1 Claims of the Agent in the case of termination of the contract

1.1 Indemnity

Italian law provides a very complex regulation for the indemnity in the case of termination of agency contracts.

In fact, indemnity is ruled by the provisions of the Civil Code and by – if applicable - dispositions provided by collective contracts (shortly “AEC”).


These provisions cannot be varied or waived in the contract to the agent’s detriment. Since article 1751 of the Italian Civil Code does not provide any parameter or criteria to calculate the indemnity amount (it only states the maximum indemnity that can be paid to the agent), on 1992, Trade Unions entered into AEC which – among other things – provide the indemnity due to the agents and the parameters to quantify such indemnity.
1.1 Indemnity

On 2002 a new AEC updated the criteria of quantification of the agent’s indemnity, introducing meritocratic standards, besides the requirement based on equity standard.

AEC are applicable only if the parties expressly agree on its application in the agency contract.

Jurisprudence and doctrine still discuss on which disciplines (Civil Code and AEC) must be applied when both are in abstract applicable: i.e. when the parties agree on applying on the agency contract the AEC rules.

Major jurisprudence states that must be applied, in case of abstract applicability of both rules, the discipline that better safeguard the agent rights: i.e the discipline that, in concrete, results in a larger economic advantage for the agent.
2 Conditions of indemnity

2.1 Provisions of Italian Civil Code

In general: Italian Civil Code provides only some guidelines for the quantification of the indemnity amount, but it does not provide any specific parameter or criteria to calculate it.

Article 1751 of Italian Civil Code states that, in case of termination of the agency contract, the agent is entitled to an indemnity to the extend that:

(a) The agent has brought to the principal new customers or has significantly increased the volume of business with existing customers and the principal continued to derive substantial benefit from the business with the customer and

(b) The payment of the indemnity is equitable having regard to all circumstances and, in particular, to the compensations lost by the agent on the business transactions with the customers.

The right to termination indemnity will also arise when the agency agreement is terminated upon the death of the agent.
No indemnity is payable when termination is due to the following events:

(a) a serious breach of the contract on the part of the agent;

(b) voluntary resignation of the agent not justified by age or health reasons, nor by the behavior of the principal; or

(c) assignments of the agency contract to another agent.

Due to the complexity of the matter and to the lack of regulations with reference to the calculation of the indemnity amount, indemnity amounts are normally quantified by Tribunals or by agreements between the parties.

The law expressly states that agent’s claim for indemnity becomes time-barred if the agent has not notified the principal within a year of termination that he intends to pursue a claim.

Clauses inserted in the agency contracts or agreements entered into by the agents during the execution of the agency contracts that modify in pejus the agents rights to the termination indemnity, are null.

2.2 Provisions of the AEC

AEC are agreements entered into by representative associations of agents (Agents Trade Unions) and associations of principals.

AEC are only binding when the agent and the principal are members of the trade unions and associations that have negotiated the AEC, or when their terms have been incorporated by reference in the contract between the parties.

According to the main AEC, in case of termination of the agency contract, agents, at the termination of the agency contract, are entitled to:

(i) an amount as indemnity deposited by the principal (by installments during the execution of the agency contract) at an institution called ENASARCO (this indemnity is called FIRR);

(ii) an amount as indemnity due to the agent when the agency contract is terminated by the principal without just cause or without agents’ breach of contract (“Indennità Suppletiva”).

(iii) an amount as indemnity related to the performances of the agents. In particular, such indemnity (called “Indennità Meritocratica”) is due if the agent (i) brought to the principal new customers or significantly increased the volume of business with existing customers and the principal continued to derive substantial benefit from the business with the customer and (ii) the payment of the indemnity is equitable having regard to all circumstances and, in particular, to the compensations lost by the agents on the business transactions with the customers.
3 Calculation of the indemnity

3.1 Provisions of Italian Civil Code

Italian Civil Code does not indicate criteria on how to calculate the indemnity.

When a termination indemnity is payable, the amount of the indemnity may not exceed a figure equivalent to one year's worth of commissions calculated from the commercial agent’s annual remuneration over the preceding five years and, if the contract goes back less than five years, the indemnity is calculated as an average of the whole period in question.
Within the abovementioned maximum amount, the amount that is granted in each specific case is to be decided by the courts, which will generally look at a number of factors, such as:

(a) the level of commission paid over an historical period;
(b) the circumstances known at the time of termination which might in the future affect the relationship;
(c) how long the agency relationship would have continued in the absence of termination;
(d) the expenses which the agent would have to incur to earn that commission;
(e) the cash flow advantage for accelerated payment;
(f) the expenses already incurred by the agent with the principal’s approval.

Agents are entitled to an eventual compensation for damages (if proved), even if they have already received the indemnity.

The indemnity is always calculated in accordance with the criteria indicated in article 1751 of the Civil Code when:

- agents work abroad;
- parties of the agency contract are not members of the Trade Unions that signed the AEC and parties did not inserted in the agency contract a clause that states the applicability of the AEC.
3.2 Provisions of the AEC

AEC state certain rules that allow parties to quantify the indemnity due to the agent as consequence of the termination of the agency contract.

Hereinafter the principal criteria of calculation of the indemnity as ruled in such AEC are summarized.

A) Indemnity for termination of contract (c.d. “indennità di risoluzione”)

Principals must annually set aside in a special Fund managed by ENASARCO (an Italian Institution), called “Fondo Indennità Risoluzione Rapporto” (F.I.R.R.), a specific percentage of the yearly commissions paid to agents.

When the agency contract ends, ENASARCO pays to the agent the allocated amount as indemnity.

B) Supplementary indemnity of clientele

This indemnity is to be added to the above mentioned indemnity for termination of the contract and it is paid directly by the principal to the agent at the termination of the contract.

It is calculated applying a specific percentage rate to all commissions and/or to all amounts paid or due to agent from the beginning of the agency relationship until the date of termination of the agency contract.

C) Meritocratic indemnity
This indemnity (if it is due) is to be added to the above mentioned indemnities and must be paid directly by the principal to the agent at the termination of the agency contract.

The Meritocratic Indemnity is due to the agent only if it is proved that the agent obtained new clients, or that the agent has substantially developed the business with the existent clients, giving the principal substantial economical advantages.

The calculation of this type of indemnity is based on the difference between the first and the last commissions earned by the agent; the following are the criteria that must be taken into consideration:

- the difference between the commissions of the first contractual year and the commissions of the last contractual year if the agency contract has been in force less than five years;

- the annual average of the first two years and the last two years if the agency contract has been in force from 5 to 10 years;

- the annual average of the first three years and the last three years if the agency contract has been in force more than 10 years.

The difference between the two amounts (differential amount) represents the amount on which it is applied a certain percentage in order to obtain the sum due to the agent as Meritocratic Indemnity.

The percentage applied to the differential amount raises proportionally to the level of increase of the agent’s commissions.

All abovementioned indemnities cannot exceed the limit provided by art. 1751 Italian Civil Code and, therefore, the full amount due to the agent as indemnity cannot be more than an amount equal to annual indemnity calculated on the annual average of commissions collected by the agent during the last five years.
4. Indemnity and non competition clauses

The non competition clause for agents, concerning a period after the termination of the agency contract, must be agreed in writing and must concern the same area, clientele and kind of goods or services of the agency contract;

Two years is the maximum duration of a non competition clause.
If agents accept a non competition clause, at the termination of the agency contract, principals must pay a further indemnity (not related to the commissions earned by the agent during the execution of the agency contract).

Parties are free to quantify this specific indemnity.

However, such indemnity must be quantified taking into consideration the duration of the non competition period, typology of the agency contract and the amount due by the principal to the agent as indemnity for the termination of the agency contract.

Normally, AEC, if applicable, provide specific rules in order to calculate the indemnity due to the agents for the non competition clause.

If AEC are not applicable and parties do not find an agreement, Tribunals will decide the amount due to the agents as indemnity, taking into consideration (i) the commissions earned by the agent during the execution of the agency contract, (ii) the causes of the termination of the agency contract, (iii) the size of the territory of the agent and (iv) the eventual application of an exclusivity clause by which the agent is bound to have only one principal.

The indemnity is exclusively due (i) to agents who carry on their activity as individuals, or through partnerships or through business corporation with a sole shareholder and (ii) to companies whose shareholders and members are exclusively or largely commercial agents.

If AEC are applicable to the case, they state that the indemnity must be calculated on the annual average of the commissions collected by the agent during the last five years of execution of the contract.
In case of termination of a distribution contract or of a franchising agreement, the distributor/franchisee does not have the right to claim an indemnity by the supplier unless the parties have expressly agreed otherwise.

A claim for compensation, however, would exist where parties have agreed a notice period and the notice period has not been complied with.
The law firm Antonelli Cocuzza & Associati was founded in 1993. The initial partnership between Piercarlo Antonelli and Claudio Cocuzza rapidly developed in response to the changing needs of the market for legal services, in particular that of the modern business enterprise striving to find a balance between professionalism, efficiency and interpersonal relationships on the one hand, and specialization and the need to cover a wide range of services on the other. Having a wealth of experience in large leading legal firms with international frameworks, the two founders wanted to promote the growth of a new “local” name in a market which is flooded with Anglo Saxon style and image. One of our prime objectives was to find the right balance between the ever-increasing business need for efficiency and the traditional role of lawyers based on personal trust.

We represent both Italian and non-Italian clients, primarily corporate entities engaged in a great variety of business field. We offer to our clients comprehensive legal advice and services in a variety of general commercial matters, including:

- counsel and general advice on legal matters;
- assistance in drafting, negotiating and updating general commercial agreements (distributorship, agency, franchising, licensing and the like) and standard terms and conditions;
- organization of sales networks;
- general counsel and advice in selecting the best business structure to meet clients’ objectives under a legal and tax point of view, drafting the necessary documentation and assisting the implementation of all the required formalities;
- advice and assistance in M&A transactions, banking and securities regulations, corporate restructuring, including recapitalizations, issuance of bonds and debentures, cross-border transactions, particularly joint-ventures.
- assistance and counsel in obtaining regulatory approvals; counsel, advice, assistance in labour law matters; assistance and advice on commercial, industrial and residential property investment, including property acquisition and disposition, retail, leasing, management, construction, financing and development in real estate transactions;
- representation in Court and in front of Arbitral Tribunals.
We have the ambition to foresee our clients’ needs, anticipating the issues with a full understanding of all the potential hazards. We believe that truly cost-effective legal services in today’s market are best delivered through close relationship with clients. Therefore, we approach each matter with a clear focus on our clients’ objectives and with a technical understanding of the business involved. Our object is to relate to the legal and business environments in which our clients make their decisions. Our objective is to assist our clients in achieving their goals by consistently providing legal services which are innovative, timely and efficient. Therefore, we constantly invest in people, resources and technology.

All our attorneys are admitted to practice in Italy and many of them also acquired ample skills and experience in Anglo Saxon countries, through university recognitions (L.L.M., M.C.J.), training courses and professional activities. We maintain constantly up-to-date office equipment and libraries to permit us to respond quickly and cost-effectively to our clients’ needs. Our offices are equipped with a fully integrated computer system which allow us to get access to the most updated technical instruments for modern communication (email, internet) and professional research (legal and business databases).

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