COUNTRY REPORT
RUSSIA

Commercial Agency

prepared by

VLADIMIR LOBASTOV
ELENA MOROZOVA, DANA BALAKHMETOVA
Egorov, Puginsky, Afanasiev and Partners Law Offices
22-24 Nevsky prospect, Suite 132
196181 St. Petersburg
(RUSSIA)

Updated at: April 2013

1. LEGAL SOURCES.

What are the rules governing commercial agency agreements (if any) in your country?

Agency is regulated by the Chapter 52 to Title IV to Part 2 of the Civil Code of the Russian Federation (hereinafter the "CCRF"), which includes general rules on agency.

In addition the rules, stipulated by the Chapter 49 or the Chapter 51 of the CCRF, are applicable to legal relations under the agency contract, depending on whether the agent acts under the terms of this contract in the name of the principal or in his own name, unless these rules contradict the provisions of the Chapter 52 of the CCRF or the essence of the agency contract.

The one specific additional provision in legislation on the commercial agency is fixed by Article 184 of the CCRF.

There are also specific rules on special categories of commercial agents, established in special statutes.

2. CONCEPT OF COMMERCIAL AGENT.

2.1 Distinctive criteria with respect to other intermediaries (occasional intermediaries).

Does the law of your country on agency contracts also apply to occasional intermediaries?

Which are the most important criteria (provided by the law of your country, or by jurisprudence) distinguishing commercial agents from occasional intermediaries?

Yes, the Russian law on agency contracts is also applicable to occasional intermediaries.

According to Article 1005 of the CCRF under an agency contract one party (the agent) is obliged to perform for remuneration legal and other acts on behalf of another party (the principal) in his own name or in the name of the principal.

It does not matter, whether the party of the agency contract undertakes to promote business on a continuing basis or not.

Thus the law of the Russian Federation on agency contracts applies as to commercial agents and occasional intermediaries.

The main criteria, allowing to distinguish the agent from the other one, are the type of acts which the person has right to perform and in whose name it acts.

Below is the comparison chart of different types of persons acting on behalf of the third party according to the Russian law.

	Allowed acts	**In whose name**	**Contract**	**Periodicity**
Representative	Specified in power of attorney, in law or in act of the state body	In the name of the principal	No contract	No matter
Commercial agent	Legal and other acts	In the name of the principal	Commercial agency contract	Continuous
Agent	Legal and other acts	In the name of the principal or in his own name	Agency contract	No matter
Commissionaire	Settlement of deals	In his own name	Commission contract	No matter
Attorney	Legal acts	In the name of the principal	Mandate contract	Continuous

So the law of the Russian Federation on agency applies to all agents, which are particularly divided into commercial agents and occasional intermediaries.

2.2 Self-employed agents.

According to the law of your country, in what cases may a commercial agent be considered as an employee, subject to labour law?

Which are the most important criteria distinguishing the self-employed agent from the employee (e.g. fixed timetables, request for detailed information about clients..)?

If the IDI standard model is used, is there a risk (or a certainty) that the agent will be qualified as an employee?

A commercial agent may be considered as an employee under the following conditions:

- no agency contract between the commercial agent and the principal;

- employment function and position in the principal's enterprise in accordance to the employment position instruction;

- fix time-table of the working;

- proliferation of the staff handbook on the agent;

- work space on the territory of the principal's enterprise etc.

There is no legal presumption, that self-employed commercial agents are considered as employees.

If the IDI standard model is used, there is no risk, that the agent will be qualified as an employee.

2.3 Authority to conclude contracts on behalf of the principal.

Has a commercial agent appointed under the law of your country the power to conclude contracts on behalf of his principal or is a specific agreement (or contract clause) needed to that effect?

According to Article 184 of the CCRF a commercial agent is an entrepreneur/ commercial legal entity, constantly and independently representing businessmen (principals) in concluding agreements in the sphere of their business activities.

A commercial agent may perform on behalf of the principal only those legal and other acts, scope of which is specified in the commercial agency contract between principal and commercial agent or in the power of attorney in the absence of authorities in the agreement – (Art. 184 Sec. 3 of the CCRF).

If the agent concludes a contract on behalf of the principal without having the authority to do so, is there a risk that, under your legislation, the principal would be bound by such agreement? Does he have to expressly notify the third party within a certain delay?

According to Article 183 of the CCRF if the agent concludes contracts on behalf of the principal without having the authority to do so, the contract will bound the agent instead of the principal. The principal may approve further the concluded by the agent contract and become a party of it instead of the agent.

In case the agency contract stipulates just general authorities of the agent for making deals on behalf of the principal and the principal proves that the third person knew or should have known about the limitation of the agent's obligations, the principal shall have right in his relations with third persons to refer to the lack of requisite obligations by the agent (Art. 1005 Sec. 2 of the CCRF).

Is the agent entitled, under the law of your country, to receive on behalf of the principal claims from purchasers in respect of defects in the products sold to them?

If the agent acts as a commissionaire and concludes contracts with customers in his own name, than customers may provide to the agent their claims in respect of defects in the products sold to them, because the agent is the party of the contract concluded by him with the customer and is responsible for the execution of his contractual obligations.

If the agent concludes contracts with customers in the name of the principal, he is not entitled to receive on behalf of the principal claims from customers in respect of defects in the products sold to them, unless other is specified in the agency contract.

According to your legislation, what happens if the agent does not timely inform the principal of a claim by the customer. (e.g. will the agent be deemed responsible for possible damages caused by the delay)?

If the agent, acting in the name of the principal, is entitled to receive claims from customers, then he is obliged to notify the principal about these claims within a reasonable time, if a specific term is not set in the agency contract.

The agent, acting as a commissioner (in his own name), is not obliged to inform the principal of any claims by the customers unless other is provided in the agency contract. This is also confirmed by the case-law1.

[1] The Decision of Supreme Arbitrazh Court of the Russian Federation of 27.07.2010 No. BAC-7063/10 on the case No. A40-25428/09-113-212.

In case the agent does not perform or performs improper the specified obligation, the principal shall be entitled to recover damages from the agent, if he proves that they were caused him due to the delay of the agent in timely informing the principal of a claim by the customer.

2.4 Agents who also act as resellers.

Is it admissible to foresee, within a commercial agency contract, that the agent may also act as a reseller, where such activity is accessory with respect to the promotion of contracts for the principal?

Yes, it is admissible to foresee, within a commercial agency contract, that the agent may also act as a reseller.

According to Article 421 Section 2 of the CCRF the parties may enter into agreement whether provided for or not by a law or other legal acts.

Furthermore, according to Article 421 Section 3 of the CCRF the parties may enter into agreement which contains elements of various agreements provided for by a law or other legal acts (mixed agreement). The legislation of the Russian Federation does not exclude the construction of a contract as a mixed agreement on the basis of the agency contract and others. The mixed agreements shall be governed by the general contract provisions directly and by the provisions applicable to certain kind of contract by analogy (as of agency contract).

How is the accessory activity as reseller to be considered within the agency agreement (e.g. should also such activity be considered when calculating the goodwill indemnity)?

An accessory activity of the agent as reseller shall be considered under the mixed agreement depending on the elements of contracts, which includes the mixed agreement. For example, such accessory activity as reseller may be considered when determining the price of the contract, contractual liability of the parties etc.

Would Article 2.6 of the IDI principal-friendly model contract, as well as Article 2.7 of the IDI balanced model contract be consistent with your law?

Article 2.6 of the IDI principal-friendly model contract, as well as Article 2.7 of the IDI balanced model contract are consistent with the Russian law.

2.5 Sub-agents.

Is the commercial agent free to appoint sub-agents at his discretion, or does he have an obligation to inform (or request the consent of) the principal?

Are contractual clauses which limit the agent's freedom to engage sub-agents (such as clauses requiring the agent not to appoint sub-agents and to perform his activity personally, or clauses requiring previous approval by the principal, e.g. Article 7.1 of the balanced and principal-friendly models) valid?

As a general rule of Article 1009 of the CCRF an agent has the right to conclude a sub-agency contract with a third party in order to execute the agency contract unless otherwise stipulated by the agency contract.

This right may be limited by the contractual clauses, which requiring the agent not to appoint sub-agents or requiring previous approval of the sub-agency contract by the principal or requiring to inform the principal about sub-agency contract etc. Such contractual clauses are valid under Russian legislation.

Would a sub-agent have any rights tin respect of the principal of the agent? If the answer is yes, would clauses like Article 7.2 of the balanced

and principal-friendly models effectively exclude any responsibility of the principal towards the sub-agents (agents of this agent)?

The agent is always responsible to the principal for the actions of the sub-agent. Since the sub-agent and the principal are not directly bound with the contract, sub-agent does not have any rights with respect to the principal.

2.6 Requirements concerning the performance of the agent's activity.

Is there any condition required by the laws of your country for being allowed to perform the agency activity (e.g. citizenship, registration etc.)?

At the present time laws of the Russian Federation do not provide any special requirements for performance of the agent's activity in Russia.

Agent's activity may be carried out on the territory of the Russian Federation both by foreign and Russian companies.

Thus, for the performance of the agent's activity in Russia agents must meet the general requirements of the law of the state of their registration for the legal entities (for example, for their legal capacity) and the special requirements established by the law of the state of their registration for the relevant area of activity.

It should be noted that the agent's activity may be carried out in Russian Federation also by Russian and foreign citizens (registered as private entrepreneurs in accordance with the procedure established by law - for carrying out commercial agency activity), as well as by the branch and representative offices of foreign companies, where the latter may not carry out business activity and enter into deals in its own name.

General requirements for the legal capacity of the Russian companies:

1. Registration in accordance with the procedure established by law in the Unified state register of legal entities.

2. Full legal capacity of the company:

- no prohibitions / restrictions on participation in certain kinds of activity in the Company Charter;

- no legal prohibitions / restrictions connected with the performance by the company of certain types of activities that are not compatible with other types of business activities, including the agency.

In accordance with Russian laws business activity may be carried out only by commercial organizations (business companies (LLC, DLC, OJSC, CJSC), business partnerships (a general partnership, a limited partnership), production co-operatives) and state and municipal unitary enterprises. These organizations, except for the latest, may perform any business activity (i.e. possess full legal capacity), unless otherwise established by the Company Charter or laws and regulations. According to the laws of the Russian Federation at the current moment the investment funds, stock exchanges, credit organizations, insurance organizations are not entitled to perform agent's activity.

Consequences of the entering by the companies with limited legal capacity into deals those are beyond the limits of the legal capacity.

If at the conclusion of the deal the company goes beyond the limitations specified in its Company Charter, such deal may be recognized by the court as invalid, if it is proved, that counterparty knew or obviously should know about its illegality. If the company concludes a deal with the breach of the limits of its legal capacity, established by the law, then such a deal should be regarded as null and void, i.e. not involving any legal consequences for the parties of the deal.

It shall be noted, that to carry out several business activities on behalf of the principal obtaining of permits of state bodies, licenses or admissions of self-regulating organizations, etc. may be required from the agent. Thus, it is prohib-

ited for the agent to perform on behalf of the principal without the license those business activities, which require obtaining of such license[2].

It shall be noted also, that the law may establish mandatory requirements to the party of the contract. If a contract can be concluded only by the specified in the law party, such contract, concluded by the agent in his name on behalf of such party (principal), will be null and void[3].

3. FORMALITIES REGARDING THE CONTRACT AND ITS MODIFICATIONS.

3.1 Formalities required by law.

Is any formality (written form, notarisation, registration, etc.) required for the validity of an agency contract in your country? If so, what are the consequences of the non observance of the above formalities?

If written form is required by the law of your country, does it also apply to subsequent modifications agreed by the parties? For instance, what happens if the parties, during the life of the contract, orally agree to increase (or to decrease) the amount of the commission?

According to Article 161 of the CCRF deals, including contracts, between several legal entities / entrepreneurs and between legal entities / entrepreneurs and individuals must be concluded in written form. Also a deal between individuals shall be concluded in written form in cases, established by law.

In addition an international business deal (e.g. deal between Russian and not Russian legal entities/ entrepreneurs) must be concluded in written form (Art. 162 Sec. 3 of the CCRF).

Thus, when determining the form of the agency contract, it is necessary to consider the following:

1. Whether at least one party of the agency contract is legal entity / entrepreneur;
2. Whether at least one party of the agency contract is foreign (not Russian) legal entity / entrepreneur.

If the answer to any of these questions is positive, an agency contract shall be concluded in written form.

This rule applies also to the subsequent modifications to the agency contract agreed by the parties.

The general consequence of non-compliance with the written form of the deal is inability of the parties to use testamentary evidences to prove the fact of conclusion of the deal or its conditions (Art. 162 Sec. 1 of the CCRF).

In cases provided for by law or the agreement between the parties non-compliance with the written form (for example, in international business deals – Art. 162 Sec. 3 of the CCRF), and absence of the notarial certification or public registration if it is required, in all cases, result in the whole or part of the agency contract being void (Art. 162 Sec. 2 and Art. 180 of the CCRF).

A void deal does not result in legal consequences, except for those, which are related to it being void and void from the moment of its conclusion (Art. 166 of the CCRF).

---

[2] The Decision of the Presidium of the Supreme Arbitration Court of the Russian Federation of 13.01.2011 No. 9174/10 on the case No. A31-8793/2009.

[3] The Decisions of the Supreme Arbitration Court of the Russian Federation of 06.07.2011 No. BAC-8421/11 on the case No. A51-7852/2010 and of 31.08.2010 No. BAC-11115/10 on the case No. A51-6087/2009.

3.2 Contractual requirement of written form for modifications.

If the contract requires the use of writing for possible future amendments, what are the consequences of non compliance?

According to Article 452 of the CCRF amendments or cancellation of the contract shall be made in the same form as the contract, unless otherwise is required by law, other legal acts, contract or usual business practice.

In case where the law provides for additional requirements regarding the contract form (signing of entire document, notarial form), the form of the agreement on the modifications of the contract is also subject to these requirements.

Consequence of non-compliance with the written form of amendments to the agency contract is the inability of parties to use testamentary evidences to prove the fact of conclusion of amendments to the contract or their conditions.

If the agency contract shall be considered as an international business deal under Russian law, non-compliance with the written form of amendments to the agency contract shall entail the invalidity of the agreement on modifications of the agency contract.

It shall be noted, that the parties may foresee a different form for amendments to the agency contract.

Would* Article 23.3, second sentence, of the IDI model contracts *(which has been taken from the Vienna convention on international sale) be effective under your law?

Universally recognized principles and norms of international law and international treaties of the Russian Federation, which comply with the Constitution of the Russian Federation, are a part of the legal system of the Russian Federation and have a greater legal force than the laws of the Russian Federation and other legal acts.

The Russian Federation is a participant of the Vienna convention on international sale.

Thus Article 23.3 of the IDI model contracts in general is effective under Russian law.

However, the following shall be noted.

In case where the non-compliance with the written form results in the deal being void (for example, an international business deal), then, as a general rule, the present provision of the second sentence of Article 23.3 is void.

However, it is necessary to consider that where the parties are in fact performing the contract in accordance with the new terms, and there is written evidence that these terms were agreed by the parties, depending on the circumstances, the court may consider the present evidence as observance of the written form.

Where there is no term in either the statute or the agreement between the parties that non-compliance results in the deal being void, a consequence is the inability, in case of a dispute, to refer to testimonial evidence (Art. 162 of the CCRF). Therefore the above provisions of Article 23.3 will not be valid for the situations where the party doesn't have any other (for example, written) evidence[4].

Where the contract is subject to public registration, it will not be considered to be modified, unless the modifications are registered.

[4] The behavior of the parties may amend the terms of the contract – see the Decision of Federal Arbitrazh Court of the West-Siberian District N Ф04-3063/2009(7277-A70-39) dated 02 June 2009 (case No. A70-4618/27-2008)

3.3 Clauses authorizing unilateral contract modifications.

Are clauses which give one party the right to unilaterally modify some essential elements of the agency contract, such as Article 5.4 of the principal-friendly IDI model, valid and effective under the law of your country?

As a general rule conditions of the contract may be changed with the consent of the both parties of this contract.

According to Article 450 Section 1 of the CCRF the parties may foresee in the agency contract clauses which prohibit any amendments to the contract or give one or both parties the right to unilaterally modify certain conditions of the agency contract.

Amending of any essential conditions of the contract requires consent of both parties of the contract, because the rule of Article 432 Section 1 of the CCRF, on which the contract is considered as concluded when the parties have achieved consent on all essential terms of the contract, shall apply.

Thus, the clauses which give one party the right to unilaterally modify some essential elements of the agency contract are invalid under Russian laws.

3.4 Form requirements and applicable law.

How is the law governing the form of the agency contract to be determined under the law of your country?

According to Article 1209 of the CCRF the form of the deal (the contract) is subordinated to the law of the place of its conclusion. However, the contract, concluded abroad, may not be recognized invalid due to non-compliance of form, if it meets the requirements of the Russian law.

The form of the international business deal shall always comply with the Russian law, regardless of the place of commission of this deal, if at least one of the parties to the deal is a Russian legal entity or a Russian entrepreneur.

3.5 Information about the parties.

Is it required by law (or simply customary in your country) to include in the contract additional specifications (such as registration number, social security number)?

According to the Russian law it is necessary to indicate the registered name of the company and its registered address. Additionally, for the purpose of state record keeping and state control, governance of the further relations between the parties, the contracts usually contain the following information about the parties:

- State registration number;
- Individual Tax Payer Number;
- Tax Payer Classification Code;
- Main Code for International Business Activity;
- All-Russian Classifier of Enterprises and Organizations;
- Correspondence address;
- Physical location (may differ from registered address);
- Bank details;
- The country of incorporation and company specifications, required (or just customary) in this country (for a foreign company);
- Company seal, signature, name and position of the signatory (which are usually placed at the end of the contract).

4. AGENT'S OBLIGATION NOT TO COMPETE.

4.1 Noncompetition during the term of the contract.

If there is no contractual provision prohibiting the agent to sell competitive goods, does it mean that the agent is free to act for competitors of the principal?

In the contract law of the Russian Federation is a principle of freedom of contracts, which includes 3 aspects:

- freedom to conclude contracts;

- freedom to choose a contractor;

- freedom to choose the type of the contract.

On the basis of this principle, the agent may sell competitive goods, unless other is provided in the agency contract.

The parties may insert in the agency contract a clause, prohibiting the agent to conclude with other principals similar agency contracts, which should be executed completely or partially on the same territory (Art. 1007 Sec. 2 of the CC RF).

Is it possible to contractually extend the agent's noncompetition obligation to the promotion of noncompeting goods of competing manufacturers?

Is it possible to contractually extend the agent's noncompetition obligation to the promotion of competing goods outside the contractual territory (i.e. an obligation not to represent competitors of the principal outside the territory)?

According to Article 1007 Section 3 of the CCRF conditions of the agency contract, in virtue of which the agent has right to sell goods, perform works or render services to exclusively definite category of buyers (customers) or exclusively to buyers (customers), locating or residing in the territory, specified in the agency contract, are null and void.

Agency contracts may not restrict the range of counteragents (consumers) on the deals to be concluded by the agent. In other case, a certain category of persons will be excluded from number of consumers (buyers, customers) of goods, works or services provided with the help of an agent, which is a violation of the competition law.

Contractually extending the agent's noncompetition obligation to the promotion of noncompeting goods of competing manufacturers or to the promotion of competing goods outside the contractual territory (i.e. an obligation not to represent competitors of the principal outside the territory) or to other activity of the agent may be qualified as a violation of the competition law or abuse of principal's rights, if execution of the agency contracts leads or may lead to non-admission, restriction, elimination of competition and (or) infringement of interests of third parties.

Both parties in such case may be subject to administrative liability for the administrative offense foreseen in the RF Administrative Offense Code.

4.2 Agent engaged for one principal only.

Is it possible to agree with the agent that he will distribute only the products of the principal (and consequently concentrate his activity exclusively on the distribution of the principal's products)?

If this is the case, will special rules or principles protecting the agent be applicable?

There is a risk that such a provision will not be valid and enforceable under current legislation of the Russian Federation, because it may be considered as restriction of the agent's legal capacity which is allowed only in cases provided by the law (Art. 22, 49 of the CCRF). The issues regarding validity of such kinds of agreements are disputed in Russia.

It shall be noted, that there is also a risk, that such agreement may be considered as a labour contract, if the agent performs individual an employment function for remuneration (i.e. exercises a specific type of work according to the position, specified in the personnel list, or profession, or specialization with indication of the qualification of the employee) and subordinates internal labour regulations.

In such case the agent will be protected by the Labour law as an employee.

4.3 Post-contractual non-competition obligation.

Is it possible to agree with the agent an undertaking not to compete in the period after contract termination? If so, is this obligation subject to specific conditions (i.e. time limit, special compensation for the agent etc.)?

Is Article 6.4 of the IDI principal-friendly model contract valid under your law?

Are postcontractual undertakings not to compete frequently used in your country?

No, it is not possible to agree with the agent an undertaking not to compete in the period after contract termination, because agreements leading to the restriction of competition are prohibited (Sec. 4 Art. 11 of the Law on protection of competition.

Thus, Article 6.4 of the IDI principal-friendly model contract shall be considered as invalid under Russian law.

5. EXCLUSIVITY.

5.1 Rights of the agent in the absence of contractual rules.

If there is no written contract or if the contract does not state anything about the agent's exclusivity, does it mean that the principal is free to appoint other agents or distributors and to sell the products without having recourse to the agent (and without paying him a commission)?

If under the law of your country the agent has no exclusivity without a specific agreement to that effect, does it mean that, if the agent has been de facto the only one in the past, the principal may appoint other agents or make direct sales without breaching the agency contract? Or would the courts consider the existence of a tacit agreement recognising the agent's exclusivity?

The current Russian legislation does not define, what should be understood under the "agent's exclusivity".

According to Article 1007 of the CCRF it is allowed to include in the agency contract a clause prohibiting the principal to conclude similar agency contracts with other agents acting on the specified in the agency contract territory, or to perform independent activity, similar to the activities, which are subject to the agency contract. Only in case the agency contract contains such condition, it can be recognized that the agent has the exclusive right to perform the respective activity on behalf of the principal on the territory, specified in the agency contract.

If there is no such clause in the agency contract the principal is free to appoint other agents or distributors for promoting, selling the products etc. or to perform

this activity himself without having recourse to the agent (and without paying him a commission) and breaching the agency contract. The agent has no exclusivity in such case.

Thus, in practice there is a distinction between «sole» and «exclusive» agent, i.e. the agent can be de facto the only one agent acting on the territory, but not exclusive.

However, the terms “sole agent” and “exclusive agent” have no precise legal meaning.

5.2 What is covered by exclusivity.

When the agent is exclusive, does it mean that the principal must not sell to customers in the territory? Does it also imply that the principal may not sell to customers outside the territory who may resell into the agent's territory? Is the principal still free to sell in the agent's territory if he pays the normal commission?

Exclusivity of the agent’s rights under the agency contract is not implied and can be ascertained by means of interpreting of the contract. In accordance with Article 1007 Section 1 of the CCRF the agency contract may stipulate that the principal must prevent himself from entering into analogical agency agreements with other agents, which are acting on the same territory as his counteragent under the contract concerned, or must not to carry out on this territory an activity by himself which is analogical to the subject of the agency contract. Thus, we can consider the agent as an “exclusive” one only if the contract contains such a clause. Otherwise, there are no exclusive powers of the agent which could deprive the principal of freedom to carry out the same activity as one which is the subject of the agreement or to engage other persons in such activities.

Is Article 11.2 of the IDI balanced and principal-friendly model contract valid under your law?

The Article 11.2 of the IDI balanced and principal-friendly model contract is valid under the Russian law (Art. 1007 Sec. 1 of the CCRF).

However, in case the agent and the principal are entitled to perform their business activity on the same territory, it is necessary to carefully check the terms of the agency contract for compliance with the law on protection of competition.

Are there any rules (or case law principles) concerning principal’s direct sales to clients in the territory, through the principal’s internet web-site?

No, there are no any such rules or case law principles affecting the relationship between the principal and the agent. But there are certain rules regulating the consumers’ rights in the context of distance sales (which include the sales through the Internet) established by the CCRF (Art. 497 Sec. 2), the Law “On Protection of Consumers’ Rights” N 2300-1 of 07.02.1992 (Art. 26.1) and the Rules for Distance Sales of Goods approved by Resolution of the RF Government N 612 of 27.09.2007.

According to the provisions of the above specified acts the seller before conclusion of a contract shall provide to the consumer the information on the basic consumer properties of the goods, on the address (location) of the seller, on a place of production of the goods, on a complete company name of the seller (manufacturer), on the price and on conditions of the goods purchase, on its delivery, best before date, service life and a warranty period, on payment procedure, and also on term during which the offer to enter into a contract is effective.

A consumer in the moment of the goods delivery shall be also notified in written on the terms and procedure for the goods return. Otherwise a consumer is entitled to return the goods in three months from the date of the goods delivery.

Would Article 11.3 of the IDI agent-friendly model contract, as well as Article 11.4 of the IDI balanced and principal-friendly models, be valid under your law?

In the absence of special rules and case law principles concerning principal's direct sales to the clients in the territory through the principal's internet web-site Article 11.3 of the IDI agent-friendly model contract, as well as Article 11.4 of the IDI balanced and principal-friendly models may be considered as valid under Russian law.

5.3 Sole agent/Exclusive agent.

Does your law (or case law) distinguish between a "sole" agent and an "exclusive" agent?

If so, what are the differences?

No, the terms "sole agent" and "exclusive agent" have no precise legal meaning, therefore the difference between them cannot be revealed.

In practice a "sole agent" may be considered as an "exclusive" one, if there is an exclusivity clause in the agency contract, i.e. the exclusivity of the agent's rights may derive from the clause prohibiting the principal to engage other agents for the performance of the same or analogical assignment on the territory or to perform such activity himself (Art. 1007 Sec. 1 of the CCRF). In case of absence of such clause in the contract, the principal may conclude analogical agreements with other agents. In such case his counteragent may be de facto "sole", but not the "exclusive" one.

5.4 Contractual limitations to the agent's exclusivity.

Is it possible to exclude specific products or clients from the exclusivity?

The principal may freely determine the scope of the agent's activity carried out under the agreement: i.e., to ascertain the types of goods sold on the territory on which the agency agreement is planned to be performed.

However, this freedom is limited by Article 1107 Section 3 of the CCRF, which prohibits including into the agency contract the clause allowing the agent to make deals only with certain customers, which have their domicile on the territory stated in the contract, or with certain groups of customers.

Other provisions of the agency contract may be recognized as invalid under competition law if execution of such contractual clauses by the parties leads or may lead to non-admission, restriction, elimination of competition and (or) infringement of interests of third parties.

Thus, the contractual limitations to the agent's exclusivity are possible when they comply with requirements of the Russian competition law.

Is Article 11.3 of the IDI balanced and principal-friendly model contracts in compliance with your legislation?

Article 11.3 of the IDI balanced model contract is valid under Russian law and complies with the Law on protection of competition, since the agency contract does not restrict the right of the agent for promotion of principal's goods to Special Customers, i.e. the agency contract may not lead to the limitation of competition on the market.

Article 11.3 of the IDI principal friendly model contract may be recognised by the antimonopoly authority as contrary to Article 11 of the Law on protection of competition and Article 1107 Section 3 of the CCRF and invalid, if the agent will be entitled to make deals only with certain groups of customers or will be obliged not to deal with certain customers, including Special Customers. Any agreements, which lead or may lead to the limitation of competition on the market, are prohibited under Russian antimonopoly law.

6. SALES OUTSIDE THE TERRITORY.

Does the legislation of your country allow the principal to forbid to the agent to promote sales outside the territory?

According to Article 1007 Section 2 of the CCRF the parties may specify in the agency contract the territory of its execution. Consequently, outside this territory the agent has no authority to act on behalf of the principal.

Thus, the principal may forbid to the agent to promote sales on behalf of the principal outside the territory, for which he is appointed under the agency contract.

If the agent promotes business with customers outside the territory, will he be entitled to commission under the agency contract?

If the agent promotes principal's goods to the customers outside the territory, i.e. performs business activity outside the agency contract, such activity of the agent may be considered under certain conditions as negotiorum gestio in sense of Chapter 50 of the CCRF.

In any case at the first opportunity the agent must notify the principal on the actions, he has taken promoting business with customers outside the territory, and wait for the principal's decision on approval or disapproval of such actions (Art. 981 Sec. 1 of the CCRF).

If the principal approves the agent's actions on promoting principal's goods to the customers outside the territory, further relationships between the principal and the agent are subject to the law, regulating the respective type of contract (i.e. mandate, commission or agency contract etc.) (Art. 982 of the CCRF). In such case the agent shall be entitled for commission in the amount, agreed between the principal and the agent, or in the amount, which is usually charged under the comparable circumstances for the similar kind of services, if the sum of the commission is not agreed between the parties.

In case the principal does not approve the actions on promoting business to the customers outside the territory, which were taken by the agent, the agent is entitled for the compensation of necessary expenses, incurred in connection with the acting in the interests of the principal. The agent may be entitled for the commission only, if his acts led to results, which are positive for the principal, and if the right for such commission is provided for by law, the agreement between the parties or the customs of business turnover (Art. 985 of the CCRF).

It shall be noted, that if the principal does not approve the actions taken by the agent, especially deals concluded by the agent with the customers, such actions and deals do not lead to the occurrence of any obligations of the principal to the customers. Such deals shall be considered as concluded by the agent in his own name and in his interests (Art. 183, 983 of the CCRF).

Is it Article 12.2 of the IDI model contracts in compliance with your legislation?

Article 12.2 of the IDI model contracts complies with the Russian law.

What if the party do not regulate the situation in the contract?

If the parties do not regulate the situation in the agency contract, the rules of Chapter 50 of the CCRF, described above, shall apply.

Are there specific provisions (or case law) concerning the performance of the agent's activity through an Internet web-site?

There are no specific provisions or case law, regulating the agent's activity through an Internet web-site and relationships between the principal and the agent in such case.

However, there are some legal acts, regulating the remote sales of goods (including sales through the Internet web-sites), which the agent most comply with, performing his business activity:

- Article 497 Section 2 of the CCRF,

- the Law “On Protection of Consumers’ Rights” N 2300-1 of 07.02.1992 (Article 26.1),
- the Rules for Distance Sales of Goods approved by Resolution of the RF Government N 612 of 27.09.2007.

7. ACCEPTANCE AND NON-EXECUTION OF BUSINESS BY THE PRINCIPAL.

7.1 Acceptance of orders.

Is the principal free to decide if he wishes to accept or refuse business transmitted to him by the agent?

If the principal does not inform the agent within a reasonable period about his decision as to whether he accepts or refuses an order transmitted by the agent, can the business be considered as accepted (at least for the purpose of the agent's right to commission)?

This question, whether the principal is free to decide if he wishes to accept or refuse business transmitted to him by the agent, should be answered depending on the scope of powers given to the agent under the agency contract:

1. If the agent is entitled to conclude contracts with customers and acts as commissionaire, i.e. in his own name, all rights and obligations on the contracts, concluded with customers will bear the agent. Thus, the principal will not be bound with such deals, concluded by the agent with the customers, but the principal shall meet his obligations under the agency contract (including payment of commission), if the agent, concluding the mentioned contracts with customers, has duly executed the agency contract (Art. 1005 Sec. 1 of the CCRF).
2. If the agent is entitled to conclude the contracts with customers on behalf of and in the name of the principal, the principal will be bound with such contracts (Art. 1005 Sec. 1of the CCRF).
3. If the agent is entitled only to promote the goods of the principal and/or to render other services, excluding conclusion of contracts with customers, the principal is free to accept the orders transmitted by the agent or not.

It shall be noted, that the decision of the principal, whether to accept the order transmitted by the agent and to conclude the contract with the customer or not, shall not involve acceptance by the principal of the agent’s performance of his obligations under the agency contract.

The CCRF foresees the procedure for providing and adoption of the agent’s reports.

According to Article 1008 Section 1 of the CCRF the agent shall submit to the principal reports in the order and terms, stipulated in the agency contract. In the absence of the relevant conditions in the agency contract the agent shall provide such reports to the principal while execution of the agency contract or at the termination of the agency contract.

Based on Article 1008 Section 3 of the CCRF the principal, which has objections to the report provided to him by the agent, must inform the agent about them within 30 (thirty) days since the date of receipt of the report, unless the contract determines other term of notification. If the principal does not make such a notice, his silence will be considered according to the case-law as the approval of the report. As a consequence of this the agent is not obliged to prove the per-

formance of his obligations under the agency contract to the extent, to which they are listed in the report[5].

However, it should not disturb the principal to present other evidence, that, despite the reports, the agent performed his obligations improper way. The burden of proof lies in this case on the principal as a party, which has not fulfilled the requirements of the law. This conclusion is confirmed also in the case-law.[6]

Would Article 2.2 of the IDI model contracts be effective under your law?

Article 2.2 of the IDI model contracts is effective under Russian law.

7.2 Non-execution of accepted orders by the principal.

If the principal does not perform a contract concluded on the basis of an order transmitted by the agent, is the agent nevertheless entitled to commission?

Is the agent entitled to commission only if and insofar as the non-performance is due to reasons for which the principal is responsible?

In the latter case, what are reasons for which the principal is responsible? E.g. accepting the return of goods for commercial reasons or when there is a risk that the customer will not pay? Non-performance by the principal in cases where he is entitled to do so by the contract with the customer?

The Russian law does not regulate in details the relationships between the agent and the principal.

According to Article 1006 of the CCRF the principal shall pay to the agent a commission in the amount and in the procedure specified in the agency contract. So, the agent's right for the commission depends on how the parties have set in the agency contract the moment, when the agent's obligations under the contract shall be considered as executed.

For example, the parties may set in the agency contract, that the agent's obligations under the contract shall be considered as properly executed from the moment when the agent has transmitted to the principal the order from the customer. Under such condition the agent is not responsible for the acceptance or rejection of the customer's order transmitted by the agent and/or for performance or non-performance by any party of the contract, concluded by the principal with the customer, i.e. the agent in any case has the right to commission, if he has duly promoted the principal's goods and transmitted customer's order to the principal.

On the other hand the agency contract may foresee that the agent's obligations under the agency contract are duly executed and the right of the agent to commission arises only in case of signing the contract by the principal and the customer or after the proper performance by the customer of his obligations under the contract, concluded with the principal etc. However, there is court practice according to which the terms of the agency contract, excluding the payment of the rendered[7] services at the discretion of the principal or in connection with the actions of third parties, which are not parties to the agency contract, are null and void[8].

---

[5] The Decision of Federal Arbitrazh Court of West-Siberian District of May 12, 2010 on case No. A78-1448/2009;

[6] The Decision of Federal Arbitrazh Court of Povolzhskiy District of March 31, 2008 No. A65-8205/07СГ3-25;

[7] The moment, when the agent's services shall be considered as "rendered", is debateable. The uniform case-law on this issue is missing.

[8] The Decision of the Federal Arbitrazh Court of Far Eastern District of October 11, 2010 No. Ф03-7142/2010, The Decision of Federal Arbitrazh Court of West-Siberian District of February 28, 2011 on case No. A45-11870/2010;

Would Article 14.2 of the IDI principal-friendly model contract be effective under your law?

Article 14.2 of the IDI principal-friendly model contract may be recognized by Russian courts as null and void in part, which excludes the payment of the commission to the agent in connection with the actions of third parties, which are not parties to the agency contract, in particular in case of non-performance by the customer of the contract, concluded with the principal under the order transmitted by the agent.

The last sentence of Article 14.2 of the IDI principal-friendly model contract is null and void under the Russian law, because the limitation period to claim the commission is three years and may not be changed by the parties.

8. RIGHT TO COMMISSION.

8.1 Amount of commission.

Are there any rules in your domestic law limiting the parties' freedom to agree upon the rate of commission?

According to Article 1006 of the CCRF the principal shall be obliged to pay to the agent the commission in the amount and in the order stipulated by the agency contract. Thus, the Russian legislation does not set any limits to the parties' freedom to agree upon the rate of commission. However in case the commission of the agent significantly exceeds the sum of the deal made by the agent to the benefit of the principal, the Russian court could enforce the commission in a less volume on the assumption of the principle of reasonableness[9].

If the parties do not agree on the rate of commission will the contract be void, or will the rate be fixed by the courts?

If the agency contract does not provide for the rate of commission of the agent and the latter cannot be estimated on the basis of the contractual terms, the commission shall be paid in the amount, which is usually charged under the comparable circumstances for the similar kind of services. In this case the court could establish the sum, which is usually paid under the comparable circumstances for the similar kind of services.

If the agency contract does not provide for the procedure for the payment of the agent's commission, the principal shall be obliged to pay the commission during a week from the moment of submission of the report by the agent to him for the past period, unless a different procedure for the payment of the commission follows for the substance of the agency contract or customs of trade.

8.2 Business on which commission is due.

Assuming that the agent has in any case a right to commission on sales promoted by him within the scope of the agency contract, does the agent have a right to commission on successive sales to customers previously acquired by him for the principal?

Due to the lack of special rules, we believe that the parties may include such provision into the agency contract.

Nevertheless, there is a risk that in the event of a dispute between the principal and the agent on commission on successive sales to customers previously acquired by the agent for the principal, the courts may interpret the mentioned clause as not corresponding to the essence of the agency contract as synallagmatic contract (there is no consideration from the agent to the principal) and recognize it as invalid.

[9] The Decision of the Federal Arbitrazh Court of West-Sibirian District of 24.08.2006 No. Ф04-5282/2006 (25616-A03-8) on the case No. A03-12872/05-15.

Does the agent have a right to commission on direct sales made by the principal in the territory?

If the answer is yes, are the above rules mandatory, or do they apply only if the parties have not agreed otherwise?

The CCRF does not regulate such situation. It depends at the parties' discretion.

8.3 Partial payment by the customer.

If the customer does not pay the full amount and the partial payment is not conforming to the contract between the principal and the customer, is the agent entitled to

- ***no commission at all, or***
- ***partial commission in proportion to the payment received?***

The CCRF does not stipulate the situations when the commission is not paid at all on conditions that the agent acts in good faith. If the principal fulfilled on his own the agent's duties, it does not make him free not to pay the commission to the agent upon condition that the agent did not refuse to fulfill his duties[10].

There is also court practice according to which the terms of the agency contract, excluding the payment of the services, rendered by the agent, at the discretion of the principal or in connection with the actions of third parties, which are not parties to the agency contract, are null and void. Following this logic the payment of the commission could not have been made dependent upon the payment by third parties (including customers), except for del credere clauses in agency contracts concluded after model of a commission contract. Thus if the customer does not pay to the principal in full or partially, the principal could not refuse to pay to the agent for the services rendered.

However, the following shall be noted.

The Russian law does not regulate the moment, when the agent's obligations under the contract shall be considered as executed and the agent's right for the commission arises. Thus, the parties may specify in the agency contract the moment, when the services under the contract are considered as rendered by the agent, at their discretion.

Would Article 12.5 of the balanced and principal-friendly IDI models be in compliance with your legislation?

Compliance of Article 12.5 of the balanced and principal-friendly IDI models with the Russian legislation must be assessed in the light of Article 12.4 of these models.

Article 12.4 of the balanced and principal-friendly IDI models may be recognized by the courts as invalid, cause of court practice, according to which the terms of the agency contract, excluding the payment of the services, rendered by the agent, in connection with the actions of third parties, which are not parties to the agency contract, are null and void.

We recommend to amend the wording of Article 12.4 of the balanced and principal-friendly IDI models and specify, that the agent shall acquire the right to commission after full execution of his obligations under the agency contract; the agent's obligations under the agency contract shall be considered as executed in full only after fulfillment by the customer of his obligations under the contract with the principal. In such case the Article 12.5 of the balanced and principal-friendly IDI models will be in compliance with Russian law.

8.4 Business concluded or carried out after contract termination.

[10] The Decision of the Federal Arbitrazh court of the West-Sibirian District of 22.06.2010 on the case No. A45-20150/2009.

Does the agent have a right to commission on business:

- ***transmitted by the agent or received by the principal before contract termination, but concluded and/or carried out after contract termination, or***
- ***concluded before contract termination, but carried out after such date, or***
- ***concluded and carried out after contract termination?***

If so, on what conditions?

The CCRF does not regulate the moment when the right to commission arises and the parties could stipulate any of these moments (it depends on that which moment party agreed the obligation to be executed).

Would Articles 20.1 and 20.2 of the IDI principal-friendly model contract be fully effective under your law?

Articles 20.1 and 20.2 of the IDI principal-friendly model contract are effective under Russian law.

8.5 Moment when the right to commission arises.

According to the law of your country, does the right to commission arise:

- ***when the contract between the principal and the customer is concluded,***
- ***when the principal performs the transaction with the customer,***
- ***when the customer performs the contract, or***
- ***other?***

If the law fixes the moment when the right to commission arises, can this rule be derogated contractually and to what extent?

Since the law does not fix the moment when the right to commission arises the parties could stipulate any of the abovementioned options. There is a court practice that the right to commission should not depend on relations between the principal and the customer.

However, the parties may make the moment, when the right to commission arises, dependent on the moment, when the agent's obligations under the agency contract shall be considered as executed; and the last of the above may be defined in the agency contract by the parties at their discretion.

In the absence of contractual terms on the procedure for the payment of the agent's commission, the principal shall be obliged to pay the commission during a week from the moment of submission of the report by the agent to him for the past period, unless a different procedure for the payment of the commission follows for the substance of the agreement or customs of trade (Article 1006 of the CCRF).

9. METHOD OF CALCULATING COMMISSION AND PAYMENT.

Are the clauses contained in Article 13 of the IDI models consistent with your domestic law?

The clauses contained in Article 13 of the IDI models comply with the Russian law.

Are cash discounts deductible under your legislation?

The CCRF does not regulate the method of calculating and paying agent's commission. So, it depends on the parties' discretion.

10. OBLIGATIONS REGARDING THE SUPPLY OF INFORMATION TO THE OTHER PARTY.

Article 8 of the IDI agent-friendly model provides a general obligation of the agent's part to inform the principal about his activity and market conditions, at the latter's request. Pursuant the law of your country, has the agent more burdensome and/or more specific obligations to inform the principal?

In case the answer is yes, are such provisions mandatory?

In accordance with Article 1008 of the CCRF in the course of performance of the agency contract the agent shall submit to the principal reports in the order and within the terms, stipulated by the agency contract. In the absence of the relevant conditions in the agency contract the agent shall submit reports to the principal while execution of the agency contract or by the end of validity of the agency contract.

The parties can provide in the agency contract the measures of responsibility applied in case of violation of the agent's obligations to submit the reports, which can be expressed in the form of compensation of losses caused to the principal, as well as in the form of penalties for the late submission of the report. Stipulated by the contract penalty will stimulate the agent to the proper execution of his obligation to submit the reports to the principal in the proper time. If there is no penalty, stipulated by the contract, for the mentioned violation the principal is entitled to rely only on the compensation of losses, and only in that case, if he can prove that he had suffered these losses as a result of delay in submission of the report.

On the other side, Article 16 of the IDI principal-friendly model does not contain any obligation on the principal's part to inform the agent. Pursuant to the law of your country, has the principal more burdensome and/or more specific obligations to inform the agent?

If the answer is yes, are such provisions mandatory?

The principal's obligations to supply any information to the agent are not regulated by the Russian law. Thus the parties may specify in the agency contract more burdensome and/or more specific obligations to supply information in comparison with Article 16 of the IDI principal-friendly model.

11. *DEL CREDERE* CLAUSE.

Does the law or jurisprudence of your country allow del credere clauses?

As a General rule, if the agent is acting as a commissionaire and concludes contracts on behalf of the principal but in his own name, according to Article 993 Section 1 of the CCRF the agent is not responsible for nonperformance by a third person (customer) of a contract concluded by him with the agent, if the agent has exercised due diligence in the choice of customer. The law also allows inserting del credere clause in the agency contract, but only if the agent acts under such contract in his own name on behalf of the principal (i.e. the agency contract is based on the model of a commission contract).

If the contract with a customer is concluded by the agent in the name of the principal, the agent is responsible only for non-fulfillment or improper fulfillment of his obligations. For the violation by the customer of his obligations the agent shall not be liable, because the relationship from the concluded contract arises between the customer and the principal.

In this regard, in order to protect the rights of the principal in the agency contract it is recommended to establish in the contract that the agent's obligations under the agency contact shall be considered as executed in full only after fulfillment by the customer of his obligations under the contract with the principal.

If so, is this obligation subject to specific conditions (e.g. only for specific contracts or customers or only up to a certain amount or with special compensation for the agent)?

No, it depends on parties.

Is this type of clause frequently used in your country?

In our practice we have not seen del credere clauses in agency contracts.

Would Article 9.3 as well as Annex E of the IDI balanced and principal-friendly models be fully effective under your law?

Article 9.3 as well as Annex E of the IDI balanced and principal-friendly models are effective under Russian law only, if the agency contract is based on the model of commission contract (i.e. the agent acts in his own name on behalf of the principal).

12. PRINCIPAL'S TRADEMARKS.

According to the law of your country is it sufficient that the principal simply authorises the agent to use his trademark (or other proprietary rights) in the context of his promotional activity, or is it necessary for the parties to sign a separate licence agreement for that purpose?

The legislative provisions regarding the trademarks do not provide for the possibility of simple authorization to use a trademark which is protected in the territory of Russia.

There are two legitimate possibilities to dispose the rights to a trademark – franchise agreement and license agreement. Therefore, on the franchise agreement the principle may grant the right to use his trademark only in a complex with other exclusive rights. Thus, according to the Russian law the principal can grant separate the right to use his trademark to the agent only by virtue of a license agreement (it may be a separate agreement or agreement which is a part of the agency contract).

The license agreement must be registered with the special state authority – Federal Service for Intellectual Property, Patents and Trademarks and is invalid without such registration.

If the agent registers in your country the principal's trademark, in breach of Article 10.2 of the IDI balanced and principal-friendly model contracts, will this clause allow the principal to obtain the cancellation of such registration?

No, such a clause cannot be considered as a ground for the cancellation of such trademark registration.

Part IV of the CCRF sets out the limited list of grounds for cancellation of a trademark registration, which does not include any contractual obligations prohibiting the trademark registration.

Moreover under Russian law (Article 9 Section 2 of the CCRF) the waiver of rights does not entail the termination of such rights, unless otherwise established by law.

Therefore such contractual clause will be invalid.

Thus, the principal may obtain the cancellation of a trademark registered by the agent, which is identical or confusingly similar to the principal's trademark, only in case if the principal's trademark is already protected in Russia either by national or international registration.

If the principal's trademark is not protected in Russia there is still a risk that the agent will validly register the similar trademark in Russia.

13. TERM AND TERMINATION OF THE CONTRACT.

13.1 Contract for a fixed period with automatic renewal.

Is a clause contained in a contract for a fixed term, providing that the contract* will be automatically renewed for a further term and so on *(like Article 17.2, alternative B, of the IDI models), admissible under the law of your country?

Yes, by the agreement of the parties the agency contract could be concluded both for a fixed term and for an indefinite period.

Or would a contract of this type be converted into a contract for an indefinite period?

No, according to the court practice unlimited numbers of prolongations do not indicate that it is a contract for an indefinite period.

If the automatic renewal clause is admissible, may the successive contracts be considered all together as one contract (e.g. for calculating the goodwill indemnity)?

No, because the automatic renewal means that at the end of the initial term of the contract the new contract, the conditions of which are identical to the ended contract, begins to act between the parties.

13.2 Contract for a fixed period (without automatic renewal clause), which continues to be performed after its expiry.

What happens, under your law, if a contract concluded for a fixed term (and not containing a clause for automatic renewal) continues to be performed after its term?

The correct answer is (a). The agency contract concluded for a fixed term and not containing a clause for automatic renewal terminates after its term. If the parties continue to perform this contract after its term, it shall be considered that a new deal between agent and the principal is concluded. In such case relationships between the agent and the principal will be regulated by general rules of the Contractual law, provided for by Title III of the CCRF Part I, and by special rules applicable to certain kind of deal, established in Title IV of the CCRF Part II.

It shall be noted, that if a written form of such new deal between the agent and the principal is required according to Article 161 of the CCRF, non-compliance with the written form of the deal will consequence the inability of parties to use testamentary evidences to prove the fact of conclusion of the deal or its conditions (Art. 162 Sec. 1 of the CCRF) or invalidity of the deal in cases, provided for by law (refer to Paragraph 3.1 of the Report).

13.3 Termination notice (contract for an indefinite period).

Does the legislation of your country require a minimum period of notice for the parties to terminate an agency contract made for an indefinite term?

If so, is such a period mandatory? For both parties?

If no period of notice is required by law, will it be fixed by the courts?

In the latter case, will the courts intervene only if no period of notice has been agreed contractually? Or will the courts establish a reasonable period if the period agreed in the contract is considered too short?

The CCRF contains several special rules on the minimum period of the termination notice for following cases:

1. if the agency contract is based on the model of the commercial mandate contract (i.e. the commercial agent acts on behalf and in the name of the principal), the minimum period of notice on termination of commercial agency contract is 30 days (Art. 977 Sec. 3 of the CCRF). The parties may specify in the commercial agency contract longer period.
2. If the agency contract is based on the model of the commission contract (i.e. the agent acts on behalf of the principal, but in his own name), the minimum period of termination notice is 30 days, unless the contract provides for a longer period of time (Sec.2 Art. 1003 of the CCRF).

Specified above special rules on the minimum period of the termination notice are mandatory for both parties of the agency contract.

In other cases the period of termination notice could be indicated in the agency contract at the parties' discretion. In the absence of such term in the agency contract the termination notice may be send to other party at any time and the agency contract will be recognized as terminated, when the termination notice is received by other party[11].

13.4 Form of the notice of termination and effectiveness.

Is there a form (e.g. registered letter) that must be respected for the termination notice to be effective?

The agreement on termination of the contract shall be executed in the same form as the contract itself, unless otherwise follows from the law, the other legal acts, the contract itself or from the customs of the business turnover (Art. 452 Sec. 1 of the CCRF).

Provisions of the CCRF on agency do not foresee a special form, that must be respected for the termination notice to be effective.

Using the rule of Article 452 Section 1 of the CCRF on the analogy by law and proceeding from the nature of a unilateral refusal (termination notice) as the unilateral transaction, to decide on the form of the termination notice we need to apply provisions of Articles 158 - 165 of the CCRF concerning the form of the transaction.

According to Article 158 Section 1 of the CCRF a transaction, for which a written (simple or notarial) form is not established by the law or the agreement of the parties, may be made orally. Thus, the notice on termination of the agency contract may be done orally, if written form is not required by the law or the agency contract.

So, we recommend including in the agency contract a clause, according to which the termination notice shall be done in a simple written form and delivered to other party by any of following methods: personal delivery, by commercial courier, by post with return receipt requested, by fax.

Is the notice of termination considered to have been validly given when it is sent or when it is received?

The agreement on termination is valid from the moment of its subscription by both parties.

Unilateral refusal to fulfill obligations stipulated by the agency contract (the notice of termination) is considered to have been validly given when it is received by other party.

If the addressee is a company, is there a specific person to whom the notification must be given in order to be effective?

No. The main requirement is that the employee of the company should confirm receipt of the notice, for example, by putting the stamp of the company, his/her name, position and signature and the date of receipt on the second copy of the notice.

If the form imposed by law or prescribed in the contract (see for example Article 19.1 of the IDI models) has not been respected, what are the consequences?

If the form of the termination notice imposed by law or prescribed in the contract has not been respected, the general consequence is the inability of the party to use testamentary evidences to prove, that the other party is notified on the ter-

[11] The Decision of Federal Arbitrazh Court of Volga-Vyatsky District of 27.09.2001 No. A43-2518/01-15-106

mination of contract, unless other consequences are established by law or the contract.

13.5 Earlier termination.

What reasons can normally justify earlier termination by the agent and/or by the principal?

According to the Russian legislation the reasons, which can justify earlier termination of the agency contract by the agent and/or by the principal, could be as follows:

- Material breach of a contract:
- Article 450 of the CCRF states that where there is a material breach of contract, the contract may be terminated by any party **in a judicial procedure**. In case of material breach a contract can be terminated in extrajudicial procedure, where such a right is provided for by the statute or the contract (For example, in case of material breach of a supply contract, there is no need to file a lawsuit to terminate a contract. Non-breaching party has the right to send the notice of termination, and the contract is considered to be terminated from the moment of the notification (according to Art. 523 of the CCRF)).

A breach of a contract is considered to be material where one of the parties causes the other party such damage that non-breaching party is substantially deprived of what it expected to receive under the contract.

An essential change of circumstances (if otherwise follows from the contract or nature of the liability)

An essential change of circumstances, from which the parties have proceeded when concluding the contract, shall be the ground for its amendment or cancellation, unless otherwise stipulated by the contract or following from its substance. The change of the circumstances shall be recognized as essential, if they have changed to such an extent that in case the parties could have wisely envisaged it, the contract would not have been concluded by them or would have been concluded on the essentially different terms.

If the parties have failed to reach an agreement on bringing the contract into correspondence with the essentially changed circumstances or on its termination, the contract may be terminated by the court upon the claim of the interested party in the face of the simultaneous existence of the following conditions:

1) at the moment of concluding the contract, the parties have proceeded from the fact that no such change of the circumstances will take place;

2) the change of the circumstances has been called forth by the causes, which the interested party could not overcome after they have arisen, while displaying the degree of care and circumspection, which have been expected from it by the nature of the contract and by the terms of the circulation;

3) the execution of the contract without amending its provisions would so much upset the balance of the property interests of the parties, corresponding to the contract, and would entail such a loss for the interested party that it would have been to a considerable extent deprived of what it could have counted upon when concluding the contract;

4) neither from the customs of the business turnover, nor from the substance of the contract does it follow that the risk, involved in the change of the circumstances, shall be borne by the interested party.

The agency contract shall cease in consequence of:

the refusal of one of the parties to execute the contract concluded without fixing the period of the completion of its validity[12];

the death of the agent, the recognition of him as legally unfit, specially incapable or missing;

the recognition of the individual intrepreneur who is an agent as insolvent (bankrupt).

In other cases stipulated by the contract.

Is it necessary that termination for breach be notified within a short period after the breach is discovered?

There are no specific statutory requirements to the period of termination notice for breach of agency contract.

However, such termination notice shall be sent by the injured party in a reasonable period after the breach is discovered. Otherwise, such "late" termination notice may be considered by the court as an abuse by the party of its rights, if they do not comply with the principle of reasonableness and good faith.

Can a party terminate the contract for a breach which such party has tolerated in the past without complaining?

The CCRF does not set in relation to the agency contract any requirements to the terms and the order of unilateral refusal to fulfill obligations stipulated by the agency contract (notification on termination).

In our opinion, a party may terminate the contract for a breach which such party has tolerated in the past without complaining.

Would the result be different if the contract contains a "waiver clause" (e.g. a clause saying that "Any waiver on the part of either party hereto of any right or interest shall not imply the waiver of any other right or interest, or any subsequent waiver")?

Under the Russian law (Article 9 Section 2 of the CCRF) the waiver of rights does not entail the termination of such rights, unless otherwise established by law. So, we believe, that a "waiver clause" will not imply a right of the party to terminate the contract for a breach which such party has tolerated in the past without complaining.

Article 18 of the IDI model contracts provides specific cases of substantial breach and exceptional circumstances which shall justify an earlier contract termination. To what extent the parties are free to choose contractual clauses, violation of which would justify the earlier termination?

The parties may define in the agency contract contractual clauses, violation of which would justify the earlier termination of the contract, on their discretion. The Russian legislation does not set any frameworks for defining of such terms by the parties.

Is Article 18 in compliance with your law?

Article 18 of the IDI model contracts is in compliance with the Russian law.

13.6 Unjustified earlier termination.

What is the effect of an unlawful earlier termination of an agency contract under the law of your country?

An unlawful earlier termination does not have legal force and does not terminate the rights and obligations of the parties under the contract. The injured party is

[12] If the contract is for a fixed period, the agent, acting in his own name on behalf of the principal (i.e. as a commissionare), has no right to refuse to execute the agency contract unless otherwise is stipulated by the agency contract.

entitled to claim for compensation of losses, caused by the unjustified earlier termination of the contract.

Does the contract remain in force until a further valid termination notice is given by one of the parties, or does the contract end in any case (with the terminating party being responsible for the damages arising out of the unlawful termination)?

The contract remains in force until proper termination notice or agreement on termination of the contract.

13.7 Compensation for unjustified earlier termination.

Please, explain whether there are legal rules (or principles established by case law) for calculating the amount of compensation for unjustified earlier termination.

No special compensation for unjustified earlier termination is provided for, because unlawful termination has no legal force. However, where unlawful notification and further acts of the sender (for example, non-performance of an obligation) result in losses to the other party, the injured party is entitled to claim for their compensation.

Would Article 18.6 of the IDI balanced and principal-friendly model contracts, as well as Article 18.5 of the IDI agent-friendly model be valid under your law?

Yes, in our opinion, the present provision is valid under Russian law. However, in order to avoid the risk of it being treated as invalid by the court, it requires an adaption to Russian law, including more precision with regard to terminology. For instance, a pre-defined amount of “damages” must be called “penalty”.

14. GOODWILL COMPENSATION (INDEMNITY).

Does the law or jurisprudence of your country recognise goodwill compensation to the agent?

Russian law does not contain any provisions as to the goodwill compensation (indemnity) for an agent and there is no respective case law, recognizing the goodwill compensation (indemnity) for an agent.

Is article 21.4 of the IDI balanced and principal-friendly model contract in compliance with your legislation? If not, could you please suggest an alternative clause consistent with your jurisdiction?

The Russian law and court practice do not recognise goodwill compensation to the agent. Thus, the Article 21.4 of the IDI balanced and principal-friendly model contract and other Articles concerning goodwill compensation (indemnity) are most probably inexecutable in the Russian Federation.

15. LIMITATION OF ACTION.

Does your legislation provide limitation periods (or similar systems) for the exercise of the rights of the parties under the commercial agency agreement, and what is their duration?

According to the Russian law a limitation period is a time period after the breach for defense of right (a claim may be sustained by a court). A limitation period starts from the date when a person became aware or should become aware of the violation.

There are not any special limitation periods for the exercise of the rights of the parties under the agency contract. Therefore in respect of violations arising from agency contracts the common limitation period is applied which amounts to three (3) years (Art. 196 of the CCRF).

Nevertheless there is a special limitation period for different special claims, for example for recognition of voidable agreements as invalid. Such limitation period may be applied also to agency contracts and amounts to one (1) year.

Can the limitation periods be contractually modified under your law?

No, there is a direct legislative prohibition providing that the terms of limitation period and the procedure of its calculation cannot be changed by agreement between the parties (Art. 196 of the CCRF).

16. APPLICABLE LAW.

16.1 Legal sources.

What are the rules of your legal system concerning applicable law to commercial agency contracts?

The Russian Federation has not ratified the Rome I Convention.

The rules of the Russian private international law are established by the CCRF Part 3.

Under the Russian legislation the law applicable to the international commercial agency contracts shall be determined on the basis of international treaties of the Russian Federation, the CCRF, other Federal laws and customs, recognized in the Russian Federation. If the conflict-of-laws rules established in these regulations do not allow to determine the applicable law, the law of the country, to which the civil law relations are closest connected, shall apply.

16.2 Applicable law in the absence of choice.

If there is no choice of law by the parties, what criteria are used by the courts of your country to determine the applicable law in the event of a commercial agency contract with a foreign counterpart?

Conflict-of-laws rules applying to the agency contract with a foreign counterpart are established by the Title VI of the CCRF Part 3.

If there is no applicable law clause in the agency contract according to Article 1211 Sections 2 and 3 of the CCRF the law of the country, where the principal place of agent's business or his residence is, shall apply.

16.3 Effectiveness of a choice of law excluding the law of the agent's country.

Is it possible to submit to the law of a foreign country an agency contract with a party domiciled in your country?

The form of an international business deal in which at least one party is a Russian legal entity shall be governed by the Russian law, irrespective of the place where the deal was concluded (Art. 1209 of the CCRF). Consequently, the form of an agency contract with a Russian counterpart is governed by the Russian law. Russian law prescribes that a written form is mandatory for international business deals.

With regard to the terms of the contract, at the time of the contract conclusion or later, the parties may by mutual agreement choose the law, which will govern their rights and obligations under that contract. The law chosen by the parties governs the creation and termination of property rights and other proprietary interests in movable property with no prejudice for third party rights.

Does your legal system contain provisions on agency law considered to be "international public policy" (loi de police), i.e. applicable even where the parties choose to submit the contractual relationship to the law of a foreign country?

Under the Russian legislation, the parties' right to determine applicable law is limited to a number of restrictions.

Public policy rule (Art. 1193 of the CCRF).

The application of a rule of any foreign country must be refused if such application is manifestly incompatible with the public policy of Russia. In such a case, the respective rule of Russian law is applicable where necessary.

A refusal to apply the foreign rule cannot only be based on the differences between the legal, political or economic system of the respective foreign state and the legal, political or economic system of the Russian.

2. Application of mandatory rules (Art. 1192 of the CCRF).

Mandatory rules of the Russian legislation regulate the relations between the parties irrespective of the applicable law if that is indicated in them or due to their special significance.

Similarly it is provided for that a court may apply mandatory rules of a foreign country in case the legislation of this country requires application of such rules irrespective of applicable law.

3. The choice of the applicable law must not violate third parties' rights (Art. 1210 Sec. 1 of the CCRF).

16.4 Application by the courts of your country of foreign rules having «internationally mandatory» character.

If the contract with a foreign agent contains a choice of law clause which provides for the application of the law of your country and assuming that some provisions of the law of the agent's country are "internationally" mandatory (see § 3.2 of the Law and Jurisdiction Report) would the courts of your country take these rules into consideration and, if so, to what extent?

The court may consider the mandatory rules of a foreign country if the legislation of this country requires application of such rules irrespective of applicable law.

Nonetheless, the court must consider the purpose and character of such rules as well as the consequences of their application or non-application (Art. 1192 of the CC RF).

The present provision does not bind, but instead gives the court a right to apply foreign mandatory rules.

It must be taken into account, that due to the workload of the courts, they prefer not to complicate the matter and not to deal with foreign law, if there is no necessity.

17. JURISDICTION AND ENFORCEMENT OF FOREIGN JUDGMENTS.

17.1 Legal sources.

What are the rules of your legal system concerning jurisdiction as well as recognition and enforcement of foreign decisions?

Recognition and enforcement of foreign judgments in Russia is subject to the jurisdiction of state courts. It is worth mentioning that the Russian court system recognizes separate jurisdictions for civil disputes between natural persons and commercial disputes between legal entities. These disputes, as well as recognition and enforcement of foreign judgments on them, are accordingly subject to the jurisdiction of either general state courts (civil disputes) or state arbitrazh courts (commercial disputes). Both procedural regimes (on civil and commercial disputes) are regulated by their respective procedural codes: the Civil Procedure Code and the Arbitrazh Procedure Code, respectively.

The questions concerning jurisdiction of the state courts of Russia as well as recognition and enforcement of foreign judgments are also regulated by the Law of the Russian Federation "On Execution Proceedings" and number of international agreements of Russia on legal assistance.

17.2 Jurisdiction without a choice of jurisdiction clause.

If there is no valid jurisdiction clause, is an agent of your country entitled, under the procedural rules of your country to bring a claim before his courts against a foreign principal?

If there is no valid jurisdiction clause, is a principal of your country entitled, under the procedural rules of your country to bring a claim before his courts against a foreign agent?

Russian procedural rules provide for the same rules for bringing a claim before Russian state courts against a foreign counterpart by Russian agents or principals.

A Russian agent or principal can bring a claim before a Russian state court only if the following requirements are met: if a defendant has a place of residence or domicile in Russia, and also if such defendant has movable or immovable property, or a management body, affiliate or representative office located on the territory of Russia, or if the dispute has arisen from an agreement which was or should be executed on the territory of Russia (Art. 247 of the Arbitrazh Procedure Code and Art. 402 of the Civil Procedure Code).

17.3 Effectiveness of a jurisdiction clause in favour of foreign courts.

Do judges in your country have exclusive jurisdiction to settle disputes concerning agents, who carry out their activity between the boundaries of your country?

No. Russian procedural legislation does not provide any special regulations regarding the settlement of disputes arising from an agency contract.

Would a clause contained in a contract between a foreign principal and an agent of your country under which a foreign court has jurisdiction on disputes arising out of the contract be valid in your country?

Would a clause contained in a contract between a foreign agent and a principal of your country under which a foreign court has jurisdiction on disputes arising out of the contract be valid in your country?

Yes, such a clause will be considered as valid in Russia.

Particularly, the general rule is that if an agreement under which a competent foreign court has jurisdiction on disputes arising out of the contract exists, an Arbitrazh court of Russia shall stop proceedings commenced between the same parties on the same subject matter and on the same grounds. However, the court will do so only at the request of the defendant. In other words, if there is no such a request the court will continue proceedings.

17.4 Recognition - enforcement.

Is it possible to recognise and enforce a foreign judgment against citizens of your country?

Yes, it is possible to recognize and enforce a foreign judgment in Russia against its citizens. However, the general rule is that such recognition and enforcement are possible only if it is permitted by international treaties and federal law of the Russian Federation. As an exception from the general rule in some cases a foreign judgment can be recognized and enforced on a reciprocity principle, but this is subject to the court's discretion.

Is recognition or enforcement subject to particular limits or conditions? What are they?

Yes, there are certain conditions and limits for recognition or enforcement of foreign judgments in Russia.

As a general rule, a court will refuse to recognize and enforce a decision if it contradicts the public policy of Russia. Also a court shall refuse on the following formal grounds:

1) if the decision has not come into force in conformity with the law of the country where it was adopted;

2) if the party against which the decision is adopted has not been timely and properly notified about the time and place of the case consideration, or could not give its explanations to the court by other reasons;

3) if according to an international treaty or a federal law of Russia, the investigation of the case is referred to the exclusive competence of Russian court;

4) if there exists a previous decision by a Russian court on a dispute between the same persons on the same subject matter and on the same grounds;

5) if a) there is under consideration of Russian court a case regarding a dispute between the same persons, on the same subject matter and on the same grounds which was initiated before the legal proceedings in a foreign court or b) if Russian court has accepted the application to initiate proceedings between the same persons, on the same subject matter and on the same grounds before initiation of the proceeding by a foreign court.

6) if the term of limitation for the execution of the decision of the foreign court for enforceable execution has expired, and this term was not restored by a Russian court.

If enforcement is possible, how long does the proceeding take?

It is difficult to estimate how long the proceedings can last since there are substantial differences from case to case. For example, according to the Article 243 of the Arbitrazh Procedure Code, enforcement proceedings are to be completed within one month, but this rarely happens in practice. Taking into account that the proceedings may be held at 3 (in general state courts) or 4 (in arbitrazh courts) instances they may last from half a year to two or three years.

18. ARBITRATION.

18.1 Legal sources.

Is your country part of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)?

Yes, Russia is a party to the New York Convention.

Are there other rules applicable to international arbitration provided for by the law or jurisprudence of your country?

Yes, the legislation governing international arbitration in Russia is the International Commercial Arbitration Act 1993 which is mostly based on the UNCITRAL Model Law. Also it is noteworthy that with regard to the recognition and enforcement of foreign arbitral awards the New York Convention prevails over any Russian law provision in case of contradiction.

18.2 Arbitrability.

Are agency contracts considered a subject matter capable of settlement by arbitration, under your legislation?

Yes, the parties are free to choose whether a dispute should be resolve by way of arbitration or by litigation through the courts.

If so, does this apply to all agency agreements or only to certain situations (e.g. agents who are not physical persons)?

This applies regardless as to whether the agent is a physical person, a legal entity or a partnership.

18.3 Arbitration clauses.

Would an arbitration clause providing for arbitration abroad, contained in an agency agreement be valid in your country?

Yes, the clause would be valid. There are no special requirements on arbitration clauses in agency contracts.

Would the courts in your country refuse jurisdiction with respect to an agency contract containing such a clause?

Yes, the court will refuse jurisdiction with respect to an agency contract containing an arbitration clause if the clause meets requirements of the International Commercial Arbitration Act 1993 (which are the same as in the UNCITRAL Model Law).

18.4 Recognition of foreign awards.

Would a foreign arbitration award dealing with an agency agreement be recognised by the courts of you country?

Yes, it would be recognized if it meets general conditions for the recognition and enforcement of foreign awards.

C.
LIST OF CLAUSES THAT MIGHT NOT BE FULLY EFFECTIVE OR THAT SHOULD BE DELETED OR MODIFIED

Clause	Model	Advice
1.1	All IDI model contracts	We recommend to specify in this clause, whether the agent is entitled to act in his own name on behalf of the principal or in the name of the principal.
1.1, Annex A-3	IDI balanced and principal-friendly model contracts	We recommend to exclude all clauses, which define the categories of customers, to which the agent is entitled to promote the products, because such provisions are contrary to Article 1007 Section 3 of the CCRF and Article 11 of the Law on protection of competition and are null and void.
6	All IDI model con-tracts	The clauses may be recognized as contrary to Article 11 of the Law on protection of competition, because they could lead to the limitation of the competition on respective markets. It is recommended to replace these clauses with a clause, which prohibits the agent to conclude with other principals similar agency contracts which should be executed on a territory coinciding in whole or in part with the territory specified in the agency contract.
9.3	IDI balanced and principal-friendly model contracts	The clause as well as Annex E are invalid, if the agent acts on behalf and in the name of the principal. Del credere clause is effective under Russian law only, if the agency contract is based on the model of com-mission contract (i.e. the agent acts in his own name on behalf of the principal).
10.1	All IDI model con-tracts	The Russian legislation does not provide for the possibility of simple authorization to use a trademark. The principal can grant separate the right to use his trademark to the agent only by virtue of a license agreement, which shall be registered with the special state authority – Federal Service for Intellectual Property, Patents and Trademarks. Thus, the clause may require registration of the agency contract with the Federal Service for Intellectual Property, Patents and Trademarks. The clause is invalid without such registration.
11.3	IDI principal-friendly model contract	The clause may be recognised by the anti-monopoly authority as contrary to Article 11 of the Law on protection of competition and invalid, because any agreements, which lead or may lead to the limitation of competition on the market, are prohibited under Russian antimonopoly law. The clause will comply with the Russian law, if it does not restrict the agent's right to deal with Special Customers.

12.4	IDI balanced and principal-friendly model contracts	The clause may be recognized by the courts as invalid, cause of court practice, according to which the terms of the agency contract, excluding the payment of the services, rendered by the agent, in connection with the actions of third parties, which are not parties to the agency contract, are null and void. We recommend to amend the wording of the clause and specify, that the agent shall acquire the right to commission after full execution of his obligations under the agency contract; the agent's obligations under the agency contract shall be considered as executed in full only after fulfillment by the customer of his obligations under the contract with the principal.
14.2	IDI principal-friendly model contract	The clause may be recognized by Russian courts as null and void in part, which excludes the payment of the commission to the agent in connection with the actions of third parties, which are not parties to the agency contract. The last sentence of the clause is null and void under the Russian law, because the limitation period to claim the commission is three years and may not be changed by the parties.
18.5	IDI agent-friendly model contract	The clause requires an adaption to Russian law, including more precision with regard to terminology. For instance, a pre-defined amount of "damages" must be called "penalty".
18.6	the IDI balanced and principal-friendly model contracts	The clause requires an adaption to Russian law, including more precision with regard to terminology. For instance, a pre-defined amount of "damages" must be called "penalty".
21 (ALTERNATIVE A)	IDI balanced and principal-friendly model contracts	The clauses are inexecutable in the Russian Federation, because the Russian law and court practice do not recognise goodwill compensation to the agent.