

# COUNTRY REPORT MOROCCO

## *Commercial agency agreement*

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### **1. LEGAL SOURCES.**

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

#### **Rules of law –**

Commercial agency agreements are governed by specific provisions of the Moroccan Commercial Code (Articles 393 to 404 C.com.). They are also subject to the general provisions that pertain to mandate included in the Dahir des obligations et contrats (Articles 879 to 942 DOC).

It is important to note however that the law in Morocco is not clear regarding the civil or commercial nature of the mandate given to the commercial agent. Legal scholars (la doctrine) are divided in this regard. Certain authors believe that the mandate is by nature commercial whereas others agree with the position adopted in France by French court which considers that the nature of the mandate is civil because the commercial agent does not perform any commercial acts carried out on his name and on his behalf. Furthermore, legal scholars who believe that the nature of the mandate is civil also point out that it cannot be otherwise since the Moroccan commercial code does not include the activity of commercial agency in the list of activities that are considered as commercial by Moroccan law (Article 6 C.com.).

### **2. NOTION OF COMMERCIAL AGENT.**

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#### **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?***

The law of Morocco on agency contracts does not apply to occasional intermediaries. It only applies to intermediaries that act as commercial agents on a regular and professional basis (Article 393 C.com.).

Occasional intermediaries are subject to the provisions pertaining to the contract of mandate included in the Dahir des obligations et contrats (Articles 879 to 942 DOC).

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

Pursuant to Moroccan law, an agency contract is a mandate by which a person who is not bound by an employment contract agrees to negotiate or conclude, **on a regular basis**, purchases, sales or any other commercial transactions in the name and on behalf of a merchant, a producer or other commercial agent who in turn commits to compensate with commission fee the commercial agent for his or her activity (Article 393 C.com). We can derive from this definition that the most important criteria that characterizes commercial agent is the regularity of the commercial activity they carry on for their principals.

However, in some cases the activity of a commercial agent can be exercised on a regular basis without falling under the regulation of the Moroccan law on commercial agency. This is specifically the case when the activity of commercial agency is accessory in a contract which main purpose is not the commercial agency. In this specific case, the law allows the parties to decide not to apply the provisions of the law that pertains to agency contract to the accessory activity of commercial agency. However, the law indicates that such clause will be considered non valid if the execution of the contract shows that the main object of the contract is commercial agency (Article 394 C.com).

Unlike commercial agents, occasional intermediaries are by definition intermediaries that can carry on the same activity as a commercial agent but not on a regular basis.

## **2.2 Self-employed agents.**

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

In Morocco and according to the provision of Article 6 of the Moroccan labour code a person can be considered as an employee subject to the provisions of the Moroccan labour law if he or she has committed to exercise his or her professional activity under the direction of one or several persons in exchange of a salary whatever its nature and method of payment.

The lack of independence which materialises into a relationship of subordination “lien de subordination” is the main criteria that Moroccan courts take into consideration in order to characterize an employment contract and differentiate it from any other contracts.

It derives from the above that according to Moroccan law a commercial agent may be considered as an employee submitted to labour law if he has a relationship of subordination with his principal and thus lack the independence that characterizes the activity of a commercial agent.