Distribution Law Center
DRIVEN BY CONTRAST

HAVEL & PARTNERS
CONNECTED THROUGH SUCCESS

Q&A DOCUMENT | 4 October 2021

Q&A on Agency Agreements

Part 1: Introduction

Council Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents (the "Directive") harmonizes the laws, regulations and administrative provisions of Member States governing the relations between the parties to commercial agency agreements.

As the Directive constitutes a minimum harmonization, the Member States are free to set higher standards applicable to agency agreements. In addition, on various aspects the Directive leaves room for further elaboration in national law.

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of Slovak law ("Slovak Agency Law"). The starting point is always the minimum harmonisation reflected in the Directive. The Q&A then aims to identify any deviations or additions from the regime reflected in the Directive.

Part 2: Legislative framework

Q1. Which rules constitute the transposition of the Directive into Slovak Agency Law (a)? Where available, please also include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and to the English translation of the regulatory framework (c).

a. *Legislative framework:*

Act No. 513/1991 Zb., the Commercial Code, as amended (the "Commercial Code"), in particular: Book three, Title I – General Legal Rules for Commercial Agreements; Book three, Title II, Chapter 18 – Agency Agreement.

Act No. 244/2002 Z.z., on Arbitration, as amended (the "Arbitration Act").

b. Link(s) to official publication:

The Commercial Code is available via this link. An official consolidated version is also available via this link.

The Arbitration Act is available via this link. An official consolidated version is also available via this link.

c. Link(s) to English translation:

There is no official English translation available.

Part 3: Scope

Q2. The Directive (Art. 1(2)) defines a commercial agent as a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another party (the “principal”), or to negotiate and conclude such transactions on behalf of and in the name of that principal. Is the definition in the Slovak Agency Law the same?

No. Under Art. 652 Commercial Code, the definition of commercial agent is broader, as it does not refer only to the sale or purchase of goods. Instead, the definition refers to “performance of an activity for the principal that aims at a conclusion of certain type of contracts". Therefore, mandatory provisions of the Slovak Agency Law shall also apply to those commercial agents whose activities are related to the provision of services and not only to the purchase of goods.

Q3. Do other intermediaries fall within the scope of the Slovak Agency Law?

No.

Q4. The Directive (Art. 2(2)) entitles the Member States to exclude from the scope of application parties whose activities as commercial agents are considered secondary in nature. Has Slovakia made use of this possibility?

Yes. Under Art. 652(3) Commercial Code, the provisions on agency agreement shall not apply to parties operating at the securities exchange or commodity exchange.

Part 4: Contractual phase

A. Form of agency agreements

Q5. The Directive (Art. 13) provides that, as a minimum, each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency agreement including any terms subsequently agreed. Does the Slovak Agency Law provide for such obligation?

Yes. Under Art. 652(4) Commercial Code, the agency agreement must be executed in writing. This is a mandatory provision that cannot be excluded/modified by an agreement of the parties.

Q6. Are there any (other) requirements under the Slovak Agency Law as to the form of the agency agreement in order for it to be valid and enforceable?

No.

B. Content of agency agreements

B.1 - RIGHTS AND OBLIGATIONS OF PRINCIPAL AND COMMERCIAL AGENT

Q7. The Directive (Art. 3) provides that a commercial agent has the following minimum obligations:

- to look after his principal's interests and to act dutifully and in good faith;
- to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- to communicate to his principal all the necessary information available to him;
- to comply with reasonable instructions.

Are these minimum obligations provided for in the Slovak Agency Law?

Yes. The Commercial Code does not explicitly state that the commercial agent must make proper efforts to negotiate and, where appropriate, conclude the transactions he/she is instructed to take care of. However, such obligation could be derived from the wording of Art. 652(1) and 655(1) Commercial Code by means of interpretation.

Q8. Does the Slovak Agency Law explicitly impose any other obligations on the commercial agent that go beyond the aforesaid minimum?

Yes. Under Art. 655(1) Commercial Code, the commercial agent shall conduct the activity under the agency agreement with professional care. This is a mandatory provision that cannot be excluded/modified by an agreement of the parties.

There are also other obligations of the commercial agent under the Slovak Agency Law (see below); these are, however, not mandatory and could be excluded/modified by an agreement of the parties.

Under Art. 655(2) Commercial Code, the commercial agent shall submit a report to the principal concerning market developments and all circumstances important for the principal's interests, in particular for their decision-making related to the conclusion of commercial transactions.

Under Art. 655(3) Commercial Code, if the agency agreement includes concluding commercial transactions by the commercial agent in the name of the principal, the commercial agent is obliged to conclude these commercial transactions only under the business terms determined by the principal, unless the principal has expressed its consent to another procedure.

Under Art. 655(4) Commercial Code, if the commercial agent is unable to conduct his/her activity, he/she must inform the principal of such fact without undue delay.

Under Art. 656 Commercial Code, within the framework of his/her obligation, the commercial agent is obliged to cooperate on the fulfilment of concluded commercial transactions according to the principal's instructions and in the principal's interest, insofar as such instructions and interest are or must be known to the commercial agent, in particular when resolving discrepancies arising from the concluded commercial transactions. The term "discrepancies" refers to various issues arising from the concluded commercial transactions. In practice, the commercial agent must cooperate with the principal to resolve any discrepancies from the concluded commercial transactions, e.g. notification of defects, dealing with asserted rights or resolving interpretation difficulties of the agreement or similar.

Under Art. 657 Commercial Code, the commercial agent shall not disclose information acquired from the principal during his/her activities to other parties or use such information for his/her own benefit or for the benefit of another party without the principal's consent if this is contrary to the interests of the principal. This obligation shall survive the termination of the agency agreement.

Under Art. 658(1) Commercial Code, the commercial agent is obliged to propose the conclusion of commercial transactions or conclude commercial transactions only with parties that may be expected to fulfil their obligations.

Under Art. 663(3) Commercial Code, the commercial agent is obliged to keep for the principal's needs the documents acquired in relation to the commercial agency for as long as such documents may be important to protect the interests of the principal.

Q9. Does the Slovak Agency Law provide that a commercial agent may appoint sub-agents?

Yes. The Slovak Agency Law neither explicitly grants the commercial agent a right to appoint sub-agents nor provides any prohibition in this relation. Therefore, the commercial agent is entitled to appoint sub-agents unless the parties agreed otherwise in the agency agreement. A similar approach could be also derived from the statutory regime under Art. 654(2) and 568(2) Commercial Code (although these provisions are not mandatory).

Q10. The Directive (Art. 4) provides that a principal has the following minimum obligations:

- to act dutifully and in good faith;
- to provide his commercial agent with the necessary documentation relating to the goods concerned;
- to obtain the information necessary for the performance of the agency agreement;
- to notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected;
- to inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.

Are these minimum obligations provided for in the Slovak Agency Law?

Yes. See, Art. 655a Commercial Code.

Q11. Does the Slovak Agency Law explicitly impose any other obligations on the principal that go beyond the aforesaid minimum?

Yes. Under Art. 655a Commercial Code, the principal is obliged to provide the commercial agent with the necessary information related to the subject of commercial transactions. This is a mandatory provision that cannot be excluded/modified by an agreement of the parties.

Under Art. 663(1) Commercial Code, the principal is obliged to hand over to the commercial agent all supporting documents and requisites (e.g. samples, models, promotional materials, etc.) required for the fulfilment of the commercial agency's obligations. The supporting documents and necessary requisites shall remain the property of the principal, and the commercial agent is obliged to return them upon termination of the agency agreement, unless they were used up by the commercial agent when fulfilling his/her obligations. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the Slovak Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent?

No. There are no mandatory rules under the Slovak Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent. Therefore, all statutory rules in this regard (Art. 659-662 Commercial Code) could be excluded/modified by an agreement of the parties except the following Sections:

- Under Art. 660(2) Commercial Code, the right to commission of the commercial agent arises at the latest when the third party has fulfilled its part of the obligation or was obliged to do so, provided the principal has fulfilled its part. However, if such third party is to fulfil its obligation only after the expiry of more than six months from the conclusion of the commercial transaction, the commercial agent becomes entitled to the commission after conclusion of the commercial transaction.

- Under Art. 660(3) Commercial Code, the commission of the commercial agent is due at the latest on the last day of the month following the end of the quarter in which the right to the commission arose.

- Under Art. 660(4) Commercial Code, at the latest on the last day of the month following the end of the quarter in which the commission became due, the principal shall issue to the commercial agent, even without his/her request, a written confirmation with a breakdown of the main components required to calculate the commission. This shall not affect the right of the commercial agent to demand information available to the principal and required to check the calculation of the commission.

Q13. The Directive (Art. 6(1)) provides that, in the absence of an agreement on the level of the remuneration, the commercial agent is entitled to the remuneration that is customarily allowed in the place where he carries on his

activities and, in the absence of such customary practice, to a reasonable remuneration taking into account all the aspects of the transaction. Do these principles also represent the default regime under the Slovak Agency Law?

No. The implementation of Art. 6 Directive into the Slovak Agency Law is not accurate due to the terms used in relation with remuneration. In particular, the Slovak Agency Law does not differentiate between the term "remuneration" and "commission" and any remuneration of the commercial agent is defined as commission.

Regarding Art. 6(1) Directive, the Slovak Agency Law does not provide the commercial agent with a right to reasonable commission (remuneration) in case of the absence of an agreement of the parties or customary practice. In detail, Art. 659(1) Commercial Code (implementing Art. 6(1) Directive) provides the commercial agent only with a right to the agreed commission or to the commission corresponding to the customary practice in the sector of activity at the place of conducting such activity, taking into account the type of commercial transaction that is the subject of the agreement. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q14. The Directive (Art. 6(2)) provides that any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission. Does this principle also represent the regime under the Slovak Agency Law?

No. See, Question 13. As discussed above, the implementation of Art. 6(2) Directive into the Slovak Agency Law is not accurate. In detail, Art. 659(1) Commercial Code (implementing Art. 6(2) Directive) stipulates that the commission is meant to be also the remuneration of the commercial agent performed based on the number or level of commercial transactions. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q15. Does the Slovak Agency Law impose any criteria with regard to the type of the agent's remuneration (i.e. fixed amount or commission)?

Yes. The Slovak Agency Law provides the parties with an option to agree on reimbursement of the cost related to the activity of the commercial agent in addition to the commission. Both provisions discussed below are not mandatory and could be excluded/modified by an agreement of the parties.

Under Art. 659(2) Commercial Code, the commercial agent is entitled to reimbursement of costs related to his/her activity in addition to the commission only if this has been agreed by the parties and, and only if he/she becomes entitled to commission from the commercial transaction to which the costs relate, unless the agency agreement provides otherwise.

Under Art. 659(3) Commercial Code, the commercial agent does not become entitled to commission and the agreed reimbursement of costs in those cases where he/she acted as the commercial agent or broker for the

party with which the principal concluded the commercial transaction.

Q16. Does the Slovak Agency Law impose any criteria with regard to the calculation of the agent's remuneration?

Yes. Under Art. 659 (1) Commercial Code, the commercial agent is entitled to the agreed commission or to the commission corresponding to the customary practice in the sector of activity at the place of conducting such activity, taking into account the type of commercial transaction that is the subject of the agreement.

Art. 660(5) Commercial Code further states that, if the basis for determining the commission is the scope of the fulfilled obligation by a third party, such basis shall also include fulfilment that was not provided for reasons accountable to the principal.

B.3 - REMUNERATION BY MEANS OF A COMMISSION (DURING)

Q17. According to the Directive (Art. 7(1)) a commercial agent is entitled to a commission during the period covered by the agency agreement:

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

Are both cases reflected in the Slovak Agency Law?

Yes. See, Art. 659a Commercial Code.

In addition, Art. 659b Commercial Code further states that the commercial agent is not entitled to the commission under Art. 659a Commercial Code if the previous commercial agent is entitled to the commission and, given the circumstances, it is not fair to divide the commission between these two commercial agents.

These provisions are not mandatory and could be excluded/modified by an agreement of the parties.

Q18. The Directive (Art. 7(2)) provides for an additional case of entitlement to a commission and has left it to the Member States to choose between two options:

- Option 1: the transaction is entered into with a customer belonging to a specific geographic area or group of customers entrusted to the commercial agent; or
- Option 2: the transaction is entered into with a customer belonging to a specific geographical area or group of customers in respect of which the commercial agent enjoys exclusive rights.

Which option has been retained in the Slovak Agency Law?

Option 2. Art. 666 Commercial Code stipulates that the principal is entitled to conclude commercial transactions to which exclusive commercial agency of the commercial agent applies even without assistance from the

commercial agent; however, the principal is obliged to pay the commercial agent the commission for such commercial transactions as if these commercial transactions had been concluded with the assistance of the commercial agent, unless the agency agreement regulates otherwise. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

B.4 - REMUNERATION BY MEANS OF COMMISSION (AFTER TERMINATION)

Q19. According to the Directive (Art. 8) a commercial agent is entitled to a commission after the agency agreement has terminated if:

- the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency agreement and if the transaction was entered into within a reasonable period after that agreement terminated; or
- the order of the third party reached the principal or the commercial agent before the agency terminated and the conditions applicable to entitlement during the term of the agency are met.

Are both cases reflected in the Slovak Agency Law?

Yes. See, Art. 671 Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q20. Are there any additional cases provided for in the Slovak Agency Law?

Yes. Art. 671 letter c) Commercial Code stipulates that the commercial agent is also entitled to a commission after termination of the agency agreement if a third party's obligation was fulfilled only after the expiry of the agreement. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q21. According to the Directive (Art. 9) a commercial agent is not entitled to the commission, if that commission is payable, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents. Do these principles also represent the regime under the Slovak Agency Law?

Yes. See, Art. 659b Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q22. According to the Directive (Art. 10(1)) the commission shall become due as soon as and to the extent that one of the following circumstances obtains:

- the principal has executed the transaction; or
- the principal should, according to his agreement with the third party, have executed the transaction; or
- the third party has executed the transaction.

Are these circumstances reflected in the Slovak Agency Law?

Yes. See, Art. 660(1) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q23. Are there any additional circumstances provided for in the Slovak Agency Law?

Yes. Art. 661 Commercial Code provides that, if under the agency agreement the commercial agent is only obliged to provide the opportunity for the principal to conclude a commercial transaction with certain content with a third party, the commercial agent is entitled to the commission as soon as he/she provides the principal with such opportunity. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q24. The Directive (Art. 10(2)) provides that the commission shall be due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have. Does the Slovak Agency Law apply the same deadline?

Yes. In addition to the rule stipulated under Art. 10(2) Directive, Art. 660(2) Commercial Code provides that, if a third party is obliged to fulfil his/her obligation only after more than six months from the conclusion of the commercial transaction, the commercial agent is entitled to the commission after conclusion of such commercial transaction. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q25. The Directive (Art. 10(3)) provides that the commission needs to be paid no later than on the last day of the month following the quarter in which it became due. Does the Slovak Agency Law apply the same deadline?

No. Art. 660(3) Commercial Code stipulates that the commission is due at the latest on the last day of the month following the end of the quarter in which the right to the commission arose. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q26. The Directive (Art. 10(4)) stipulates that parties cannot by agreement derogate from the principles included in Art. 10(2) and 10(3) to the detriment of the commercial agent. Does the Slovak Agency Law impose the same restriction on the parties?

Yes. For the sake of completeness, both Art. 660(2) and Art. 660(3) Commercial Code are mandatory and cannot be excluded/modified by an agreement of the parties irrespective of the fact whether such derogation is performed to the detriment of the commercial agent or not.

Q27. According to the Directive (Art. 11(1)) the right to commission can be extinguished only if and to the extent that:

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

Does the Slovak Agency Law impose these cumulative conditions?

Yes. See, Art. 662(1) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q28. Does the Slovak Agency Law allow for other cases where the agent's entitlement to commission is extinguished?

Yes. Art. 662(3) Commercial Code states that the parties may agree differently on the expiry of the entitlement to commission provided that such amendment is in favour of the commercial agent. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q29. According to the Directive (Art. 11(2)) any commission which the commercial agent has already received must be refunded in case the right to it is extinguished. Does the Slovak Agency Law also provide for such an obligation of restitution?

Yes. See, Art. 662(2) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q30. The Directive (Art. 12(1)) provides that the principal must supply his commercial agent with a statement of the commission due. This statement must be supplied no later than the last day of the month following the quarter in which the commission has become due, and shall set out the main components used in calculating the amount of the commission. Do these principles also represent the default regime under the Slovak Agency Law?

Yes. See, Art. 660(4) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q31. Does the Slovak Agency Law impose that the parties cannot by agreement derogate from the principles included in Art. 12(1) of the Directive to the detriment of the commercial agent?

No. Under Art. 263(1) Commercial Code, Art. 660(4) Commercial Code is a mandatory provision and cannot be excluded or amended by an agreement of the parties, regardless if such amendment would be to the detriment the commercial agent.

Q32. Does the Slovak Agency Law impose any additional requirements with regard to the statement of the commission due?

No.

Q33. The Directive (Art. 12(2)) entitles the commercial agent to demand to be provided with all the information, and in particular an extract from the books, which he needs to check the amount of the commission due to him. Does the Slovak Agency Law grant the commercial agent the same right?

Yes. See, Art. 660(4) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q34. Does the Slovak Agency Law broaden this right to information of the commercial agent?

No. Art. 660(4) Commercial Code stipulates that the commercial agent shall have a right to request information available to the principal that is needed for the purpose of the calculation of the commission. Although the Slovak Agency Law does not follow the wording of Art. 12(2) Directive, we believe that the same rights are provided under the Directive as well as under the Slovak Agency Law in this respect.

Q35. Does the Slovak Agency Law impose any criteria with regard to the calculation of the commission?

No.

Q36. Do specific rules and/or restrictions apply to:

- non-solicitation clauses;
- minimum sales quota;
- specific sectors?

No.

B.5 - NON-COMPETE CLAUSE

Q37. The Directive (Art. 20(2)) provides that a non-compete clause shall only be valid if and to the extent that:

- it is concluded in writing; and
- it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by the agency agreement.

Does the Slovak Agency Law impose these cumulative criteria?

Yes. See, Art. 672a(1) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q38. Does the Slovak Agency Law impose any additional criteria in order for a non-compete clause to be valid?

Yes. The regulation of non-compete clauses under Art. 672a Commercial Code goes beyond the scope of a non-compete clause under the Directive.

In detail, Art. 672a(1) Commercial Code stipulates that the agency agreement may contain a written clause that the commercial agent must not conduct the activity which was the subject of the agency agreement (see Q2 above in this respect) or a different activity which would be competitive in nature with respect to the principal's entrepreneurial activity, for a maximum of two years after the expiry of the agency agreement within a designated territory or towards a designated group of customers in such territory, either on his/her own account or on another party's account.

Art. 672a Commercial Code is mandatory and cannot be excluded/modified by an agreement of the parties.

Q39. The Directive (Art. 20(3)) provides that a non-compete clause shall be valid for not more than 2 years after termination of the agency agreement. Does the same maximum period apply under the Slovak Agency Law?

Yes. See, Art. 672(a)(1) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q40. The Directive (Art. 20(4)) provides that national law may impose other restrictions:

- on the validity or enforceability of non-compete clauses, or
- which enable the courts to reduce the obligations on the principal or the commercial agent.

Does the Slovak Agency Law impose any such restrictions?

Yes. Art. 672(a)(2) Commercial Code states that, in case of doubt, a court may limit or declare the non-compete clause invalid if the non-compete clause would restrict the commercial agent more than required for the necessary degree of protection of the principal.

Q41. Does the Slovak Agency Law provide any criteria with regard to the calculation method of the indemnification in case of a violation of the non-compete clause?

No. General provisions on compensation of damage shall apply (Art. 373 et seq. Commercial Code).

B.6 - LIABILITY

Q42. Under the Slovak Agency Law, can the parties agree that the commercial agent shall be liable (in whole or in part) for the breach of third party-customers with whom he/she has negotiated and/or concluded an agreement on behalf of the principal, by including a so-called *del credere* clause?

Yes. See, Art. 658(2) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q43. If yes, are such clauses subject to certain rules and/or restrictions?

Yes. Under Art. 658(2) Commercial Code, the commercial agent is liable for the fulfilment of obligations by a third party which he/she proposed to the principal for concluding a commercial transaction or with which the commercial agent concluded a commercial transaction on behalf of the principal only if he/she has undertaken to bear such liability in writing and if he/she receives a special remuneration for assuming such liability. Should the commercial agent undertake the liability, the rights and obligations are governed by the provisions on guarantees.

Q44. Are there liability-related clauses that must be mandatorily included in agency agreements?

No.

C. Term and termination

C.1 - TERM

Q45. According to the Directive (Art. 14) an agency agreement for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency agreement for an indefinite period. Does this principle also represent the default regime under the Slovak Agency Law?

Yes. See, Art. 667 Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q46. Does the Slovak Agency Law contain particular rules and/or restrictions in relation to the term (incl. renewal) of agency agreements?

Yes. Art. 668(1) Commercial Code stipulates that if the agency agreement does not contain any provision on the period for which it is to be concluded, or if a time restriction does not follow from the purpose of the agency agreement, there is a presumption that the agency agreement is of indefinite duration. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

C.2 - TERMINATION BY NOTICE

Q47. According to the Directive (Art. 15(1)) an agency agreement that is concluded for an indefinite period may by either party be terminated by notice. Does this principle also represent the regime under the Slovak Agency Law?

Yes. See, Art. 668(2) Commercial Code. This principle represents the default regime under the Slovak Agency Law if not agreed otherwise by the parties (this provision is not mandatory and could be excluded/modified by an agreement of the parties). For instance, parties may agree on further conditions that need to be met if a party wishes to terminate an agreement.

Q48. According to the Directive (Art. 15(2)) the notice period is 1 month for the first year, 2 months for the second year commenced, and 3 months for the third year commenced and subsequent years. Do these notice periods also represent the regime under the Slovak Agency Law?

Yes. See, Art. 668(3) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

Q49. According to the Directive (Art. 15(3)) the notice period for the fourth, fifth and sixth year and subsequent years may be respectively 4, 5 and 6 months. Do these notice periods also represent the regime under the Slovak Agency Law?

No. Art. 668(3) Commercial Code provides that if the agreement lasts for three or more years the notice period is 3 months. Parties may agree to extend the notice period. This provision is mandatory and cannot be

excluded/modified by an agreement of the parties.

Q50. If yes, can the parties agree to a shorter notice period?

No. See, Art. 668(3) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q51. According to the Slovak Agency Law, if no notice period has been agreed, is there a notice period that always applies irrespective of the duration of the agency agreement?

No.

Q52. According to the Directive (Art. 15(4)), if a principal and commercial agent agree on longer notice periods than those laid down in Art. 15(2) and (3) of the Directive, the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent. Does the same default regime apply under the Slovak Agency Law?

Yes. See, Art. 668(4) Commercial Code. The same default regime applies under the Slovak Agency Law if not agreed otherwise by the parties (this provision is not mandatory and could be excluded/modified by an agreement of the parties). For instance, parties may agree not to respect the rule that the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent.

Q53. According to the Directive (Art. 15(5)), unless otherwise agreed by the parties, the end of the notice period must coincide with the end of a calendar month. Does the same default regime apply under the Slovak Agency Law?

Yes. See, Art. 668(5) Commercial Code.

Q54. Does the Slovak Agency Law provide how the termination notice must be notified to the other party?

No.

Q55. According to the Directive (Art. 15(6)), the answers to questions 47 to 53 also apply to agency agreements having a fixed term if they are converted to agency agreements having an indefinite term due to the continuation of the agreement beyond the fixed term, provided that the earlier fixed period must be taken into account in the calculation of the notice period. Does the same default regime apply to agency agreements having a fixed term under the Slovak Agency Law?

Yes. See, Art. 668(6) Commercial Code. This provision is not mandatory and could be excluded/modified by an agreement of the parties.

C.3 - TERMINATION FOR CAUSE

Q56. According to the Directive (Art. 16) an agency agreement may immediately be terminated:

- because of the failure of one party to carry out all or part of his obligations; or
- where exceptional circumstances arise.

Are both termination grounds reflected in the Slovak Agency Law?

Yes. Art. 16 Directive has not been explicitly transposed into national law.

In general, the agency agreement may be terminated for a breach (1) if specifically so agreed between the parties in the agreement, or (2) if statutory law explicitly provides so and the parties did not agree otherwise.

Regarding point (2) above, there are various legal grounds for termination of the agency agreement for breach under the general statutory provisions, particularly in case of a delay of a party and if the delay constitutes a material breach of the agency agreement (Art. 345(1) Commercial Code), in case of a delay of a party if the delay constitutes a non-material breach of the agency agreement (Art. 346(1) Commercial Code), if a party is obliged to perform an obligation before fulfilment of the other party's obligation and it becomes clear after the conclusion of the agreement that the other party will not fulfil its obligation (Art. 326(2) Commercial Code), if the basic purpose of a agreement, which was explicitly expressed therein, is frustrated after its conclusion in consequence of a fundamental change of the circumstances under which the agreement was concluded (Art. 356(1) Commercial Code) etc. These provisions are not mandatory and could be excluded/modified by agreement of the parties.

Q57. Are there additional termination grounds provided in the Slovak Agency Law?

Yes. Art. 672(1) Commercial Code provides that, in case of an exclusive agency agreement, , the commercial agent is entitled to withdraw from the agreement if the principal also uses another commercial agent.

Similarly, Art. 672(2) Commercial Code stipulates that, if the commercial agent performs the activity which is the subject of the exclusive agency agreement with the principal, also on behalf of other parties, the principal is entitled to withdraw from the agreement.

Art. 670 Commercial Code further provides that an exclusive agency agreement of a fixed term may be terminated by either party with the notice period set out in Art. 668(3) Commercial Code (see Q48-50 above), if the volume of commercial transactions (agreements), that were concluded during the performance of the agency agreement, over the last 12 months does not reach the volume determined in the agency agreement, or did not reach the volume proportionate to sales opportunities if a specific volume of commercial transactions was not agreed on in the agency agreement (in this regard, proportionality should be assessed on a case-by-case basis taking into consideration all circumstances of the case).

These provisions are not mandatory and could be excluded/modified by an agreement of the parties.

Q58. Does the Slovak Agency Law provide that the parties may not derogate from the regime on termination for cause to the detriment of the commercial agent before the agency agreement is terminated?

No.

Q59. Is it possible to terminate the agency agreement based on certain grounds for termination (breach or other) included in the agency agreement?

Yes. See, Question 56 above.

Q60. If yes, is prior judicial intervention required in order for the termination of the agreement to take effect?

No.

Q61. Are there any other particular rules and/or restrictions as regards the termination of the agency agreement (e.g. trial period, etc.)?

No.

C.4 - INDEMNIFICATION

Q62. The Directive (Art. 17(2)(a)) provides that the commercial agent is entitled to an indemnification if and to the extent that he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers. Does the Slovak Agency Law provide for this criterion?

Yes. See, Art. 669(1)(a) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q63. The Directive (Art. 17(2)(a)) also provides that the commercial agent is entitled to an indemnification if and to the extent that the payment of this indemnification is equitable having regard to all circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Does the Slovak Agency Law provide for this criterion?

Yes. See, Art. 669(1)(b) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q64. Is under the Slovak Agency Law the application of a non-compete clause a circumstance on the basis of which the commercial agent is presumed to be entitled to an indemnification (cfr. Art. 17(2)(a), second indent of the Directive)?

No. Under Art. 669(1)(b) Commercial Code, when determining the entitlement of the commercial agent to an indemnification (the term “severance pay” is used in the Slovak implementation instead of the term “indemnification”), all the circumstances must be taken into an account (including the application or non-

application of a competition clause). This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q65. Other than the criteria set forth in Art. 17(2)(a) of the Directive, are there any specific rules or precedents derived from the Slovak case law on the basis of which the indemnification is calculated?

No.

Q66. The Directive (Art. 17(2)(b)) provides that the amount of the indemnification may not exceed a figure equivalent to an indemnification for 1 year calculated from the commercial agent's average annual remuneration over the preceding 5 years, and if the agreement goes back less than 5 years the indemnification shall be calculated on the average for the period in question. Does the same regime apply under the Slovak Agency Law?

Yes. See, Art. 669(2) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q67. According to the Directive (Art. 18), indemnification or compensation for damage is not payable where

- the principal has terminated the agency agreement because of default attributable to the commercial agent which would justify immediate termination of the agency agreement;
- the commercial agent has terminated the agency agreement, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he/she cannot reasonably be required to continue his/her activities; and/or
- with the agreement of the principal, the commercial agent assigns his rights and obligations under the agency agreement to another parties.

Do these principles also represent the default regime under the Slovak Agency Law?

Yes. See, Art. 669a Commercial Code which implements Art. 18 Directive only in relation to the indemnification. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q68. According to the Directive (Art. 17(5)), a commercial agent may lose his/her entitlement to the indemnification or compensation for damage if within 1 year following termination of the agency agreement he/she has not notified the principal of his/her intention to pursue the entitlement. Does this principle also represent the default regime under the Slovak Agency Law?

Yes. See, Art. 669(5) Commercial Code which implements Art. 17(5) Directive only in relation to the indemnification. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

C.5 - ADDITIONAL COMPENSATION

Q69. The Directive (Art. 17(2)(c)) provides that the commercial agent, in addition to the indemnification, is entitled

to seek damages for breach of agreement, failing to respect the notice period, etc. Does the same regime apply under the Slovak Agency Law?

Yes. See, Art. 669(3) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q70. If yes, do specific rules and/or restrictions apply to the damage that can be compensated in addition to the indemnification under Art. 17(2) of the Directive?

No.

Q71. The Directive (Art. 17(3)) provides that the commercial agent is entitled to compensation for damage suffered as a result of the termination of the agency agreement. Does the same default regime apply under the Slovak Agency Law?

Yes. See, Art. 668a Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q72. According to the Directive (Art. 17(3)) such damages shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the commercial agent of the commission which proper performance of the agency agreement would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities; and/or
- which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency agreement on the principal's advice.

Does the Slovak Agency Law take the same circumstances into account?

No. An implementation of Art. 17(3) Directive into Art. 668a Commercial Code was performed improperly.

Under this Article, the commercial agent has the right to compensation of damage which was incurred in consequence of the termination of contractual relations with the principal if the commercial agent: (a) has not obtained the commission to which he/she is entitled on the grounds of having performed commercial agency in accordance with Art. 655(1) Commercial Code despite the fact that he/she produced substantial benefits for the principal through his/her activity, and/or (b) has not obtained the reimbursement of costs under Art. 659(2) Commercial Code. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q73. Are there any other specific rules or precedents, than the criteria set forth in Art. 17(3) of the Directive, derived from case law on the basis of which the compensation is calculated?

No.

Q74. The Directive (Art. 17(4)) provides that a commercial agent is entitled to indemnification or compensation for damage where the agency agreement is terminated as a result of the commercial agent's death. Is this default entitlement available under the Slovak Agency Law?

Yes. See, Art. 669(4) Commercial Code which implements Art. 17(4) Directive only in relation to the indemnification. This provision is mandatory and cannot be excluded/modified by an agreement of the parties.

Q75. The Directive (Art. 19) stipulates that the parties may not derogate from Art. 17 and 18 to the detriment of the commercial agent before the agency expires. Does the Slovak Agency Law impose the same restriction on the parties?

No. Art. 263(1) Commercial Code stipulates that all provisions governing the right to indemnification (Art. 669 and 669a Commercial Code) and compensation for damage (Art. 668a Commercial Code) in relation to the agency agreement are mandatory and cannot be excluded/modified by an agreement of the parties regardless of whether such amendment would be to the detriment of the commercial agent.

Q76. Are the parties under the Slovak Agency Law free to opt for either indemnification or compensation?

No. Art. 668a Commercial Code is the result of an incorrect implementation of Art. 17(3) Directive. Art. 17(1) Directive requires member states to choose between the German model of the right to indemnification (Art. 17(2) Directive) and the French model of the right to compensation (Art. 17(3) Directive). However, the Slovak legislature decided to implement both of these models into the Slovak legal order which makes an application of Art. 668a Commercial Code (in the form as implemented in this Art.; see Q 71) rather questionable.

Q77. Must the commercial agent under the Slovak Agency Law claim the indemnification or compensation within a certain period of time after termination of the agency agreement?

Yes. Under Art. 669(5) Commercial Code, the commercial agent loses the entitlement to the indemnification if within 1 year following termination of the agency agreement, he/she has not notified the principal of his/her intention to pursue the entitlement.

Q78. Are there other specific rules with respect to compensation or indemnification following the termination of the agency agreement?

No.

Part 5: Dispute resolution

Q79. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the Slovak Agency Law?

No.

Q80. Can the parties opt for arbitration?

Yes.

Q81. If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in agency agreements?

No.

Q82. Does the Slovak Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

Yes. For an arbitration agreement (clause) to be valid and enforceable, it must comply with the general rules set out in the Arbitration Act. In particular, the arbitration agreement must be in writing; failure to comply with the requirement of written form of the arbitration agreement, may be replaced by a declaration of the parties in the form of minutes before the arbitrator declaring that the parties submit the case to the jurisdiction of the arbitration tribunal.