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AGENCY AGREEMENT

Parties to a contract have broad freedom to establish and shape legal relations in accordance with their own interests.

Freedom of contract is an indispensable means of self-discipline in the face of the constant and accelerated socio-economic progress being registered in the country. The possibility of the parties to enter into contracts and thereby attune themselves to the renewed needs of a practical nature imposes therefore the passing of new legislation on the matter.

Agency agreements, also known as dealer agreements, carry in their essence the need to foment expansion, but also to capture trade by progressively appealing to enterprises collaborators or assistants so that enterprises may serve locally established people, taking advantage of their organisation, capabilities and credibility within the public.

It is therefore a fundamental obligation of the commercial agent to promote the conclusion agency or dealer agreements, which implies not only the distribution of goods and their penetration into the market, but also a whole and complex set of tasks linked to negotiation and preparation of contracts.

In preparing this statute, account was taken of the solutions recommended in comparative law, essentially adopting all relevant aspects relating to protection of third parties.

Thus,

Pursuant to subparagraph e) of article 115.1 of the Constitution of the Republic, the Government enacts the following to have the force of law:

CHAPTER I
General provisions

Article 1
Notion and form

1. An agency agreement is an agreement through which one of the parties to it (the agent) commits itself to promote, on behalf of the other party (the principal), the conclusion of later agreements in an autonomous and regular manner against retribution, it being possible that a certain geographical area or circle of customers may be attributed to the agent.

2. Any of the parties to the agency agreement has the unrenounceable right to demand from the other party a signed document indicating the content of the agreement and of ulterior additions or amendments thereto.

Article 2
Agent with powers of representation

1. Without prejudice to the provisions of the ensuing paragraphs, the agent may only conclude agreements on behalf of the principal if the latter has provided the agent with the necessary powers in writing.

2. Claims or other declarations relating to businesses concluded through the agent may however be presented to the latter.

3. The agent shall have legitimacy to request the undertaking of urgent actions deemed indispensable in order to protect the interests of the principal.

Article 3
Credit collection

1. The agent may only collect credits if the principal so authorises in writing.

2. Agents with powers of representation shall be presumed to have been authorised to collect credits resulting from agreements concluded by him or her.

3. Where the agent collects credits without the necessary authorisation, the provisions of article 704 of the Civil Code shall apply, without prejudice to the regime provided for in article 23 of this statute.

Article 4
Exclusive agent

The granting to the agent of the exclusive right under which the principal is prevented from using other agents within the same geographical area or circle of customers for undertaking activities in competition with those of the exclusive agent shall depend upon agreement of the parties.

Article 5
Sub-agency

1. Unless otherwise agreed upon, appointment of sub-agents shall be permitted.

2. The rules of the present Title shall apply, mutatis mutandis, to the relationship of sub-agency.

CHAPTER II
Rights and obligations of the parties

SECTION I
Obligations of the agent

Article 6
General principle

In accomplishing their obligations, agents shall act in good faith and it shall be incumbent upon them to protect the interests of the principal and carry out the activities that are adequate to the full realisation of the objective of the agreement.

Article 7
Enumeration

Agents shall be obliged, inter alia, to:

- a) Respect the instructions received from the principal that do not jeopardise their autonomy;
- b) Provide the information requested by the principal or the information that appear to be necessary to a sound management of the business, mainly information relating to solvency of customers;
- c) Clarify the principal on the situation of the market and the prospects of progress;
- d) Render accounts, as agreed to, or whenever the situation so justifies.

Article 8
Obligations of secrecy

Agents shall not, even after the agency agreement has ceased, use or disclose to third parties secrets of the principal that have been entrusted to them or that have come to their knowledge in the exercise of their activity, save where the rules of professional deontology so permit.

Article 9
Obligation of non-competition

1. Any agreement establishing the obligation of the agent to the effect of not exercising, after the cessation of the agency agreement, any activity that is in competition with the activity of the principal shall be put in writing.
2. The obligation of non-competition may only be agreed upon for a maximum period of two years and shall confine itself to the geographical area or circle of customers earlier entrusted to the agent.

Article 10
“*Del credere*” Agreement

1. The agent may guarantee, through a written agreement, the fulfillment of the obligations relating to an agreement negotiated or concluded by him or her.
2. The *del credere* agreement shall only be valid where the agreement is specified or where the guaranteed people are individualized.

Article 11
Temporary impossibility

An agent who is temporarily unable to fulfill the agreement in full or in part shall immediately notify the principal of such fact.

SECTION II
Rights of the agent

Article 12
General principle

Agents shall have the right to demand that the principal acts in good faith in view of the full realisation of the objective of the contract.

Article 13
Enumeration

Agents shall have the right, *inter alia*, to:

- a) Obtain from the principal the elements that, according to the circumstances, reveal themselves to be necessary to the exercise of their activity;
- b) Be informed without delay of the acceptance or refusal by the principal of the negotiated agreements and of those they may have concluded without the necessary powers;
- c) Receive, periodically, a list of the agreements concluded and the commissions due, up to the last day of the month following the trimester in which the right to the commission has been acquired;
- d) Demand to be provided with any information, notably bookkeeping statements, from the principal which is deemed to be necessary to verify the amount of commissions due to them;
- e) Be paid, pursuant to the terms agreed upon;
- f) Be paid special commissions, which may be accrued, relating to the task of collecting credits and to the *del credere* agreement;
- g) Be paid a compensation for the obligation of non-competition after the cessation of the agency agreement.

Article 14
Right to notice

The agent shall have the right to be notified immediately that the principal is only in the position to conclude a number of contracts considerably lower than the number of contracts agreed upon or expected, in accordance with the circumstances.

Article 15
Compensation

In the absence of an agreement of the parties, the compensation for the agent shall be calculated in accordance with the usages or, where this is not applicable, on the basis of equity.

Article 16
Right to commission

1. The agent shall have the right to a commission for the agreements promoted and for the agreements concluded with customers raised by him or her, as long as such agreements have been concluded prior to the cessation of the agency agreement.
2. Unless otherwise agreed upon in writing, an agent who benefits from the exclusive right shall not lose his or her right to commissions relating to contracts concluded directly by the principal with people belonging to the geographical area or the circle of customers reserved for the agent.
3. The agent shall only have the right to a commission from agreements concluded after the cessation of the agency agreement where he or she proves that such agreements have been negotiated by him or her or, where he or she has prepared such agreements, the conclusion of such agreements is due mainly to the activity undertaken by him or her, provided that, in both cases, such agreements are concluded within a reasonable period of time subsequent to the cessation of the agency agreement.

Article 17
Succession of agents in time

The agent shall not have the right to a commission while the agency agreement is in force where, by force of article 16.3 above, such commission is due to the agent who preceded him or her, without prejudice of the commission being equitably shared between them whenever the circumstances so justify.

Article 18
Acquisition of the right to commissions

1. The agent shall acquire the right to commissions as and once any of the following circumstances is verified:
 - a) The principal has fulfilled the agency agreement or should have fulfilled it by force of the agreement concluded with the third party;
 - b) The third party has fulfilled the agreement;
2. Any agreement of the parties on the right to commissions shall not prevent the right to commission to be obtained at least when the third party has fulfilled the agreement or should have fulfilled it, if the principal has already fulfilled his or her obligation.
3. The commission referred to in the preceding paragraphs shall be paid by the last day of the month following the trimester in which the right to commission has been acquired.

4. Where a *del credere* agreement exists, the agent may however demand the commissions due once the agreement has been concluded.

Article 19
Failure to fulfill

Where the failure to fulfill the agreement results from a cause attributable to the principal, the agent shall not lose the right to demand the commission.

Article 20
Expenses

Unless otherwise agreed upon, the agent shall not have the right to reimbursement of the expenses for the regular exercise of his or her activity.

CHAPTER III
Protection of third parties

Article 21
Duty to inform

1. The agent shall inform any interested party of the powers of representation that he or she possesses and whether he or she has the power to collect credits, notably through signs posted on his or her workplaces and in all documents where he or she identifies himself or herself as being an agent.

2. The information referred to in the preceding paragraph shall be provided in writing in one of the official languages and shall be accompanied by a translation where it is intended to interested parties who can only express themselves in the other language.

Article 22
Representation without powers

1. Without prejudice to the provisions of article 23 below, any business concluded by the agent without powers of representation on behalf of the principal shall have the effects provided for in article 259.1 of the Civil Code.

2. The business shall be considered to be ratified where the other party, once made aware the conclusion of such business and of the essential content thereof, does not inform the *bona fide* third-party of his or her opposition to the said business within five days from the date he or she was made aware of such business.

Article 23
Apparent representation

1. Any business concluded by an agent without powers of representation shall be valid before the principal where, considering the circumstances of the case, objectively appreciated ponderous reasons existed that justified the confidence of the *bona fide* third-party in the legitimacy of the agent, provided the principal has also contributed to substantiate the confidence of the third-party.

2. The provisions of the preceding paragraph shall apply, *mutatis mutandis*, to the collection of credits by a non-authorised agent.

CHAPTER IV
Cessation of agency agreement

Article 24
Mutual agreement

An agreement through which the parties to it decide to put an end to the contractual relationship must be contained in a written document.

Article 25
Forfeiture

An agency agreement shall forfeit particularly in the following cases:

- a) The period of its duration has elapsed;
- b) The condition under which the parties to it subordinated it has occurred or it has become certain that such condition shall not occur, depending on whether it is a resolutive condition or a suspensive condition;
- c) Following the death of the agent or, where it is a corporate body, following its dissolution;
- d) Following bankruptcy on the part of the agent or of the principal.

Article 26
Duration of the agency agreement

1. Where the parties to the agency agreement have not agreed on its duration, the agency agreement shall be presumed to have been concluded for an undetermined period of time.

2. An agency agreement that continues to be implemented by the parties to it beyond the end of its established duration shall be presumed to have been renewed for an undetermined period of time.

Article 27
Rescission

1. Rescission shall only be allowed in agency agreements concluded for an unspecified period of time and provided it is communicated to the other party in writing with the following minimum prior notice:
 - a) One month, where the duration of the agency agreement is less than one year;
 - b) Two months, where the duration of the agency agreement is higher than one year;
 - c) Three months, where the duration of agency agreement is higher than two years;
 - d) Four months in all other cases.
2. Unless otherwise agreed upon, the periods of time referred to in the preceding paragraph shall end on the last day of the month.
3. Where the parties stipulate longer durations as compared to those provided for in paragraph 1 above, the duration to be observed by the principal shall not be shorter than that to be observed by the agent.
4. In the case provided for in paragraph 2 above, the time prior to the lapsing of the duration shall be taken into account when determining the period of prior notice.

Article 28
Lack of prior notice

1. A party denouncing the agency agreement without observing the lengths of time referred to in the preceding article shall be obliged to compensate the other party for the damages caused due to the lack of prior notice.
2. The agent may demand, in lieu of compensation, an amount calculated on the basis of the monthly average compensation received in the course of the preceding year as multiplied by the time not observed; where the agency agreement has been in place for less than one year, the monthly average compensation received during the time the agency agreement was in force shall apply.

Article 29
Dissolution

The agency agreement may be dissolved by any of the parties:

- a) If the other party fails to fulfill its obligations where, considering its gravity or reiteration, the survival of the contractual link cannot be demanded;
- b) If circumstances occur that render impossible or seriously damage the realisation of the objective of the agency agreement in such a manner that no one may demand the maintenance of the contract until such time as the period of time agreed upon for its expiration, or imposed in case of rescission, expires.

Article 30
Declaration of dissolution

Dissolution shall take place through a written statement within a period of one month from the date of knowledge of facts justifying it, with an indication of the reasons substantiating it.

Article 31
Compensation

1. Irrespective of the right to dissolve the agency agreement, any of the parties shall have the right to be compensated, pursuant to the general terms, for the damages resulting from the non-fulfillment of the obligations.
2. Dissolution of the agency agreement on the basis of sub-paragraph b) of article 29 shall confer the right to compensation in accordance with equity.

Article 32
Clientele compensation

1. Without prejudice to any other compensation due pursuant to the preceding provisions, the agent shall have the right, after the agency agreement has ceased, to a clientele compensation, provided the following requirements are met cumulatively:
 - a) The agent has attracted new clientele for the other party or has substantially augmented the volume of business with the already existing clientele;
 - b) The other party ends up benefiting considerably from the activity developed by the agent after the cessation of the agency agreement;
 - c) The agent ceases to receive any compensation for agreements negotiated or concluded with the clients referred to in sub-paragraph a) after the agency agreement has ceased.
2. In case of death of the agent, the clientele compensation may be claimed by the respective heirs.

3. No clientele compensation shall be due where the agency agreement has ceased due to reasons attributable to the agent or where the latter, following an agreement with the principal, has transferred his or her contractual position to a third party.

4. The right to clientele compensation shall extinguish where the agent, or their heirs, fail to communicate the principal, within a period of one year from the date of cessation of the agency agreement, of their intention to receive it, with the respective claim proceeding being filed within the year subsequent to such communication.

Article 33

Calculation of the clientele compensation

Clientele compensation shall be calculated on equitable terms, but it shall not exceed an amount equivalent to an annual compensation, calculated from the annual average of the remunerations received by the agent during the last five years. Where the agency agreement has lasted less time, the average of the period during which it was in force shall apply.

Article 34

Right of retention

The agent shall have right of retention over any objects and valuables that he or she retains by force of the agency agreement for the credits resulting from his or her activities.

Article 35

Obligation to return

Without prejudice to the provisions of the preceding article, each party shall have the obligation to return to the other part, pursuant to the agency agreement, all the items, valuables and other elements belonging to the other party.

CHAPTER V

Conflict rules

Article 36

Temporal scope of application

1. The provisions of the present statute shall apply to agency agreements in force at the date of its entry into force, without prejudice to the legal or conventional provisions that are concretely more favourable to the agent.

2. The parties to the agency agreement shall have 60 days after the entry into force of the present statute, to put in writing any previously concluded agreements where this is the form required by the present statute.

3. The agent shall have a similar period of time to comply with the duty to inform as imposed in article 21 above.

Article 37
Territorial scope of application

As regards the regime for their cessation, agency agreements regulated by the present statute that are executed exclusively or mainly in the national territory shall only attract legislation other than the Timorese legislation where the foreign legislation reveals itself to be more favourable to the agent.

CHAPTER VI
Final provision

Article 38
Entry into force

The present statute shall enter into force on the same date of the entry into force of the Civil Code, approved by Law No. 10/2011 of 14 September.

Approved by the Council of Ministers on 11 January 2012.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister for Tourism, Commerce and Industry,

Gil da Costa Alves

Enacted on 17/2/2012

For publication,

The President of the Republic,

José Ramos-Horta