for any person convicted of breaching or failing to comply with its provisions. In the event of a second or subsequent conviction, the maximum penalty is increased to a fine of up to €2,562, a term of imprisonment not exceeding two years, or both.

It is a defense to a criminal prosecution if the accused proves that the committal of the offence was due to:

- Mistake;
- Information supplied to him;
- An act or omission of another person; or
- A cause beyond his control.

The Sale of Goods Law 1994, as amended, aligns Cyprus law with international norms and perceptions of consumer protection as regards the sale of goods. It offers protection to consumers buying pre-packed goods from self-service shops where those goods subsequently prove to be defective. In such cases the buyer does not lose his right to reject the products since he did not have the chance to inspect them before they came into his possession.

The Safety of Consumer Products Law of 1994, which came into force on 11 January 1995, introduces and implements European standards for the safety of products. It provides that buyers must be informed of any dangers resulting from incorrect use of the products, outlines the legal responsibility of manufacturers, importers and suppliers for bodily harm or death of a consumer resulting from the use of their products, and provides for the banning or confiscation of products which do not meet safety standards. It gives extensive powers to the Consumer Protection Authority to conduct searches, and to confiscate or ban products.

The Defective Products (Civil Liability) Law, Law 10(I) of 1995 (“the Defective Products Law”), which came into force on 1 January 1997, renders the producer or manufacturer of defective goods strictly liable for any damage caused by such products and aligns Cyprus legislation in this area with European legislation, as it implements all European Directives on the area of

product liability, including the 85/574/EEC Directive. Its main provisions are as follows:

- Wherever a defect in a product causes personal injury or damage, the victim or his dependants may invoke the rules of strict liability to sue under the Defective Products Law. Liability is not limited to manufacturers alone. The Defective Products Law imposes liability under certain circumstances on the importers of products into the Republic of Cyprus and on the suppliers unless they comply within a reasonable time with a request to name the person supplying them with the product;
- Defect is defined in section 4 of the Defective Products Law, which provides that there is a defect in a product if the safety of that product is not such as the consumer is entitled to expect. Of course, the circumstances under which the product is used, possessed, and consumed must always be taken into account. The burden of proving that there was a defect in the product and that the relevant injury or damage was wholly or partly caused by that defect lies on the plaintiff;
- Section 12 of the Defective Products Law provides several defenses to strict liability. For example, the defendant will not be liable if he can show that the state of scientific and technical knowledge at the time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control (the development risks defense); and
- Section 11 of the Defective Products Law provides that the action must be brought within three years of the date on which the plaintiff became aware or could reasonably have become aware of the damage or injury. Moreover, no action may be brought in any circumstances more than 10 years after the date on which the defendant supplied the relevant product to another.

The Safety of Consumer Products Law, Law 41(I) of 2004, was enacted to implement Directive 2001/95/EC on the general safety of products. It has since been amended in 2009 and 2010. The duties of producers, set out in section 7, include providing consumers with information that will allow them to evaluate the dangers which the product may pose during its usual and reasonably foreseeable use in the event that such dangers are not immediately apparent.

Section 8 requires distributors of products to act diligently to conform to the safety standards imposed and in particular not to supply products which they know, or ought to know on the basis of information which they have in their possession, fall short of the prescribed safety standards. Distributors are also required to keep up with information relating to the safety of the products in the market.

Under section 10, both distributors and producers of products covered by the law must cooperate with the appropriate authority and report any dangers which the products may pose.

The Law Regulating Consumer Protection in relation to Certain Aspects of the Sale of Consumer Products and Relevant Guarantees, Law 7(I) of 2000 (“the Consumer Protection Law”), was enacted to give consumers effective protection when they enter into a contract for the purchase of consumer products, by obliging the seller to supply goods which are in accordance with the terms of the contract.

If the goods supplied to the consumer are not in accordance with the description given by the seller, not suitable for any specific use which the consumer requires them for and which was notified by the consumer to the seller at the time of the contract, not suitable for the use for which such goods are usually intended, or do not have the quality which may be reasonably expected by the consumer, the consumer is entitled to repair or replacement without charge, to an appropriate reduction in the product's price or to a repudiation of the contract as far as the product is concerned.

The Consumer Protection Law provides that a guarantee offered by any person to a consumer binds that person legally. The guarantee must explain, in simple and understandable language, its contents and the substantial elements required for its effectiveness. It must also include a clear statement that the consumer has legal rights under the Consumer Protection Law and that such rights are not affected by the guarantee.

If the Consumer Protection Authority of the Ministry of Commerce, Industry and Tourism considers that there has been a violation of any of the provisions of the Consumer Protection Law, it may apply to the court for the issue of a restrictive or mandatory order, including an interim order.

Under section 15 of the Consumer Protection Law, the provisions of the Contract Law and the Sale of Goods Law will continue to apply to contracts for the sale of consumer products unless they conflict with or are incompatible with the express provisions of the Consumer Protection Law.

The Inscription of the Sale Price and the Unit Price of Products Law, Law 112(I) of 2000, establishes provisions for providing consumers with information and enabling them to compare prices of products. Any trader who sells or displays products for sale to consumers is obliged to ensure that customers are informed of the selling price and the price per unit. These must be distinctly and legibly inscribed on the products themselves, on their packaging or on the shelves, and displayed in such a way as not to confuse the consumer.

A trader who fails to comply with these requirements will be subject on conviction to imprisonment not exceeding six months, a fine not exceeding €1,732 or both. In the event of a second or subsequent conviction, the trader is subject to imprisonment not exceeding one year, a fine not exceeding €3,463 or both.

Distributorship

There are no statutory provisions governing distributorship relationships and, often, the legislation does not make any distinction between agent and distributor. Therefore, the principles discussed in the previous part of this chapter as regards agents would *prima facie* apply to distributors.

