

COMMERCIAL ENTERPRISE LAW

MERCHANT ASSISTANTS

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CONCEPT OF ASSISTANTS TO MERCHANTS - REASONS FOR EXISTENCE



Individual merchants and corporate merchants' organs are not considered merchants' assistants in the technical-legal sense; because these individuals, by law, undertake this duty as a member of the merchant or as the legal representative of the merchant.



When a merchant carries out business activities, depending on the size of the enterprise, the volume of production operations, and the commercial position of the goods and services it supplies, the merchant may need the assistance of third parties with expertise.



Persons who are in a relationship with suppliers or customers, who are equipped with the authority to represent inside or outside the enterprise to a lesser or greater extent, or who, even if they do not have the authority to represent, are given the duty of mediation in certain matters within the scope of the commercial enterprise by contract, are considered assistants to merchants.



These individuals are equipped with a certain level of representation authority, and bona fide third parties are protected to a certain extent.

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CLASSIFICATION / TYPES



Dependent merchant assistants: Commercial representatives, other commercial agents, and marketers.



Independent merchant assistants: Agents, brokers, and dealers.



Classification based on the relationship with the merchant: Continuous or discontinuous.



Classification based on whether they have authority to represent.



Sole seller?

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COMMERCIAL REPRESENTATIVE

Definition and authorization

TBK Madde 547 – The commercial representative is the person to whom the owner of the business has explicitly or implicitly authorized to manage the commercial enterprise and to represent himself with the commercial representation authority under the trade name in the transactions related to the business.

The owner of the business must register with the trade registry that he / she has been given commercial representation; however, the responsibility of the business owner for the acts of the commercial representative does not depend on the registration.



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Appointment of Commercial Representative

Appointment of Commercial Representative

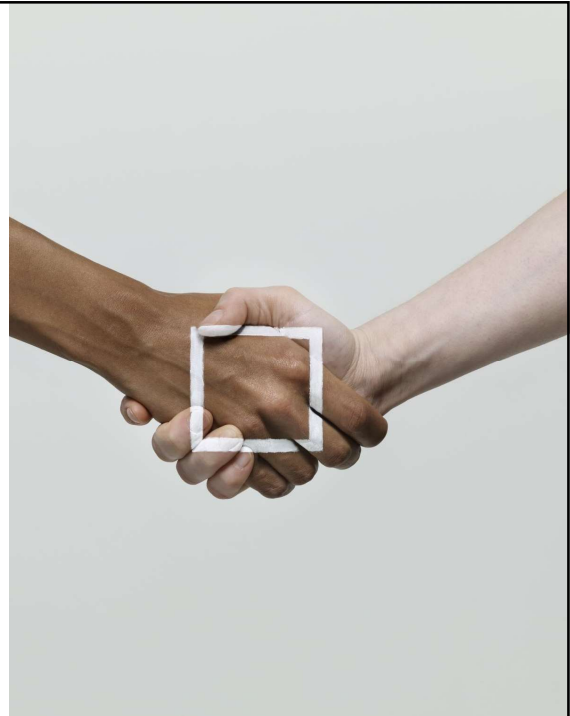
- **Authorized Appointers:** The owner of the business or the organs managing the business.
- **Eligibility to Appoint a Commercial Representative:** Must be a natural person. Having the capacity to discern is sufficient.
- **Appointment Procedure:** There is no formal requirement.



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Internal Relationship: Relationship between the operator and the merchant

- **Dependent on a service/employment contract with the merchant.**
- **Non-compete obligation:** the representative is bound by loyalty to the merchant.



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External Relationship: Scope of the power of representation: all kinds of legal transactions and similar acts & exception if the authority is based on the principle of authority.

- 1-Examples of transactions that a commercial representative can perform under the The Turkish Obligation Code (TOC) 548.

- 2-Transactions that a commercial representative cannot perform:

A- Transfer of real estates or restriction with a real right.

B- Transactions outside the scope of the business / Fundamental transactions

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COMMERCIAL REPRESENTATIVE

Limitation of Commercial Representative

1- Limitation with branch affairs (territorial limitation)

2- Limitation with joint representation registration

3- Registration and announcement of limitations



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Termination of Commercial Representation Relationship (TOC Article 554)

- Voluntary Termination Reasons
- Automatic Termination Reasons
- Effects and Consequences of Termination

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Statute of Limitations

- Claims arising from contracts 5 years
- Unauthorized representation 10 years
- Tort 2 and 10 years

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PRACTICE EXERCISE 1

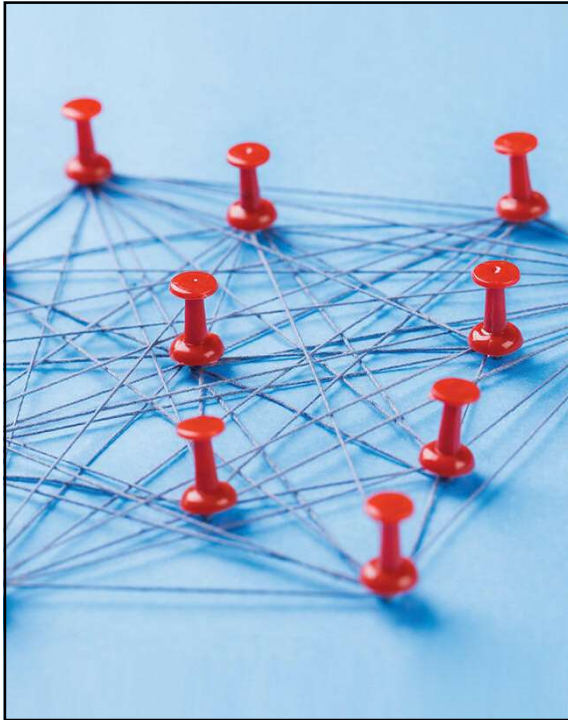
- In Konya, the owner of a shopping mall (A) appointed (T) as a commercial representative to manage its affairs. (T) wanted to open a toy section in the mall, which was not currently available, and reached an agreement with the toy factory (F). (T) also signed a promissory note for 3,000 TL for the toys purchased. Later, (T) rented a store in the mall to (B), who then started to default on the rent payment. Consequently, (T) filed a lawsuit against (B) on behalf of (A) by proxy. (B) claimed that (A) should have hired an attorney.
- (A) found (T)'s powers as a commercial representative excessive and limited them in conjunction with himself. (A) attempted to register this limitation in the trade registry, but the trade registry director claimed that such limitation should be made among commercial representatives and refused to register it. Meanwhile, (A) fell ill and delegated the shopping mall's transactions to (T). However, (A) and (T) agreed that (T)'s commercial representative status would end upon (A)'s death.
- (A) made a contract with the Clothing and Textile Corporation to purchase winter clothing products for the shopping mall. Since they did not have enough products, the Clothing and Textile Corporation purchased winter products from another merchant and issued a promissory note on behalf of (A). Although (A) noticed this, they did not object.

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PRACTICE EXERCISE 1

- A) Does (T) have the authority to open a toy section and issue a promissory note to (F)? Why?
- B) Evaluate (T)'s leasing of the store to (B).
- C) Is it legal for the trade registry director not to register the limitation of joint representation? Why?
- D) Is the agreement between (A) and (T) regarding the termination of their commercial agency valid? Why?
- E) Does the Clothing and Textile Corporation have the authority to issue a promissory note on behalf of (A)? Why?

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COMMERCIAL AGENTS (TOC 551)

Madde 551 – A commercial agent is a person authorized by a business owner to manage his business or to carry out some business of his business, without giving him or her the authority to be a business representative.

This authorization covers all customary operations of the business. However, unless the commercial agent is explicitly authorized, he cannot borrow money or the like, make a foreign exchange commitment, file a lawsuit and follow a filed suit.

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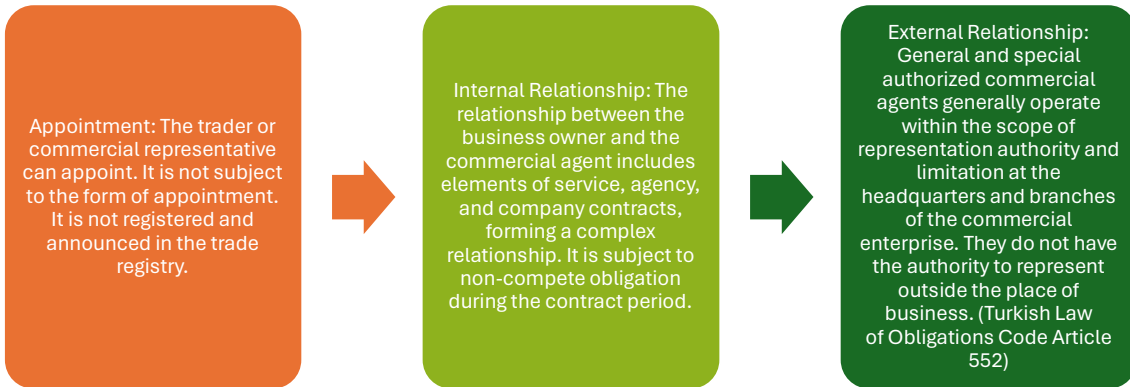
Genel Ticari Vekil - General Commercial Agent

Özel Ticari Vekil - Special Commercial Agent

Özel yetkili ticari vekil (BK 552) - Special authorized commercial agent

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COMMERCIAL AGENTS



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PRACTICE EXERCISE 2

- Retail food sector market chain owner (X) Limited Company has opened a new market in Istanbul Avclar, and (A) has been appointed as the authorized manager for all kinds of ordinary and extraordinary transactions not exceeding the value of 300,000 TL related to this market. This appointment of (A) and the limitation of his/her authority for the market have been registered in the trade registry.
- (A) has obtained a loan of 400,000 TL from (Y) Bank for the provision of the market's service vehicle, and as a security for the loan, he/she has undertaken to establish a mortgage right in favor of (Y) Bank on the market building.
- Having taken the loan, (A) purchased 3 minibusses from the car dealer (B) to be used as service vehicles and, upon (B)'s offer, also purchased a bus for the transportation of workers employed at the headquarters of (X) Limited Company, thinking it was cheaper.
- The minibusses have been delivered, but a month after delivery, it was realized that one of the minibusses had a damaged engine. Therefore, (A) sent a fax to (B) informing him/her that he/she was rescinding the sales contract for this minibus due to the damage in the engine.

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PRACTICE EXERCISE 2

- Is (X) Limited Company a trader?
- Is the market opened in Avclar a commercial enterprise? What is the effect of registering the market in the trade registry?
- What is the nature of the legal relationship between (X) Limited Company and (A)?
- a) Can (A) obtain a 400,000 TL loan from (Y) Bank on behalf of (X) Limited Company? Does the registration of (A)'s authorization limitation in the trade registry change this conclusion?
- b) Can (A) establish a mortgage right in favor of (Y) Bank on the market building?
- c) Without knowing that (A)'s authority is limited to the market in Avclar, can (B) apply to (X) Limited Company for the payment of the bus?
- Evaluate the validity of the notice sent by (A) to (B) in terms of "time" and "form".

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MARKETER (TOC Articles 448-460)

- A marketer, according to the marketing agreement, is a dependent commercial assistant who undertakes, for a fee, to act outside the business on behalf and for the account of the merchant to mediate in all kinds of transactions or to perform the transactions/contracts specified in the written agreement between them.

Intermediary Marketer

Marketer Authorized to Make Contracts



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MARKETER

Elements

- The existence of a contract establishing the marketing relationship (Service/employment contract)
- Conducting activities as an intermediary or contracting outside the commercial enterprise and as a mobile agent
- Continuity (Permanence)
- Fee (Essential Element)
- Loyalty to the merchant cannot be directly or indirectly eliminated.

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MARKETER

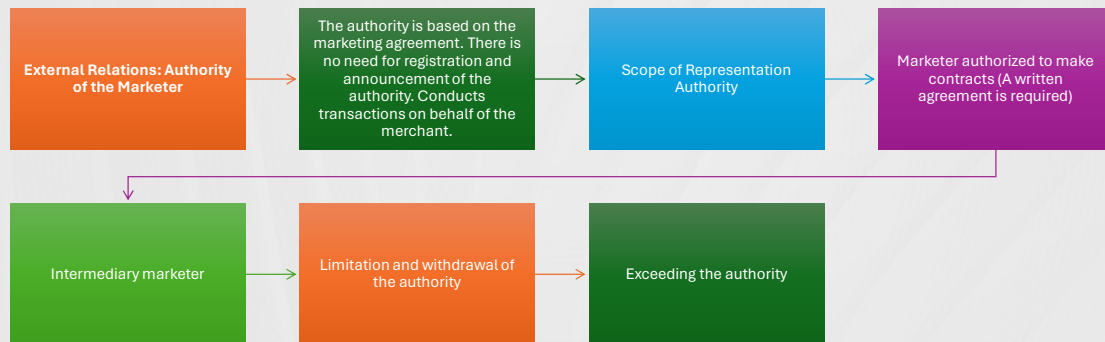
The provisions applicable to marketing are a special type of service contract.

What are the differences from similar institutions?

The appointment: A marketer is appointed by the natural person trader or legal representative operating a commercial enterprise, by a decision to be taken by the partners in a partnership, and by the authorized bodies in commercial companies. The authority to make contracts is given in writing.

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MARKETER



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Internal Relationship: Debts, obligations, and rights of the Marketer/Employer Trader

The Main Debts and Obligations of the Marketer

- a. Duty to manage the affairs and protect the interests of the Employer Trader
- b. Duty to comply with the instructions of the trader employer
- c. Non-compete obligation/agreement
- d. Duty to provide information and notification
- e. Duty to deliver to the employer the results obtained from their activities
- f. Warranty obligation

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Rights of the Marketer

- a. Right to remuneration
- b. Right to exclusivity
- c. Right of detention

Debts of the Trader and Employer

- All kinds of expenses and costs incurred for the performance of the work.

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MARKETER

Termination of the Marketing Agreement

Reasons for Termination

- a. Expiry of the Term
- b. Termination
- c. Death of the Marketer, Loss of Legal Capacity, Bankruptcy of the Trader
- d. Other Reasons for Termination

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SIM SAR (TELLAL) - BROKER

- Purpose / Function Mediation, intermediation, a subtype of agency.
- Place of Regulation / Conceptual Problem TOC 520 – 525
- Different Appearances of Brokerage in Practice / Special Regulations



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BROKER

- Definition A broker is a natural or legal person who, for a fee, facilitates the establishment of a contract between parties or acts as an intermediary in the preparation of a contract based on an agreement. (1. Finder 2. Intermediary 3. Proving and intermediary)



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BROKER

Elements

- Element of Contract: The brokerage relationship is established between the client and the broker.
- Independence
- Non-continuity of the relationship with the client
- Mediation
- Not obligatory to be a professional
- Fee

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1- Right to Remuneration

- a. Principle of success and causal connection
- b. Contribution of the client to the result or the activity of multiple brokers
 - b1. Contribution of the client to the result
 - b2. Right of exclusivity
 - b3. Activity of multiple brokers
- c. Amount of Remuneration
- d. Debtor of the Remuneration / Brokerage for two parties
- e. Broker personally being a party to the established contract
- f. Denial of excessive remuneration

2- Claiming Expenses

3- Statute of Limitations (5 years)

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BROKER

Reasons for Termination

- If a contract is concluded as a result of mediation
- At the end of the term if there is a term
- By dismissal and resignation
- Death
- End of legal capacity to exercise civil rights

Some Consequences of Termination

- There is no right to claim compensation as a result of dismissal and resignation

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Practice Exercise - 3

- (Ö), who works as a teacher at Keşan Anatolian High School, also owns a commercial enterprise and has been continuously and for a long time acting as an intermediary among those who want to buy and sell real estate. In this context, (Ö) made a written agreement with (A), who wanted to sell their real estate, and after some time, the buyers found by (Ö) purchased these properties

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Practice Exercise - 3

- Is Ö an assistant trader? If yes, what kind of assistant is he? Why?
- Does Ö have the status of a trader? Why?
- Can Ö request a fee from A, even though there is no provision in the contract?

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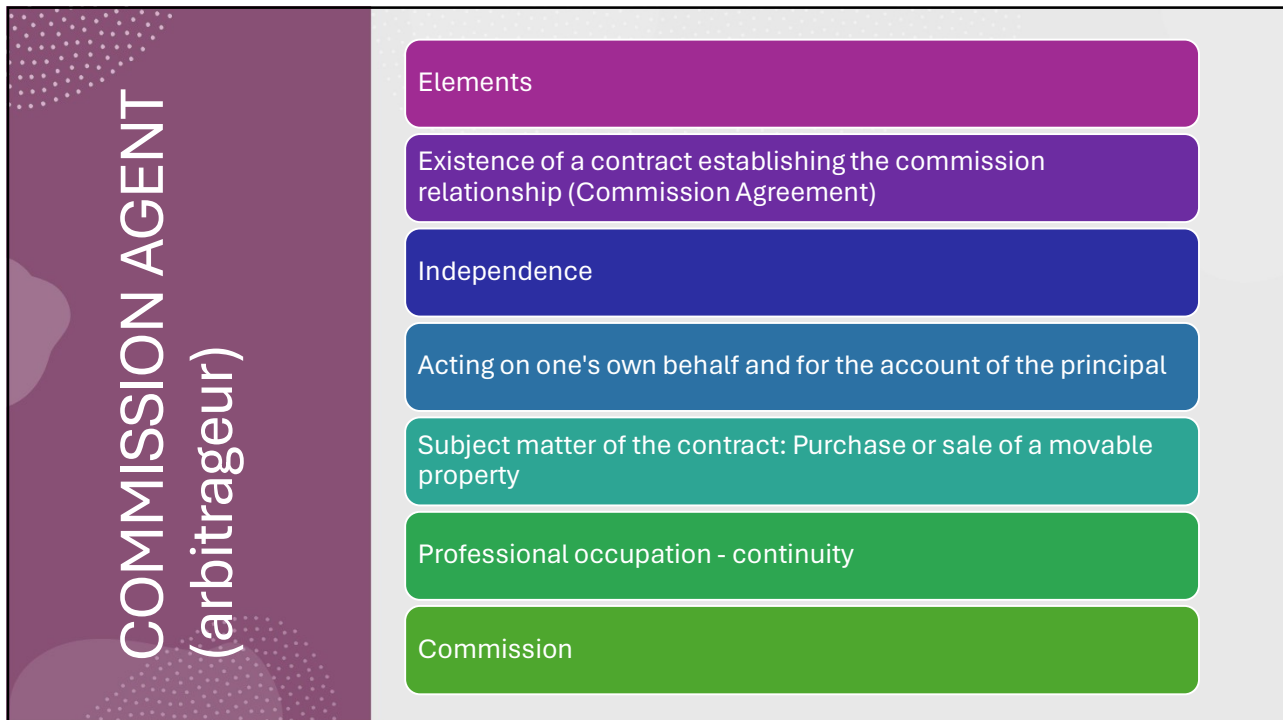
COMMISSION AGENT (TOC 532-545 TOC 546 TCC 917-930)

Description

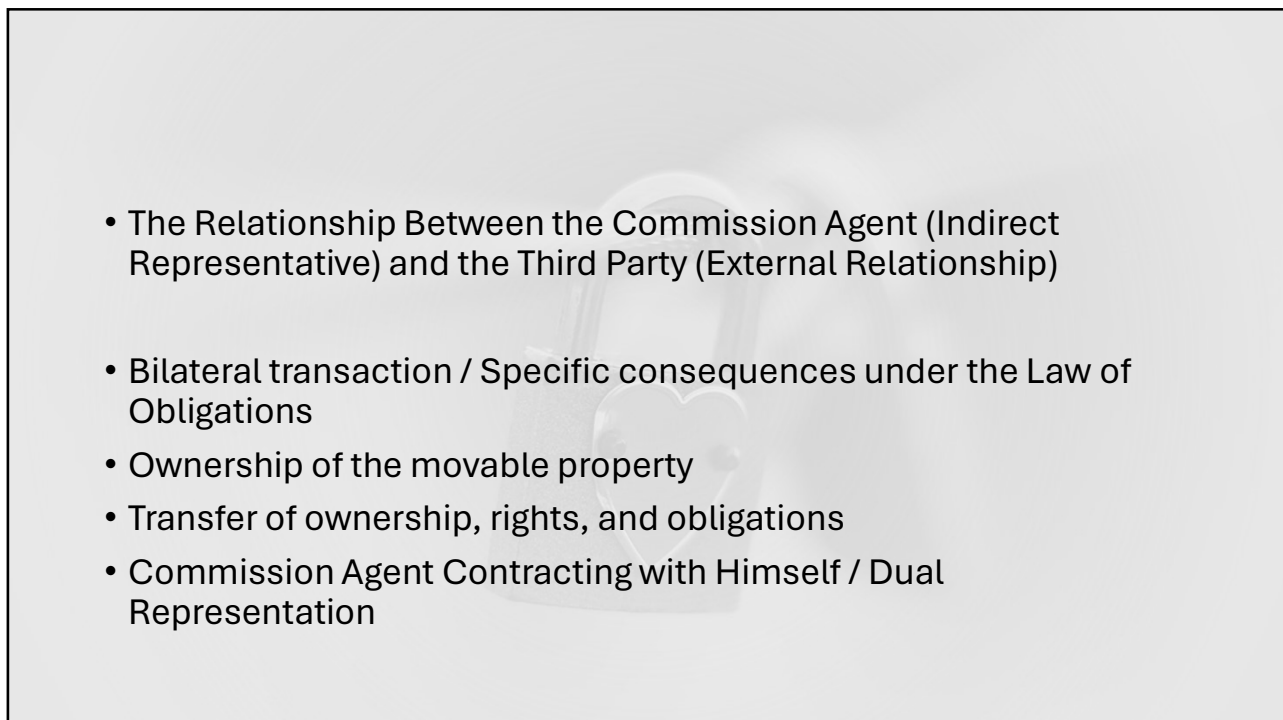
Madde 532 – A purchase or sale brokerage is a contract in which the broker undertakes the purchase or sale of valuable papers and movables in return for a fee, on his behalf and for the account of the person giving the power of attorney.

Without prejudice to the provisions in this section, proxy terms are applied to the commission contracts.

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1- Obligations of the Sales-Purchase Commission Agent

- A. Obligation to perform the work and act according to the principal's instructions
- A.1. Fee determined by the principal / liability for defects and liability without fault
- A.2. Selling goods on credit and paying before receiving the goods

2- Obligation to provide information and protect the interests of the principal

3- Obligation to account and to deliver/transfer what has been received for using the commission authority or as a result of using this authority

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Internal Relationship Between the Commission Agent and the Principal (Represented Party)

1- Rights of the Sales-Purchase Commission Agent

- 1.1 Right to Commission
- 1.1.1 Acquisition of the Commission Right
- 1.1.2 Right to request commission fee despite the loss of the right to demand it, and the principal's right to consider the agent as the buyer or seller

2- Right to Demand Payment of Expenses

3- Right to Lien

4- Right to Sell the Goods by Auction

I. Termination of Commission Agency

II. Statute of Limitations (5 years)

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