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The Legal Role of the Broker in the Luxury Market:
Contractual Constraints and available Legal
Instruments.

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Chapter 1: Intermediation and the Luxury Market: Economic Function and Dynamics.

1.1 The luxury market: characteristics, segments, and value chain.

The luxury market is situated within an entirely peculiar economic and legal dimension, in which many of the typical dynamics of traditional markets are attenuated, reversed, or even intentionally subverted. Whereas in mass markets the value of a good derives primarily from its functional utility, competitive price, and ability to satisfy widespread needs, in the luxury sector the economic value of the product is constructed through a far more sophisticated combination of material quality, manufacturing excellence, rarity, heritage, symbolic capacity, and social recognition. In other words, “a luxury good is purchased not only for what it does, but above all for what it represents”.¹

This aspect has traditionally been explained by economic theory through the Veblen effect, according to which, for a given category of goods, an increase in price does not lead to a reduction in demand, but may instead strengthen it. In such cases, itself constitutes a signal of prestige², social selection, and belonging to a restricted circle. The luxury consumer, therefore, does not seek exclusively superior technical performance of the product, but also its distinctive value and its potential to communicate status, taste, aesthetic education, or economic success. The high price thus assumes a semiotic function: it is not merely the consideration for a good, but an intrinsic element of its identity.

From a legal standpoint, this specificity has found progressively clearer recognition, especially within the European legal order. The case law of the Court of Justice of the European Union has repeatedly affirmed that, in the case of luxury goods, quality is not

¹ Jean-Noël Kapferer & Vincent Bastien, *The Luxury Strategy* (Kogan Page 2012).

² Thorstein Veblen, *The Theory of the Leisure Class* (1899).

exhausted by the material or technical features of the product, but also includes its prestigious image, its “aura,” and its ability to evoke exclusivity. It follows that maintaining the allure of luxury does not represent a merely promotional objective, but rather a legally relevant interest worthy of protection. The protection of the trademark, reputation, and distributive context therefore assumes, in the luxury sector, a more intense scope than in other product sectors.

In order to truly understand the luxury market, it is necessary to move beyond a unitary view of the sector and recognize its growing internal articulation. Today, in fact, luxury does not present itself as a homogeneous category, but as a stratified universe in which different levels of economic accessibility, productive rarity, and symbolic intensity coexist. A particularly useful distinction is that between absolute luxury, aspirational luxury, and accessible luxury.

Absolute luxury represents the apex of the pyramid. In this segment, value is grounded in extreme scarcity, uniqueness, tradition, exceptional craftsmanship, and often in a personalized relationship between the maison and the client. This category includes high jewellery, high-end collectible watchmaking, haute couture, bespoke leather goods, bespoke cars, customized yachts, and certain ultra-prime real estate. In such fields, the legal dimension revolves to a large extent around the protection of trade secrets, production know-how, designs and models, trademarks, creative works, and internal customer databases. The uniqueness of the product, moreover, increases the importance of customized contractual arrangements, confidentiality clauses, limits on resale, and forms of reputational control over the end customer.

Aspirational luxury occupies an intermediate level. These are products that retain a strong symbolic and brand component, but are offered to a broader audience than absolute luxury. This segment includes, for example, accessories, perfumes, eyewear, cosmetics, small leather goods, and licensed lines. Here the central challenge for the brand consists in reconciling commercial expansion with the protection of prestige. From a legal standpoint, trademark licensing rules, quality controls over the licensee, prevention of dilution of the distinctive sign, the fight against counterfeiting, and

constant monitoring of distribution channels become crucial. The more the trademark opens itself to a broad consumer base, the greater the risk of loss of perceived exclusivity.

Accessible luxury, finally, constitutes a boundary segment between premium and luxury. Products in this category offer high quality, and significant reputational positioning, but with greater volumes and relatively more contained prices. In this area, the regulatory framework must be managed with particular balance, since the trademark requires a certain degree of commercial capillarity while continuing to defend its distinctiveness. This entails more flexible solutions in distribution, digital presence, promotional strategies, and use of marketplaces, always within limits compatible with maintaining the brand image.

The industrial structure supporting these segments is the luxury value chain, which is distinguished by a high level of vertical integration. Unlike many sectors in which fragmentation of production is functional to cost reduction, in luxury the direct or stable control of the production and distribution phases is an essential part of competitive strategy. Maisons seek, in fact, to oversee every stage of the supply chain, from raw material to retail sale, in order to guarantee qualitative continuity, aesthetic coherence, traceability, and reputational integrity.

In the upstream phase, particular importance attaches to the selection of raw materials, relationships with highly specialized suppliers, protection of origin, and control of traditional manufacturing processes. It is no coincidence that numerous luxury groups have, over time, acquired tanneries, spinning mills, embroidery workshops, goldsmith manufactures, or textile mills: control of these assets makes it possible to protect rare expertise, avoid strategic dependencies, and preserve the value of “Made in.” Geographical provenance, in fact, in luxury does not constitute merely a logistical datum, but a true element of value. Indications of origin, labelling rules, protection of geographical indications, and, the enhancement of territorial craftsmanship directly affect the perception of the product and its positioning.

In the internal transformation phase, the luxury value chain requires very high quality standards, rigorous controls, staff selection, artisanal training, and at times production timelines incompatible with the logic of intensive industrialization. At this stage, value arises not only from technical workmanship, but also from the cultural capital incorporated into the product: craftsmanship, design, the history of the maison, continuity of style, and attention to detail.

It is, however, in the downstream phase that the most delicate legal issues emerge. Luxury distribution cannot be regarded as a mere sales channel; it constitutes an integral part of the product itself. The store, the advisor, the purchasing experience, the packaging, the post purchase service, and even the visual context in which the good is displayed all participate in the construction of value. Precisely for this reason, luxury houses make extensive use of selective distribution system³, through which they limit sales to authorized distributors that comply with stringent qualitative criteria. Such criteria may concern staff training, store furnishing, brand positioning, customer service management, the manner in which products are displayed, the level of assistance, and online presentation.

Under European competition law, such systems have been considered compatible with the internal market provided that they comply with conditions of objectivity, proportionality, and non-discrimination. EU law accepts that in the luxury sector the protection of aura and distributive coherence constitutes a legitimate interest⁴.

Ultimately, the luxury market must be read as a system in which value is built through the combination of scarcity, control, reputation, narrative, and supply chain discipline. Its economic logic cannot be understood without the law, just as its legal protection cannot be interpreted without its specific economic logic.

³ Richard Whish & David Bailey, *Competition Law* (Oxford University Press 2021); Case C-230/16, *Coty*.

⁴ Judgment of the Court (First Chamber) of 6 December 2017, *Coty Germany GmbH v Parfümerie Akzente*, C-230/16.

1.2 Information asymmetries, reputation, and trust: why intermediation exists.

One of the structural problems of the luxury market is represented by the presence of strong informational asymmetries between seller and purchaser. In this sector, in fact, the consumer is rarely in a position to assess fully and immediately the actual quality of the good, its authenticity, its provenance, the conditions of the supply chain, its collectible value, compliance with the declared artisanal standards, or even the legitimacy of its circulation. Such opacity is even more evident in secondary markets and in highly rare goods, where historical, documentary, and reputational profiles become an essential part of the price.

From an economic standpoint, luxury goods may be classified as experience goods or even as credence goods⁵. In the first case, the quality of the product is understood only after purchase and use; in the second, the consumer may not be able to verify it even *ex post*, having to rely on certifications, expert assessments, or reputational signals. This occurs, for example, in the case of a diamond with particular characteristics, a vintage watch, a collectible handbag, a signed design work, a couture garment, or a good originating from an ethical and sustainable supply chain that is declared as such but not independently verifiable by the customer.

This situation recalls Akerlof's theory of the "Market for Lemons,"⁶ according to which, in a market characterized by imperfect information, the inability of purchasers to distinguish high-quality goods from inferior or counterfeit ones progressively leads to a reduction in the average accepted price, with the risk of driving out the better producers. The luxury market is particularly exposed to this risk, since much of its value is immaterial and therefore vulnerable to imitation, falsification, and informational manipulation. If the consumer were not able reliably to distinguish the authentic product

⁵ Philip Nelson, "Information and Consumer Behavior" (1970) 78 *Journal of Political Economy* 311; Uwe Dulleck & Rudolf Kerschbamer, "On Doctors, Mechanics, and Computer Specialists" (2006).

⁶ George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism" (1970) 84 *Quarterly Journal of Economics*, 488.

from the imitation, the entire economic justification for the premium price would collapse.

For this reason, luxury *maisons* invest enormously in signalling mechanisms aimed at bridging the informational gap. The brand, the packaging, the store, personalized service, the certificate of authenticity, the serial number, digital traceability, the purchasing experience, after-sales assistance, and the coherence of the distributive context are not simple commercial accessories: they are trust-production devices. They communicate to the consumer that the product is not merely expensive, but deserves to be so.

Within this framework, reputation becomes the true currency of the luxury market. Reputation is an intangible asset accumulated over time through constant quality, identity coherence, the ability to innovate without betraying one's heritage, control of the supply chain, and reliability of the brand promise. It functions as a sort of implicit contract between enterprise and consumer: whoever purchases a luxury product buys not merely an object, but entrusts himself to the history of the trademark as a guarantee that the requested price corresponds to a universe of quality, authenticity, and prestige all together.

From a legal point of view, this explains why the trademark performs a particularly intense function in the luxury sector⁷. It is not merely an indicator of commercial origin, but also a guarantor of qualitative standards and a symbolic concentration of reputation. The enhanced protection of the trademark, especially where endowed with renown, is justified precisely because of its role in reducing uncertainty. Trademark infringement, counterfeiting, denigratory use, or placement in incompatible contexts do not just injure a formal exclusive right, but undermine the fiduciary mechanism on which the entire market lay on.

Intermediation arises precisely in order to institutionalize this trust. In a context in which the consumer does not always possess the expertise or the time necessary to

⁷ J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, 2026 - 1ed.

assess a complex good, specialized actors intervene as a bridge between supply and demand. In the luxury sector, the intermediary does not merely bring two parties into contact: he or she selects, filters, verifies, certifies, presents, reassures, and protects.

A high-end department store, a carefully selected multi-brand boutique, a certified resale platform, a rare-watch broker, a private advisor for collectible cars, a yachting broker, or an ultra-high-end personal shopper all perform a common economic function: they reduce search costs, help lowering the risk of error, provide specialist expertise, and transfer part of their own reputation onto the good sold. In other words, the intermediary places his or her own name and reputational capital at the service of the transaction. If the intermediary selects poorly, he or she loses credibility; if he or she selects well, he or she increases his or her own value as a gatekeeper.

This function also has a significant legal basis. Selective distribution contracts and commercial agreements in the luxury sector tend to construct a system in which the authorized intermediary assumes specific obligations concerning presentation, custody, staff competence, customer management, and environmental coherence. The point of sale is not neutral: it becomes part of the brand message. Trust is therefore entrusted not only to the product, but also to the institutional context in which the product is offered.

Moreover, the intermediary fulfils an essential function in managing the relational demand typical of luxury. High and ultra-high net worth consumers seek not merely an object, but first of all privileged access, then a differentiated treatment, and the ability to satisfy non basic requests. In this sense, the broker or private advisor does not simply sell goods, but availability, access, and confidentiality. The personal fiduciary relationship thus becomes an integral part of the value created.

Intermediation, therefore, is not an inefficient residue of pre-digital commerce. On the contrary, it is a structural response to the informational fragilities of the luxury market. The greater the risk of counterfeiting, the greater the complexity of the products, and the more the consumer attributes value to a subject capable of reducing uncertainty. In luxury, trust does not eliminate intermediation: it makes it necessary.

1.3 Matching and access to exclusive networks.

In the luxury market, one of the most relevant functions of the intermediary is to carry out an activity of qualified matching between highly selected demand and intentionally limited supply. Such a function is not merely logistical or commercial in nature, but involves a sophisticated dynamic of social, relational, and reputational selection. In many luxury sectors, in fact, it is not sufficient to have spending capacity in order to gain access to the good: it is also necessary to be introduced, recognized, and deemed compatible with the identity of the brand or with the culture of the relevant market.

This appears with particular clarity in sectors such as haute *horlogerie*, high jewellery, supercars, classic cars, yachting, art collecting, niche real estate, or bespoke fashion. In such markets, the most coveted goods are often destined for a restricted circle of long-standing clients, collectors, referenced persons, or clients assisted by recognized advisors. Access, therefore, is not merely economic, but first relational.

The intermediary here assumes the role of gatekeeper. He or she knows the clients, understands their profile, assesses their reliability, interprets their tastes, and measures their reputational relevance for the brand. At the same time, he or she knows the available supply, the production limits, the priorities of the *maison*, the allocation strategy for scarce goods, and the symbolic value deriving from the fact that a given good is associated with a given person. This process produces an effect of mutual selection: the client gains access to the brand, but the brand in turn selects the client.

From an economic standpoint, this matching activity generates value because it prevents highly symbolic goods from being distributed randomly or in a purely opportunistic manner. A very rare watch, a handbag produced in extremely limited quantities, or a special car derives part of its value precisely from the fact of being allocated to subjects capable of strengthening its social prestige. From this standpoint, distribution in the luxury sector is not a simple problem of efficient allocation, but one of allocation coherent with positioning.

From a legal point of view, this function is linked to the principles governing selective distribution. The possibility for the producer to choose its resellers and, indirectly, to affect the criteria for access to the product, has been recognized as legitimate when supported by requirements of protection of the luxury image and implemented according to objective, proportionate, and non-discriminatory criteria. Selection, therefore, cannot amount to pure arbitrariness, but it may certainly be based on qualitative parameters coherent with the good and with the brand.

Access to exclusive networks also generates a further effect: it produces belonging. The intermediary does not merely sell a rare good, but entry into a circuit of relationships, invitations, pre-allocations, private previews, reserved events, and privileged contacts. In this sense, matching is also the construction of social capital. Contemporary luxury, especially at the highest levels, tends in fact to shift from possession to participation: what matters is not only having the good, but being recognized as a subject authorized to be part of the ecosystem surrounding it.

1.3.1 Reduction of search and negotiation costs.

Another crucial contribution of the intermediary in the luxury market consists in reducing the search, verification, and negotiation costs borne by the parties. In the abstract, an interested purchaser might independently search for a rare good, verify its authenticity and provenance (provenance in luxury market is a fundamental information), negotiate the economic terms, arrange the contractual aspects, and organize the logistical and tax aspects of the transaction. In practice, however, this process requires highly specialized expertise, access to reserved information networks, availability of time, and evaluation capacities that the individual client often does not possess or does not wish to employ.

In luxury, the cost of search is not merely monetary. It is also a cognitive, relational, and reputational cost. Finding an authentic vintage handbag in excellent condition, a diamond with reliable documentation, a collectible design piece with certain provenance, or a historic vehicle with an intact maintenance history may require weeks

or months of verification. The intermediary compresses these costs because he or she centralizes information, contacts, technical expertise, and due diligence tools.

From this point of view, the intermediary acts as an informational hub⁸. He or she knows the market, monitors the availability of goods, identifies reliable sellers, filters doubtful proposals, and performs a pre-selection function. This significantly reduces the risk that the buyer must face alone the problem of informational asymmetry. In sectors such as high-end resale or collecting, this function is decisive: often the true added value lies not in the physical delivery of the good, but in the preliminary screening activity.

To this reduction of search costs is added the reduction of negotiation costs. Luxury transactions, especially if cross border or relating to unique goods, may involve complex negotiations concerning for example: price, guarantees, timing, authenticity, taxation, withdrawal clauses, and dispute resolution. The intermediary, thanks to his experience, standardizes many of these variables and makes the process more fluid. He knows the realistic price ranges, knows which documents to request, and can formulate standard terms or, conversely, manage customized negotiations efficiently.

From an economic standpoint, this increases market liquidity. A very rare luxury good, if left to purely bilateral negotiation between private parties, risks remaining unsold or being exchanged with significant inefficiency. The intermediary reduces this friction and makes possible a level of circulation that would otherwise be much slower, more costly, and more uncertain.

From a legal point of view, the intermediary's activity also offers a compliance advantage. In operations of high economic value, issues may arise relating to anti money laundering, export of cultural goods, international VAT, customs duties, temporary importation regimes, licenses, insurance, and customs controls. A qualified intermediary is familiar with these profiles and reduces the risk that the transaction will

⁸ Daniel F. Spulber, *Market Microstructure* (Cambridge University Press, 1996).

be compromised by formal or substantive irregularities. In luxury, therefore, efficiency is not merely a commercial question, but also a legal one.

1.3.2 Management of confidentiality and reputational risk.

The third essential function of the intermediary, particularly significant in the highest segments of luxury, concerns the management of confidentiality and the mitigation of reputational risk. In many cases, in fact, transactions involving luxury goods are not simple acts of purchase or sale, but operations in which publicity concerning the identity of the parties, the economic value, the timing, or even the very existence of the transaction may generate relevant social, financial, or professional consequences.

For certain clients like entrepreneurs, celebrities, family offices, collectors, institutional figures, or persons exposed in the national media it constitutes an essential component of the service. The purchase of an artwork, a yacht, a prestigious property, a jewellery collection, or a highly recognizable good may affect personal privacy, wealth strategies, or public reputation. In such cases, the intermediary acts as a legal and relational shield, enabling the parties to operate with a greater degree of anonymity and confidentiality.

This result is often pursued by means of specific contractual instruments, such as confidentiality agreements or fiduciary mandates. By placing himself formally or substantively between the parties, the intermediary reduces reciprocal exposure and renders the negotiation process more secure.

Confidentiality, however, does not concern only the client. The brand also has a direct interest in avoiding the public exposure of certain negotiating dynamics, contractual disputes, aggressive discount practices, authenticity issues, or after-sales controversies in ways capable of compromising the image of the *maison*. The intermediary, by acting as a buffer, may absorb part of the commercial tension and prevent the physiological friction of the transaction from turning into reputational damage for the trademark.

In this sense, the intermediary does not eliminate risk, but internalizes it and manages it professionally. His economic incentive is directly linked to the ability to offer a safe,

orderly, and “frictionless” environment in which the parties may operate without perceiving the uncertainty that normally accompanies high-value transactions. If the intermediary is perceived as reliable, the client is willing to delegate; if perceived as indiscreet or unprepared, he or she immediately loses role in the market.

It should also be considered that, in luxury, reputational risk may arise from elements apparently external to the transaction: association with certain networks, association with certain clients, presence on certain channels, or failure to comply with social and environmental standards. Consequently, the intermediary is called upon to manage not only documentary confidentiality, but also the overall reputational coherence of the context in which he or she operates. In a market where image, symbol, and trust coincide, discretion is not a marginal added value: it is part of the good itself.

1.4 Sales channels in the luxury market.

In the luxury market, the choice of the distribution channel constitutes a strategic decision of primary importance, since it affects not only the commercial efficiency of the undertaking, but also the legal and reputational resilience of the trademark. In the Italian context, that choice is situated within a composite regulatory framework, in which the provisions of the *Codice Civile*, industrial property rules, *codice del consumo*, e-commerce regulations, and the principles of national and European competition law interact.

The law, does not merely regulate the relations between undertaking and distributor, but becomes an instrument for the construction and defense of trademark positioning.

The most direct model is that of the Directly Operated Store (DOS), namely a point of sale managed directly by the parent company or one of its subsidiaries. This is the formula that offers the highest level of control over customer experience, image, prices, staff, merchandising, and post purchase service. In the Italian context, this model generally falls within the rules on commercial leases and the civil law rules relating to the organization of business activity.

Through the DOS, the trademark can shape in full its relationship with the final customer. The physical environment of the boutique, the choice of materials, furnishings, lighting, music, product arrangement, and staff conduct all contribute to creating an immersive experience coherent with the identity of the *maison*. In some cases, these elements may also be protected from the standpoint of intellectual property, for example as design, creative work, or interior architecture, provided that the requirements of originality laid down by copyright law or the rules on designs and models are met.

The flagship store occupies an even more relevant position. It is not merely a shop, but a physical manifestation of the trademark, almost a material extension of its intangible identity. In the major luxury centers, Milan, Monaco, Rome, Florence, Paris, London, New York, the flagship performs a symbolic, relational, and institutional function. It is often not designed to maximize immediate sales, but to consolidate brand equity and offer an experience that no other channel can fully replicate.

Where the brand instead decides to rely on third parties, it frequently resorts to selective distribution. Under Italian law, these agreements are generally classified as atypical contracts pursuant to art. 1322 c.c., are fully admissible if directed toward the realization of interests worthy of protection. In the case of luxury, the interest worthy of protection consists in the protection of the reputation of the trademark, the quality of the service, and the experience associated with the product.

The criteria for selecting resellers may concern the prestige of the location, the layout of the store, staff training, separation from incompatible products, the obligation to maintain certain display standards, the availability of ancillary services, and compliance with the trademark's digital policies. If such obligations are not complied with, the producer may seek termination for breach pursuant to art. 1453 c.c., in addition to claiming damages where the relevant conditions are met.

Particularly delicate is the issue of compatibility between selective distribution and antitrust law. In general terms, vertical restrictions on distribution may be admissible if

justified by the nature of the product and aimed at preserving its quality and image. Precisely in the luxury sector, case law has progressively recognized that maintaining the “luxury aura” may constitute a legitimate aim. It follows that the brand may, within certain limits, prohibit resale in environments incompatible with its positioning, such as unauthorized outlets, discount stores or aggressive promotional channels.

Alongside mono brand stores and selective distribution (like Rolex distribution), there are high end department stores, corners, and shop pop ups, which enable the brand to control qualified spaces within third-party structures. In these cases as well, the level of contractual control must be high, since the trademark has an interest in avoiding contamination with product or promotional contexts that are incoherent. The luxury corner is not merely a reduced point of sale, but a space regulated in every detail so as to reproduce, as far as possible, the brand universe.

In recent years, the digital channel has assumed an increasingly central role. E-commerce, however, in luxury presents an intrinsic tension: on the one hand it expands accessibility and data-collection capacity; on the other it risks reducing that experiential rituality which traditionally justifies part of the premium value. For this reason, luxury houses have developed forms of omnichannel integration seeking to combine digital convenience with reputational control. The proprietary website, online booking with in store collection, digital clienteling, remote personalization, private virtual sessions, and digital post purchase services are all instruments aimed at transferring online, at least in part, the relational experience of the physical store.

Within the Italian framework, electronic commerce is governed in particular by Legislative Decree No. 70/2003 and the *Codice del Consumo* (Legislative Decree No. 206/2005), which impose pre contractual obligations, transparency rules, consumer protection, rules on withdrawal, and trader liability. In luxury, however, these rules interact with the brand’s need to control the quality of the sales context. Hence the relevance of contractual policies relating to online sales, the terms of use of authorized channels, and the limits imposed on third-party resellers.

A further profile is represented by the principle of trademark exhaustion. As a general rule, the trademark proprietor may not oppose the subsequent marketing of the good once it has been placed on the market in the European Economic Area with its consent. However, Italian and European law recognize that the proprietor may object where legitimate reasons exist, especially if the condition of the product is altered or if the sales context is detrimental to the reputation of the trademark. In luxury, this principle is of decisive importance because it makes it possible to counter certain forms of parallel trade or resale in environments that are detrimental to the brand image.

The issue is directly connected to the phenomenon of the gray market, namely authentic products placed on the market through unauthorized channels. Unlike counterfeiting, here the good is original, but its circulation takes place in a manner misaligned with the brand's distribution strategy. In such cases, the damage concerns not so much the material integrity of the product as the loss of control over the sales context, pricing policy, associated service, and the geographical segmentation of the clientele. Precisely for this reason, luxury brands invest heavily in distribution-network monitoring, contractual audits, traceability, and selective enforcement.

Finally, the growing weight of the secondary market, namely certified resale, auctions, specialized brokers, and platforms dedicated to luxury pre-owned goods, cannot be overlooked. This channel, although not always directly controlled by the *maisons*, is now an integral part of the luxury ecosystem. It raises new issues in terms of authentication, liabilities, consumer protection, use of third-party trademarks, advertising, and the relationship between the primary and secondary markets. More and more brands are seeking to govern this space as well, through certified pre-owned programs (especially in the automotive field), partnerships with specialized platforms, or buy-back strategies, in an attempt to prevent the secondary market from becoming a place of reputational erosion.

Sales channels in the luxury market cannot be analyzed as mere commercial techniques since they constitute instruments of legal protection, symbolic construction, and

management of the fiduciary relationship with the customer. In luxury, distribution also means qualifying, selecting, and defending the trademark.

Chapter 2: Legal Framework of Intermediation: Typical and Atypical Models.

2.1 Classification of the relationship: criteria and practical consequences (burden of proof, remuneration, liability).

In order to arrive at the classification of the mediation relationship, it is appropriate to begin from the wording of Article 1754 c.c.

In the figure of the mediator there is identified the person who brings two or more parties into contact⁹ for the conclusion of a transaction, while remaining unbound by relationships of collaboration, subordination, or representation¹⁰.

The intermediary position assumed by the intermediary vis-à-vis the future contracting parties, and the purpose of his activity, are expressly clarified. Necessarily connected with the latter is the element of impartiality¹¹.

free from any relationship of dependence with respect to the parties. Any such dependence would distort the legal configuration of the relationship itself¹².

Article 1754 c.c. does not refer to an obligation of impartiality, but this does not mean that such obligation is excluded, since the intermediary must act in the interest of all parties. The parties derive a benefit from being brought into contact by the mediator¹³, a third party who, being fully aware of the interests of all, is capable of satisfying their expectations. His role is fundamental and his position strategic¹⁴.

⁹ Art. 1754 c.c.; Francesco Galgano, *Diritto Civile e Commerciale*; Massimo Bianca, *Diritto Civile*, vol. 3.

¹⁰ Art. 1754 c.c., in its original formulation, defines the mediator as “*colui che mette in relazione due o più parti per la conclusione di un affare, senza essere legato ad alcuna di esse da rapporti di collaborazione, dipendenza o rappresentanza*”.

¹¹ Francesco Caringella, *Manuale di Diritto Civile*; Cass. civ., sez. III, 8 February 2007, n. 2722.

¹² Massimo Bianca, *Diritto Civile*, vol. 3; Cass. civ., sez. III, 14 July 2009, n. 16382

¹³ Francesco Galgano, *Diritto Commerciale*; Cass. civ., sez. II, 20 August 2015, n. 17098.

¹⁴ Daniel F. Spulber, *Market Microstructure*; Oliver E. Williamson, *Markets and Hierarchies* – 1996.

2.2 Brokerage (mediation).

Returning to the wording of Article 1754 c.c., it may be observed that the legislator did not intend to provide a definition of the mediation relationship, but merely limited itself to indicating what the specific activity of the mediator consists of.

Legal scholarship has expressed itself at length on the point in time at which the intermediation relationship acquires legal effectiveness. The view upheld by the prevailing doctrine is that the mediation relationship is perfected when the intermediary has accepted the assignment conferred by the parties, where they have taken the initiative; or when the parties have accepted the mediator's intervention, where it was the latter who took the initiative.

2.2.1 Right to commission and “causal link”.

Article 1755 c.c. grants the mediator the right to a commission from each of the parties, if the transaction is concluded as a result of his intervention. From this it may be inferred that the right to remuneration is a fundamental right of the mediator.

The Court of Cassation, Civil Division, by judgment No. 11443/2022, addressed the issue of mediation, holding that the right to commission arises whenever the conclusion of the transaction is causally connected with the intermediary activity, which exists where the mediator has brought the parties into contact, thus creating the indispensable antecedent for the conclusion of the contract, irrespective of his intervention during the various stages of the negotiations, up to the execution of the contract, provided that the latter may be the proximate or remote consequence of the intermediary's work, such that without it, according to the principle of adequate causation, the contract itself would not have been concluded.

According to traditional doctrine, it is indispensable that the transaction have reached its final definition in order for the aforesaid right to accrue. Otherwise, and therefore if the transaction is not executed or the negotiations are interrupted, the right to commission will also lapse. This suggests that the legal perfection of the principal

transaction constitutes an indispensable condition for the arising of the intermediary's right.

In the performance of the intermediation relationship, the mediator bears professional liability, which is governed both by Article 1759 c.c. and by Law No. 39 of 3 February 1989. The latter affected the regulation of mediation by elevating registration in the register to the status of a necessary requirement both for the exercise of the activity and for the arising of the right to commission. In this regard, the burden of proving registration in the register falls upon the mediator, together with proof of the existence of the assignment and of the activity carried out, for the purpose of requesting recognition of the right to commission.

The duty of information incumbent upon the mediator is an expression of the general duty of good faith and fairness. The mediation relationship, like other contracts, remains subject to the general provisions contained in Book IV c.c., but the particular nature of such relationship has led to the inclusion, in the newer legislation, of various special obligations. These are set out in Articles 1759 and 1760 c.c. et seq. The first of those articles indicates the obligation for the mediator to communicate to the parties the circumstances known to him concerning the assessment and security of the transaction. The mediator must communicate not only circumstances of an economic nature, among which the solvency of the parties is important, but also those relating to personal conditions, such as the possible incapacity of one of them, which renders the contract voidable.

The obligations mentioned in Article 1760 concern exclusively those who professionally carry on mediation, in particular those who carry it on in relation to goods and securities. The provision is intended to afford the parties greater assurance for the security of contracts concluded through the professional intermediary.

2.3 Agency by mandate.

Article 1703 c.c. introduces the mandate, a contract which satisfies the principal's interest in the performance of the legal act which he himself cannot or does not wish to

perform, and that of the mandatary, where for consideration, in receiving compensation for such activity. The legal nature of the “mandate” refers us to a consensual contract¹⁵, that is, one which produces its effects at the moment of the exchange of consent; moreover, it is a contract having obligatory effects. This may be inferred from the wording of the provision, where it states: “the mandate is the contract by which the mandatary undertakes.”

It may, that is, be either for consideration or gratuitous. In the former case, according to part of the doctrine, regarded as a synallagmatic contract¹⁶. On the one hand there is the mandatary, who undertakes to perform a given legally relevant activity, and on the other, in a clear synallagmatic relationship, there is the payment of compensation by the principal.

The mandatary’s performance can only be deferred with respect to the time of execution of the contract; therefore it is clear that it is configured as a contract for deferred performance. This is relevant in relation to the possibility of applying the rules on termination for supervening excessive onerousness only to contracts involving deferred, continuing, or periodic performance.

Article 1722, No. 4 c.c., in providing that the mandate is extinguished by the death of the mandatary, and does not continue with his heirs, identifies another distinctive feature of the mandate as a contract *intuitu personae*. Regardless, indeed, of the presence or absence of a pecuniary counter-performance by the mandatary, there is in any event always a characteristic element, valid for every type of mandate, consisting in the “contractual programme of managerial cooperation for the implementation of which one of the parties undertakes itself vis-à-vis the other.” Compensation does not therefore affect the causa of the transaction, which remains managerial cooperation, for the implementation of which one party undertakes itself vis-à-vis the other.

¹⁵ Francesco Galgano, *Diritto Civile e Commerciale*; Renato Scognamiglio, *Contratti in generale*.

¹⁶ Massimo Bianca, *Diritto Civile*; Francesco Messineo, *Il Contratto in generale*.

Much debated both in legal scholarship and in case law is the issue of the form of the mandate¹⁷. The issue, however, arises only with respect to the mandate without representation because, indeed, with respect to the mandate with representation, the legal system expressly provides that the power of attorney must have the same form required for the contract that the representative is to conclude (Article 1392 c.c.). And in that case it is considered that the formal requirements need subsist only for the power of attorney.

Accordingly, with regard to the mandate without representation, there are various theories dividing the field. The most authoritative one holds that the general principle of freedom of form applies, but not where the mandate has as its object the sale of rights in immovable property, in which case written form would be necessary.

2.3.1 Mandate with and without representation and operational implications.

Article 1704 c.c. provides for the application of the rules on representation where the mandatary has been given the power to act in the name of the principal (*contemplatio domini*). In this case there are two distinct legal transactions, the mandate and the power of attorney, linked by a contractual connection and having different functions: the former, with obligatory effects, governs the internal relationship between principal and mandatary, while the latter governs the relationship with third parties external to the transaction.

Where, on the other hand, the mandatary has received the assignment without the power to act in the name of the principal, no relationship is established between the principal and the third party, even if the latter is aware of the mandate. From this contractual arrangement there arise a series of operational implications involving the principal, who may exercise the credit rights deriving from the performance of the mandate (Article 1705, paragraph 2, c.c.). The principal may furthermore revendicate movable goods purchased on his behalf by the mandatary (Article 1706 c.c.). It is debated whether the possibility of revendication

¹⁷ Cass. civ., sez. II, 12 October 2007, n. 21454; Massimo Bianca, *Diritto Civile*.

is configured as a merely procedural power or indicates a proprietary effectiveness of the mandate without representation for the acquisition of immovable property. In a mandate without representation to acquire immovable property there is instead a double transfer (from the third party to the mandatary and from the latter to the principal). The act of re-transfer must set out its own causa and the contract of mandate containing such obligation to re-transfer is assimilated to a preliminary contract (therefore, it requires written form).

In a mandate without representation to alienate immovable property, the principal issue concerns the means enabling the mandatary to acquire title to the asset to be transferred to third parties in his own name. More recent case law supports the thesis of the immediate transfer-effective nature of the mandate, attributing proprietary effect to the *causa mandandi*. The transfer from the principal to the mandatary is instrumental to the performance of the mandate and it is therefore considered to be subject to a suspensive condition consisting in the proper performance of the managerial transaction. In this sense the mandate would certainly be capable of registration.

The transaction carried out by the mandatary exceeding the limits of the mandate is ineffective vis-à-vis the principal, save for ratification (Article 1711 c.c.). Ratification is a unilateral, receptive act modifying the previous contract, with retroactive effect and executed in the same form. It is distinct from the ratification provided for by Article 1399 c.c., which operates in external relationships (between represented party and third party); however, as is obvious, where the act is ratified vis-à-vis third parties, the ratification also operates in the internal relationships.

2.4 The Commission Contract: structure and difference from mandate and mediation.

The commission contract is governed by Article 1731 c.c.; it is a contract legally traceable to the mandate, differing therefrom because it has as its object the sale of goods on behalf of the principal and in the name of the commission agent. It is therefore a particular form of mandate without representation having as its object the sale and

purchase of goods on behalf of the principal and in the name of the commission agent. In the commission contract, the commission agent acquires and assumes in his own name, but in the interest of the principal, the rights and obligations deriving from the acts carried out with third parties, even if the latter have had knowledge of the mandate; it follows that, precisely by virtue of the mandate received, he is under an obligation to transfer to the principal, by means of a separate transaction, the acquired right. The activity of the commission agent comprises two transactions: sale or purchase of goods in his own name and on behalf of the principal, and transfer to the principal of the right acquired in his own name, but in the interest of the principal.

2.4.1 Structure and differences compared with mandate/brokerage.

The commission contract, like mediation, is identified in the exercise of an activity of interposition in the exchange of goods.

However, whereas the mediator concludes contractual arrangements always in the interest of the proposing party, the commission agent, by contrast, always and only acts in his own name, because it is he himself who, with autonomous entrepreneurial organisation, sells goods (or purchases them) to third parties (customers), albeit on behalf of the principal.

In conclusion, the commission agent always and only acts in his own name and may be defined as a mandatary without representation, whose performance is limited to the execution of contracts of sale and purchase (with the obligation to transfer their effects to the principal) in the interest of the principal, who may also be unaware of the third-party contracting party.

The commission contract falls within the “other ancillary activities” indicated by Article 2195 c.c., paragraph 5; it is configured as an activity auxiliary to that of intermediation in the circulation of goods indicated in paragraph 3 of the same article and may in turn give rise to a commercial undertaking if carried on in an entrepreneurial manner. Since the mandate may also have as its object the purchase or sale of goods in the name of the

mandatary and on behalf of the principal, commission would not differ therefrom from a strictly legal standpoint.

The commission contract lacks the *contemplatio domini* (that is, the acting in the principal's name), so that whereas the transaction concluded by the mandatary with representation produces its effects directly in the sphere of the principal, the one carried out by the commission agent produces its legal effects in the assets of the commission agent himself, requiring a further legal act in order to transfer them into the assets of the principal. Moreover, where the commission has as its object a mandate to alienate, the contract takes shape in such a way that the real transfer effect of the asset, deriving from the manifested consent, does not occur immediately, but is subject to the suspensive condition of the managerial alienation of that same asset by the mandatary or commission agent (Court of Cassation, Civil Division, Section III, Judgment No. 8512, 05/24).

The commission contract also presents a subtle difference with the mediation contract. In the former, the commission agent undertakes to conclude a purchase or sale contract on behalf of the principal, whereas in the latter the mediator undertakes only to promote a purchase or sale contract on behalf of a third party, without being a party to the execution of the contract itself:

the object of the obligation is the facilitation of the coming together of two parties, assuming a position of marked autonomy, whereas in commission the commission agent's performance consists in the actual execution of a contract with a third party.

Since the general provisions on the mandate apply, both the principal and the commission agent have the rights and obligations deriving from the application of those rules; for example, the commission agent is required, pursuant to Article 1710 c.c., to perform the contract with the diligence of the good father of a family. Article 1734 c.c., on the other hand, reserves to the principal a specific power to revoke the order to carry out the transaction, exercisable until the same has been brought to completion.

In that case, the commission agent is entitled to a commission commensurate with the work performed up to the time of the revocation and to the expenses incurred up to that point.

In practice, the difference between the three contractual figures examined, intermediation, mandate, and commission, may also become attenuated. The mediator may well be vested with powers of representation¹⁸, while nevertheless retaining that absence of obligatoriness in his conduct which makes it possible to distinguish his figure from that of the mandatary (Cass. Civ. Sez. III, 24333/2008).

2.5 Agency: stability of the relationship, exclusivity profiles, limits, and rules governing remuneration.

The c.c., in Article 1742, governs the agency contract, defining it as the contract by which one party undertakes, on a stable basis, the assignment of promoting, for remuneration, the conclusion of contracts in a specified area, on behalf of another party. Such party is the principal, whose interests are generally commercial. The elements of the contract in question are respectively: the stable assignment conferred by the principal and assumed by the agent; the performance of the assignment in a professional and autonomous manner; the object of the assignment, which must consist in the promotion of the conclusion of contracts; and the remuneration.

Agency differs from mandate, mediation, and commission. In carrying out his assignment, the agent collaborates with the principal undertaking and contributes to the achievement of the result sought by the undertaking, ensuring a continuing relationship, but is not bound to the entrepreneur by ties of subordination.

The agent's ability consists in taking initiatives capable of directing the public towards the undertaking's offer; therefore his commercial talent, organisational abilities, and intuition influence the successful outcome of the assignment. For the purpose of achieving his objectives, the agent must collect and assess proposals

¹⁸ Cass. Civ. Sez. III, 24333/2008

and present them to the entrepreneur, who will decide on the advisability of the contract and, once it is accepted, will conclude the contract directly.

The continuity of the relationship linking the agent to the principal and its continuous character prevent the agent from becoming an intermediary. He may mediate in order to bring the offer and acceptance of the parties closer together, but he will always do so in the performance of his autonomous and stable assignment aimed at developing the entrepreneur's business, and therefore not in the occasional manner typical of mediation.

The Court of Cassation has addressed the matter, reiterating that: "Distinctive features of the agency contract are the obligation of the agent to carry out continuous and stable activity in order to promote, within a specified territorial sphere, the conclusion of contracts on behalf of the principal, thereby establishing with the latter a non-episodic autonomous professional collaboration, with result at his own risk, and with the natural obligation to observe, in addition to the rules of fairness and loyalty, the instructions received from the principal; business procurement, by contrast, consists in the more limited activity of one who, solely on his own initiative, without a stability constraint and in an entirely episodic manner, occasionally collects customer orders and transmits them to the entrepreneur from whom he has received the assignment to procure such commissions" (Cass. civ. sez. lavoro, order No. 23214/2024).

2.5.1 Exclusivity issues and limits.

Article 1743 c.c. provides a notion of the right of exclusivity in the agency contract. Indeed, it specifies that the principal may not simultaneously avail itself of more than one agent in the same area and for the same line of business, nor may the agent undertake the assignment of handling, in the same area and for the same line, the business of more than one undertaking competing with one another.

The exclusivity clause is commonly included in agency contracts and provides for a reciprocal right of exclusivity: the principal may not appoint other agents in the same area and for the same type of business handled by the agent, while the agent may not

promote the conclusion of business on behalf of competing entrepreneurs in the same area and within the activity specified in the agency contract. Territorial exclusivity in favour of the agent is a sort of recognition of his continuing commitment, whereas the exclusivity of the agent in favour of the principal is intended to ensure more effective promotional activity by the agent.

According to the majority of case law, exclusivity is regarded as a natural but not essential element of the contract, leaving the parties free to regulate their relations differently, whether by agreement at the time of execution or subsequently during performance of the contract.

Therefore, if the exclusivity clause in the agency contract is not modified, the principal is bound to respect the agent's right of exclusivity in the geographic area identified in the contract.

Exclusivity has binding effects only between principal and agent and has no effect vis-à-vis third parties, nor is it relevant whether such third parties are aware of the exclusivity clause.

Where the principal has granted an area on an exclusive basis and subsequently appoints other agents in the same area, it will be liable for the breach, and the injured agent will not be able to bring any action against the other agents.

Where, on the other hand, it is the agent who breaches the exclusivity undertaking by deciding to promote business on behalf of competing firms, the principal may never seek redress from the latter, but only from the agent.

On the other hand, the principal, having the right to require the agent to perform that activity, may not create obstacles and difficulties for him by placing competing agents alongside him in the same area and in the same line of trade.

The agent who has been prejudiced by the breach of the exclusivity clause is entitled to receive payment of commissions on all contracts concluded with customers in the area reserved to him, even if he did not promote them (so-called indirect commissions:

Article 1748, paragraph 2, c.c.); moreover, the principal is liable vis-à-vis the agent for breach of contract, with the consequent right for the agent to withdraw from the contract for just cause and claim damages equal to the amount of commissions not received on all those transactions concluded by other agents operating in the area that had instead been reserved to him.

Where it was the agent who breached the exclusivity obligation, the principal may withdraw from the relationship for just cause and may claim damages in an amount equal to the profits deriving from the transactions that it was unable to conclude because of the competing activity carried on by the agent, who also suffers a reduction in end-of-relationship entitlements.

As a general rule, breach of exclusivity does not amount to a breach of Article 2598 c.c., which prohibits acts of unfair competition, since that provision refers to a situation of competition between subjects acting autonomously in the same sector of productive activity, albeit at different levels, and not between subjects carrying on activities complementary to one another and governed by statutory provisions.

However, where the agent carries on in his own right an activity competing with that of the principal, making use of information and elements of which he is aware by reason of the agency relationship (relating to customers, marketing strategies, production systems, etc.), then it may be considered that the agent is engaging in improper conduct in breach of Article 2598 c.c.

In the agency contract, the right of exclusivity is intrinsic to the relationship and produces its effects both during its subsistence and in the period following its termination; the agent is therefore also entitled to post-termination commissions, provided that the conclusion of the transaction, occurring after the termination of the contract, is the fruit of the agent's prevailing promotional activity carried out during the mandate, without regard, in view of the exclusivity tie, to any interventions by the principal company aimed at the conclusion of the transaction (Court of Cassation, Labour Section, judgment No. 9291 of 20 May 2019).

In summary, the exclusivity clause in the agency contract seeks to provide protection and advantages both for the principal and for the agent in the context of contractual performance.

2.5.2 Relationship stability and commission rules.

The agency contract is governed as a contract for consideration, which provides the agent with a right to commission where the transaction has been concluded as a result of his activity (Article 1748 c.c.). Commission is an essential element of the contract, and its absence would determine its nullity.

The wording of Article 1748 extends the agent's right to commission also to transactions that the principal has concluded with third parties who were previously selected customers of that same agent by type of transaction and exclusive area. Likewise, Article 1748 c.c. preserves the agent's right, by virtue of the activity carried out by him, to commission on all transactions concluded by the principal within a reasonable period from the date of termination of the agency contract.

A distinction must be drawn between the moment when the commission accrues and the moment when it becomes due and payable. The direct link between performance of the transaction and the agent's right to receive commission is clarified in paragraph 4 of Article 1748 c.c., according to which commission becomes due and payable from the moment and to the extent that the principal has performed, or should have performed, the performance under the contract concluded with the third party. Moreover, commission is due to the agent, at the latest, when the third party has performed or should have performed the performance, provided that the principal has fulfilled its obligations.

Where an agreement is entered into between principal and third party with the purpose of not giving full performance to the contract, the agent shall in any case be entitled to a reduced commission, whereas he must return what has been received if, for reasons not attributable to the principal, the contract concluded with the third party is not performed.

The expenses of agency always and in any event remain borne by the agent, who works autonomously and on a stable basis. In practice, when agreeing the amount of the commission, the agent always takes account not only of the compensation for his activity, but also of the expenses.

From the nature and purpose of the agency contract it follows that the agent's right to commission is strictly linked to the regular performance of the transactions proposed by him; therefore he assumes the risk of having worked to no avail both when he works towards the conclusion of the transaction and fails, and when, after the transaction has been concluded, it is not performed, unless the non-performance depends on the act or fault of the principal, as already stated, or on force majeure. In conclusion, the condition of successful completion places every risk upon the agent.

In proceedings for the ascertainment of the right to commission, the agent, to whom Article 1748 c.c. , as amended by Article 2 of Legislative Decree No. 303 of 1991, grants the right to require all information necessary to verify the amount of the commissions accounted for, bears the burden of proving that the transactions promoted by him were successfully completed or that the non-payment was due to a fact attributable to the principal, so that, where the latter has not transmitted to him the data and information necessary for the exercise of his credit rights by quantifying precisely in the court documents the amounts due to him, the court must, upon application by a party, issue against the principal an order for production of the accounting records pursuant to Article 210 c.p.c. (Court of Cassation, Civil Division, Section II, judgment No. 17575 of 31 May 2022).

2.6 Atypical and Hybrid Contracts in the Luxury Sector.

The atypical nature of contracts in the luxury sector plays a crucial role. The possibility of defining, within the scope of certain contractual autonomies, a series of clauses to be combined with the civil-law principles governing typical contracts allows companies to adapt rapidly to the needs of a market that is continuously evolving and strongly focused on a luxury experience for all stakeholders, in order to create an exclusive product

capable of maintaining over time high experiential standards for customers, capable of generating significant impacts on the ability to produce profits for enterprises belonging to the sector supply chains, and, at the same time, of maintaining a very high level of satisfaction among customers and all subjects operating within those same supply chains.

For the purpose of pursuing the sole objective of maintaining attractive elements of the product or service supplied to a target clientele with whom a relationship of broad qualitative and experiential satisfaction is to be maintained over time, various types of contractual structures are proposed and shared, within the scope of the contractual autonomies permitted.

For informational purposes only, a number of examples of agreements and/or clauses are set out below:

- License Agreements: Agreements under which the licensor grants the licensee the right to use its trademark, know-how, or patents to produce and sell certain products in exchange for royalties.
- Co-branding Agreements: Collaborations between two or more entrepreneurs.
- Testimonial/Ambassador Agreements: Tailor-made agreements for the use of the image of celebrities or influencers for the purpose of promoting the brand, with strict reputation-related clauses.
- Concrete and Tailored Cause: Unlike typical contracts, these agreements define the “causa concreta” – the practical purpose and the synthesis of the specific interests of the parties – ensuring that the contract is functional to the prestige of the brand.
- Protection of the Trademark and Heritage: The contracts are aimed at preserving the authenticity and history of the trademark, elements regarded as fundamental in the luxury market.
- Merit (*Meritevolezza*) of the Interest: Pursuant to art. 1322 c.c., these contracts must pursue interests deserving protection under the legal system, often connected with artisanal quality and honest work, as opposed to false glamour.

- **Challenges and Regulation:** prestige, exclusivity, and heritage. These contracts, not expressly regulated by the civil code, respond to specific needs of the luxury market, such as trademark protection and distribution management.

The principal aspects and types of atypical contracts in the luxury sector are set out below:

- **Merchandising Agreement:** Used to extend the trademark across different product categories, this agreement allows a luxury brand to grant its trademark to third parties for the production of goods not directly manufactured by the parent company, while maintaining control over quality and image.
- **Selective Distribution Agreements:** Essential for protecting the brand image, these atypical or “mixed” contracts select retailers on the basis of rigorous qualitative criteria (e.g. store location, environment, qualified personnel), limiting the number of distributors in order to guarantee
- **Antitrust and Competition:** Selective distribution must balance protection of the brand with European competition rules, avoiding unjustified restrictions that could limit free competition.
- **Legal Protection:** The use of atypical contracts requires a strong legal strategy to defend the trademark against counterfeiting and unauthorized sales.

In conclusion, contractual autonomy allows luxury companies to structure creative and tailored agreements, which are fundamental in maintaining the exclusivity and value of the trademark over time.

2.6.1 Advisory, finder, introduction, business procurement.

For the purpose of achieving particular corporate objectives connected with operational or even strategic areas, the need arises to structure advisory contracts, which constitute atypical consultancy agreements, usually aimed at supporting decision-making in the fields of strategy, finance, or management in the strict sense. Under Italian civil law, although they do not have a specific statutory regulation, such arrangements are framed

by reference to different civil-law provisions depending on the content of the services and the needs they are intended to satisfy.

For the purpose of identifying certain civil-law references necessary for the drafting of voluntary agreements, below are set out certain articles of the civil code that determine a different gradation of liability on the part of the subjects concerned with the Advisory activity:

- *Contratto d'opera intellettuale* (art. 2229 ss. c.c.): The most frequent form, used when the consultancy is provided by professionals enrolled in professional registers (lawyers, chartered accountants).
- *Contratto d'opera* (art. 2222 c.c.): Applicable if the consultancy service is provided without subordination constraints, but by subjects not enrolled in specific professional registers.
- *Mandato* (art. 1703 c.c.): Used when the advisor does not merely provide advice, but acts in the name and on behalf of the client (mandate with or without representation).
- *Contratto d'opera professionale* (art. 2230 ss. c.c.): Relevant for the regulation of the professional diligence required (art. 1176 c.c.) and the liability of the professional.

In the contractual forms highlighted above, a recurring element is referable to the nature of the obligation assumed by the Advisor. Generally, we are dealing with an obligation of means and not of result: the advisor undertakes to provide his or her experience with diligence, without guaranteeing the result (for example, the successful completion of an acquisition), unless otherwise agreed.

The body of the types of contracts highlighted above often includes Success Fee clauses providing for additional remuneration linked to the achievement of a specific result. Such a clause is lawful if it does not condition the consultant's independence. Specific clauses are also regulated through the inclusion of non-compete covenants,

confidentiality obligations (NDA), express termination clauses (art. 1456 c.c.), and penalties for breach (art. 1382 c.c.).

In summary, advisory operates within the area of contracts for work and services (art. 2222 and 2230 c.c.), often with shades of mandate, characterized by an obligation of qualified diligence.

2.6.2 Mixed arrangements (retainer + success fee) and reclassification risks.

In order to remunerate the activities carried out by Advisors and, progressively, by Finders, Introducers and business finders, according to decreasing levels of responsibility and representation, measures are introduced for the payment of consideration, whether or not linked to the result and therefore to the conclusion of a transaction. In these cases, those fees determined solely by the performance of an activity in the form of retainer fees, or alternatively linked to the conclusion of a transaction in the form of success fees, find a significant field of application. In such cases, the possibilities offered by contractual autonomy give rise to the most varied synallagmatic structures. In Advisory contracts, for example, depending on the degree of responsibility attributed to the professional or to associations of professionals, and also depending on the degree of diligence required for the performance of the activity, it proves very complicated to arrive at the drafting of shared contractual arrangements. Precisely in light of these situations, the wording of these agreements very often expressly states that the text has been intentionally structured and that, accordingly, it does not contain clauses of legal subjection to be signed separately and independently pursuant to the rules governing so called unfair clauses (*clausole vessatorie* – art. 1341 et seq. c.c.). In these contractual areas, it is essential to attempt to draw a boundary between remuneration and the conclusion of transactions, in order to avoid reaching the boundaries of a true agency mandate, whose remuneration levels, expressed through commissions, are solely linked to the conclusion of transactions, with a legal framework which, as previously stated, is entirely typified. In some forms of voluntarily structured agreements within the scope of contractual autonomy governed by civil law rules, certain legal powers of the party conferring the assignment are also included, leaving

the appointee in a position of subordination. One may think, for example, of forms of discretionary fees, which constitute forms of discretionary remuneration linked, for instance, to the professional effort made by the appointee and to the quality with which the same has performed it. This type of consideration, while remaining within the powers of the party conferring the assignment, may nevertheless be subject to objective criteria of application, for example through the *ex ante* definition of KPIs (Key Performance Indicators) to be measured during the term of the assignment, with defined SLAs (Service Level Agreements).

In light of the by no means simple definition of obligations and duties in these atypical contractual settings, areas of recharacterisation of contracts may, not infrequently, arise, especially in case law, where contractual autonomy and the will of the parties have not themselves succeeded in properly framing such activity. By way of mere example, one may consider agency relationships which, at the litigation stage, are recharacterised as employment relationships (Court of Cassation– Judgment of 05 December 2018, No. 31487), or, for example, where a business finder contract is recharacterised as an agency contract (Tribunale di Rimini 86/2023) because the engagement displayed continuity, stability and territorial promotion, which are typical features of an agent. Case law, as in the case of Tribunale di Rimini 86/2023, recognises the right to commissions and end of relationship indemnities, overcoming the formal occasional nature of the business-finding activity.

We may therefore conclude that, in the Luxury sector, the significant and distinctive economic, organisational, managerial, positioning and customer satisfaction requirements, which are constantly increasing, create significant scope for the application of atypical contractual forms, within the framework of the parties' contractual intent. The concept of contractual autonomy (art. 1322 c.c.) obviously remains unaffected, which, as we know, allows the parties freely to determine the content of contracts, including atypical contracts, provided that they are lawful and deserving of protection. Such freedom obviously encounters the mandatory limits of

overriding rules, public policy and morality, failing which the transaction is null and void.

Chapter 3: The Luxury Broker: Operating Models, Duties, and Liability.

3.1 Identity and Market Positioning of the Broker in the Luxury Market.

Despite the economic uncertainties dictated by the geopolitical situation, the global luxury market remains substantially stable.

It is undeniable that the sector is countering contracting margins by relying on highly effective strategies, preserving the value of the luxury asset by enhancing its desirability.

The market is changing, seeking to interpret the desires of luxury-goods consumers, who are increasingly privileging experiences at the expense of traditional luxury goods¹⁹.

In this scenario, in which the luxury market is seeking to win back its historic clientele and attract Gen Z clients, the role of the broker becomes fundamental, as it represents a meeting point between the luxury brand and the consumer. The new consumer, young and aware, is rewriting the rules of an entire industry. Luxury is changing, and with it the expectations, behaviours and strategies of brands and luxury brokers are also changing.

This theme is the focus of Kantar's *Luxury Study 2025*,²⁰ carried out in collaboration with Altiant, a company specialising in research on high-income consumers. The study involved 600 High Net Worth Individuals (HNWI, a term used mainly in finance to indicate wealthy persons, generally with a net worth exceeding one million dollars) in four key markets, namely France, the United States, China and the United Arab Emirates, with an average age below 35 and an average net worth of

¹⁹ Bain & Company & Altagamma, *Luxury Goods Worldwide Market Study* (latest edition).

²⁰ Kantar & Altiant, *Luxury Isn't 2025*.

approximately 2.6 million dollars. Luxury is not in crisis, it is transforming. At the heart of this transformation lies a fundamental reorientation: from ownership to experience.

Possessing matters less and less, feeling, living, connecting matters more and more. The new luxury consumer is not simply looking for a quality object, but emotion, meaning, and genuine connection. The product alone is no longer enough it must be part of something memorable, part of a story that goes beyond the object itself.²¹ The result is a luxury that is increasingly destructured, less rigid in its codes, more fluid in its forms, more personal in its expectations.

The world of luxury, therefore, is a world unto itself; it must be known and its distinctive characteristics must be understood. The luxury broker is not a simple agent; he or she must possess a mindset oriented towards excellence, in-depth knowledge of the sector and, above all, an “elite networking” capability. He or she must demonstrate a high level of competence in matters of privacy and confidentiality, providing excellent service to clients, who seek in the broker a high capacity to assess the luxury asset, acting as an expert “bridge” between elite goods and consumers seeking not only a product, but also social status.

3.2 Operating Models.

The contemporary luxury broker can no longer be regarded as a mere intermediary whose activity is limited to bringing parties into contact. In the luxury sector, brokerage has progressively evolved into a sophisticated advisory function involving strategic networking, reputational positioning, confidentiality management, and highly specialized operational support.

Depending on the type of asset involved, the clientele served, and the level of services offered, several operating models may be identified. The following paragraphs analyse

²¹ Experiential Marketing; Jean-Noël Kapferer & Vincent Bastien, *The Luxury Strategy* (Kogan Page 2012).

the principal figures currently emerging in the luxury brokerage sector, highlighting their distinctive operational characteristics, relational functions, and market positioning.

1) Personal Brokerage

The intermediation carried out by the luxury broker is based on exclusivity and high-value relationships: the broker presents himself or herself as a trusted advisor, managing off-market (non-public) transactions that guarantee maximum confidentiality to clients. The reputation that the client advisor builds, and the relational network, are his or her key resources.

2) Luxury Goods Broker

The broker does not sell only an asset, but also its story and uniqueness, focusing on the value of bespoke production and craftsmanship, facilitating the sale, purchase or financing of high-value assets, while guaranteeing discretion, authenticity and access to exclusive markets.

3) Lifestyle Broker

The luxury broker does not limit himself or herself to sale and purchase activities, but offers integrated services including asset management (e.g. yacht maintenance), legal/tax advice, and management of the client's lifestyle. The lifestyle broker acts more as a trusted global advisor, integrating asset protection with the client's personal needs for luxury and comfort.

4) Global Networking Platforms

In the luxury market, which is global par excellence, it is essential to use international networks to connect demand with supply. This is not merely a matter of public relations, but an indispensable strategic resource for creating value, sustaining exclusivity and generating business opportunities on a worldwide scale. Networking in the luxury sector creates unique and exclusive experiences for end clients, generating a sense of belonging to an elite club. Global networking in luxury is the ability to create a high-

level network of relationships that combines traditional craftsmanship with digitalisation and global visibility, while maintaining an aura of exclusivity.

5) Pricing and Storytelling

The luxury broker maintains the high perceived value of the asset, often justifying high prices not only by quality, but also through exclusive narratives (storytelling) that increase prestige. Price in luxury does not follow traditional market logics; often, a higher price increases desirability, according to the “Price-Quality Bias” phenomenon.²² The price is perceived as “fair” if the story being told is compelling and coherent with the brand image. The sector focuses on the creation of unique experiences rather than on mere selling, in a market context that integrates digitalisation (luxury digital marketing) and human relationships. The high price of the luxury asset defines positioning and creates the barrier to entry; storytelling makes that luxury asset a desirable experience and not merely a material good.

3.2.1 Single Deal vs Ongoing Relationship.

The legal relationship determining the contractual obligations between the appointed party and the party granting the appointment may be based on different levels of temporal continuity. The nature and duration of the agreement strongly affect the contractual dynamics and the level of liability that each party is willing to assume. It is evident that, in a single-deal agreement, the parties’ interests are characterised by the intention to conclude a single transaction and therefore they are oriented towards formulating leaner agreements that are less demanding from the point of view of assumption of liability (art. 1176 c.c.). A relevant aspect from a strictly legal standpoint emerges in the context of continuous relationships; one may think of an agency contract or also of an intermediation and/or brokerage contract lasting over time. Here, the boundary between the autonomy of the appointed party in the exercise of his or her activity and the exercise of direction and control by the party granting the appointment is very narrow. It may happen, not infrequently, that in long-term relationships the

²² Price-Quality Heuristic; Jean-Noël Kapferer & Vincent Bastien, *The Luxury Strategy* (Kogan Page 2012).

continuity of dealings and commercial relations may lead the appointing party to trespass into activities of direction and coordination, placing the appointed party in a context of subordination that would suggest an employment relationship (art. 2094 c.c.). In such contexts, the person required to perform the appointment received sees his or her autonomy, and the time, methods and means by which he or she organises his or her work, taken away. (Judgment No. 31487/2018, Court of Cassation – Prevalence of Reality).

3.2.2 “Pure” Broker vs Broker with Ancillary Services (Logistics Management).

In the luxury sector, always with the aim of raising client satisfaction levels, the broker also assumes, within contractual arrangements, responsibilities and legal commitments connected with logistics activities. This occurs when the object of the transaction is predominantly a movable asset (for instance, delivery of a yacht to a particular marina indicated by the purchaser, or delivery of a work of art to the premises of a custodian already identified *ex ante*; likewise, it may happen that the broker undertakes commitments to arrange the transfer of furnishings belonging to the purchaser of a Trophy Asset into the property proposed by the broker). In these cases, the broker assumes responsibility for organising the transfer of the asset to the places indicated by the purchaser. In this context, the broker’s capabilities must be broader. He or she must concern himself or herself with selecting and managing carriers, entering into contracts with them that guarantee shipping capability, and ensuring that the goods arrive safely at destination. He or she also deals with optimising costs by negotiating rates with suppliers and planning storage and transportation so as to reduce journey length. He or she must further plan the modal choice of transport by making an accurate assessment of cost and risk and selecting the most appropriate mode of transport (road, rail, sea, air). Of crucial importance, especially in this sector given the value of the assets handled, is risk management covered by insurance companies, by carefully analysing transport and logistics risks. The civil-law areas to be referred to for these cases are those relating to the contract of carriage (art. 1678 - 1702 c.c.) or the forwarding contract (art. 1737 c.c.). A broker capable of also offering and organising the transport of an

asset is typically a Senior broker who maintains a dense network of longstanding relations with parties with whom he or she works on a continuous basis and with whom a relationship of significant trust has manifested itself over time.

3.3 Information Duties, Fairness and Professional Diligence.

The broker operating in the luxury sector (prestige real estate, yachts, private jets, supercars) has obligations that go beyond simple intermediation, encompassing a high degree of professionalism, confidentiality and regulatory compliance.

Following the VI EU Anti-Money Laundering Directive (in force since 2024)²³, the luxury broker must observe strict customer due diligence measures through identification of the beneficial owner, verification of the origin of funds and reporting of suspicious transactions involving yachts, aircraft and supercars. Since these are assets of very high value for HNWI clients, the broker is under an obligation of the utmost confidentiality regarding negotiations and the identity of the parties, must analyse the specific needs, assess the risks and propose tailored solutions, providing clear and detailed information on all fees, commissions and costs associated with the investment before closing the transaction.

Another obligation of the luxury broker is to verify that the assets handled comply with the applicable rules, assisting the client in the contract and verifying the legal title to the asset, acting exclusively in the interest of his or her client and avoiding situations of conflict of interest.

During the intermediation activity, the luxury broker is required to ensure a high degree of diligence. His or her liability derives from breach of the obligations of professional diligence (art. 1176 c.c.). In the luxury sector, the broker has the duty to study solutions to mitigate risk, acting as a risk-management advisor to protect valuable assets. All these aspects will be analysed more fully below.

²³ European Union, Sixth Anti-Money Laundering Directive (6AMLD).

3.3.1 Minimum Checks: Authenticity, Provenance, Reliability of the Counterparty.

As has been stated several times, the field in which the luxury broker performs his or her role spans various areas which involve minimum checks that vary depending on the specific sector (real estate, yachting, watchmaking or finance), but follow strict standards to guarantee the authenticity of the assets and the legitimacy of the transactions.

Regardless of the asset, the broker must ascertain its objective value and legal status by verifying certificates of authenticity, serial numbers and provenance. An expert appraisal is always necessary in order to verify that the condition of the asset corresponds to its description.

After verifying the seller's full legal title to sell the asset, the broker ascertains that it is free from mortgages, pledges or tax encumbrances. Equally important in high-end asset transactions is verification of the reliability of the counterparty. The broker must carry out a documentary analysis by collecting identity documents, company registry extracts for companies, and declarations on the origin of funds; and must perform banking checks. Fundamental is the request for a Proof of Funds (POF) issued by recognised institutions to confirm that the buyer has the necessary liquidity, an essential requirement to guarantee transparency and the ability to fulfil obligations, often required in real-estate transactions, M&A transactions, or as an AML/KYC requirement.

Minimum checks also include screening against international sanctions lists and verification of the presence of PEPs (Politically Exposed Persons), which require stricter checks (Enhanced Due Diligence).

3.3.2 Management of Confidentiality and Data Room.

The contractual spheres of the broker, the subject matter of the contracts and the parties involved place the appointed party in a context involving knowledge of highly sensitive information. This implies, first of all, the ability to manage information within a

perimeter of absolute confidentiality. For this reason, as will be explained more fully below, brokerage agreements are very often accompanied by side letters under which non-disclosure responsibilities are assumed (Non-Disclosure Agreement). What is addressed here instead is the manner in which the exchange of information relating to the subject matter of the contract and the relevant parties, and the review thereof, is organised.

Typically, the seller of the asset (i.e. yacht, Trophy Asset, work of art, etc.) has its own adequate organisational structure through which it opens the so-called Virtual Data Room (VDR)²⁴. The VDR is a secure IT space, hosted on a server, typically cloud-based. In these spaces, documents to be shared on a confidential basis are uploaded, stored and managed. Access to the VDR is managed by the organiser and high security levels are used. The greater the confidentiality of the information to be discussed, the higher the IT protection levels for access, which is carried out by means of OTP (One Time Password) or MFA (Multi Factor Authentication). The owners of the VDR can therefore manage access permissions for each user authorised to log in and monitor who viewed the document, for how long, and what was downloaded.

Particularly interesting, during the stages of review of the documentation by the interested parties, are the Q&A sections. In these contexts, always through organised methods and sections calendared *ad hoc*, a series of questions are submitted by prospective investor-buyers, to which the sellers must provide accurate answers. Very often, further rounds of review are conducted on individual questions in light of the fact that the documentation provided in response to specific questions does not satisfy the requesting party. It is clear that, in these cases, the broker is often asked to coordinate the activities of the VDR and thereby assumes responsibility for its proper functioning and for the exchange of information. With regard to the management of information flows, the broker himself or herself strengthens his or her knowledge of the subject

²⁴ International Bar Association, *The impact of AI on M&A transactions: opportunities, risks, and emerging market practises*, 13/03/2026.

matter and of the parties involved in the transaction, thus being able to direct and formulate pricing levels progressively compatible with the assumptions made.

Of interest is Judgment No. 9368/2022 of the Court of Naples²⁵, which held, for example, that in the absence of an express agreement, the shipyard may not exercise a right of retention (art. 2756 c.c.) over the vessel in the event of payment disputes if the defects are attributable to the builder. One may think, in such cases, of a pre purchase survey produced by the broker or by a person appointed by the broker which failed to reveal the defect or which failed to investigate a latent defect readily identifiable by persons who had exercised adequate professional diligence. It is readily understood how the proper management of the VDR becomes an essential issue to which the utmost professional attention must be devoted. (art. 1490 c.c. “*Garanzia per vizi della cosa venduta*”, unsuitability for the ordinary use of the asset).

3.4 Conflicts of Interest and Transparency (Multiple Mandates, Commissions, Retrocessions).

Under the Civil Code, a conflict of interest (art. 1394 c.c.) arises when a representative or appointed party (Agent, broker, Finder, Introducer) pursues an interest of his or her own, or of third parties, incompatible with that of the represented party or of the party conferring the appointment. According to the civil-law framework, a contract concluded in such circumstances is voidable at the request of the represented party, provided that the conflict of interest was known or recognisable by the third contracting party.

On 7 July 2025, the Béziers court convicted Cap Océan²⁶ and its director for the fraudulent sale of vessels. The judgment confirmed the recurring fraudulent practices of the brokerage network, which in the meantime has been wound up. The company is now under judicial administration because it was unable to survive the growing number of complaints and suspicions of serial fraud. According to the information that emerged from the investigation, funds received by the brokers for purchase and sale transactions

²⁵ Court of Naples, Judgment No. 9368/2022.

²⁶ Tribunal judiciaire de Béziers, 7 July 2025.

remained in their accounts without being transferred to the original owners of the vessel. A couple had entrusted the sale of their yacht to Cap Océan in complete confidence, without the proceeds of the transaction ever being paid to them, notwithstanding that the sale had been completed.

This extreme case indicates, without leaving room for interpretation, the dynamics and contexts in which parties may become involved if the activities of selection, evaluation and all useful inquiries concerning the search for a broker are not carried out with care and discipline.

The reputation of the broker remains central, and his or her skills and professional capabilities must have an unusual breadth. A conflict of interest, if not regulated and limited, may even result in pathological cases of fraud and/or deceit, thus leaving the sphere of civil law and trespassing into criminal law. Returning now to ordinary cases, and setting aside the pathological situations in which the luxury sector may find itself, what is addressed here is the case of conflict of interest generated by the presence of multiple mandates or plurality of mandates.

This condition occurs when a single person (appointed party, agent, broker, professional) receives appointments from multiple parties. This situation obviously generates a conflict of interest whenever the interests under the various mandates conflict with one another, thereby making it in fact impossible for the mandatary to protect the overall interests of the parties impartially. The conflict of interest may be actual or real, in that a concrete conflict of interests is already underway. The conflict may also be potential, because there exists a concrete connection between the parties that makes a future conflict likely.

When a broker represents both the purchaser and the seller, or represents several sellers or several purchasers, his or her impartiality becomes impossible. The broker might push for a rapid closing of the deal to the detriment of a fair value linked to price. Another typical case may be that of different mandates with different commission levels. In this case, the broker might push to close the deal from which he or she receives

higher commissions, to the detriment of the interests of the represented parties. Other recurring cases, for example in the art market, concern undisclosed payments by galleries or auction houses and therefore unknown to purchasers. In order to mitigate these pathological situations, in bage agreements it is possible to require guarantee and declaration clauses (Rep & Warranties)²⁷ to be signed by the broker. It is evident that, also in this case, contractual good faith and the trust of the parties remain fundamental. Any recourse against the broker for his or her own breaches or for pathological situations remains subject to the procedural actions provided for by law and, in any event, recovery remains difficult where the broker himself or herself lacks financial substance and financial solidity.

3.5 Pre-Contractual and Contractual Liability of the Luxury Broker.

The liability of the luxury broker, by virtue of professional intermediation in high-value transactions, is articulated mainly in the pre-contractual and contractual stages, on the basis of high standards of professional diligence. Pre-contractual liability (*culpa in contrahendo*) arises during negotiations and before conclusion of the contract, pursuant to artt. 1337 and 1338 c.c.. Pre-contractual liability protects freedom of negotiation, indeed it sanctions injury to such freedom. The protected interest is not the interest in performance (safeguarded by contractual liability), but the interest in freedom of negotiation. It is no coincidence that all hypotheses of pre-contractual liability involve an injury to the interest in the free exercise of contractual autonomy. Each party has an interest in the loyalty and seriousness of the negotiations; indeed, the good faith referred to in art. 1337 c.c. must be understood as correctness. The broker is required to act correctly and loyally. Unjustified interruption of negotiations, after having created a legitimate expectation in the counterparty, constitutes an unlawful act, and the broker must provide precise information such as not to expose the parties to unforeseen risks. In conclusion, the pre-contractual wrongful act occurs where a party has induced the other party to rely on the conclusion of the contract. Liability for *culpa in contrahendo* is classified by case law as a form of tort liability connected with the breach of the rule

²⁷ Practical Law Company (PLC), *Representations and Warranties in Commercial Contracts* – 2026.

of conduct governing the proper formation of the contract (Court of Cassation. S.U. 9645/2001; Court of Cassation. 9157/1995). In other words, it consists in the breach of the general principle of *neminem laedere*²⁸ underlying art. 2043 c.c.

Whereas art. 1337 c.c. represents the fulcrum of pre-contractual liability, that is, it contains the statement of the principle of liability, art. 1338 c.c. is broader in nature; indeed, it does not concern only the omission of a cause of invalidity of the transaction, but also includes cases in which the acting party directly contributed to causing the ground of invalidity²⁹. In unjustified withdrawal from negotiations, the contract is not concluded; in this case, however, the contract is concluded, but it is a useless contract, giving rise to compensation for the party that, without fault, relied on the validity of the contract. For the broker, after conclusion of the contract (e.g. sales mandate or intermediation appointment), contractual liability arises and is based on non-performance of the obligations undertaken.

The broker is subject to stricter contractual liability (*ex art. 1176, par. 2, c.c.*). Since the broker must guarantee high standards of technical competence, he or she must observe qualified professional diligence.

The transaction must be conducted with due expertise, the information provided by the parties must be verified, and transparency must be guaranteed. In the luxury market, the broker is required to perform a correct analysis of the (high) risk faced by the client. If this does not occur, the broker is liable for contractual non-performance. Liability arises when the broker acts negligently, incompetently, or fails to comply with the client's instructions, thereby causing financial loss. Case law refers the broker's liability to art. 1759 c.c., namely the obligation to communicate to the parties known circumstances that may affect the safety of the transaction. The broker may not limit his or her professional liability through contractual clauses and, in the contractual phase, is liable

²⁸ Bianca. C.M., *Diritto Civile*, vol. V. – Giuffrè Francis Lefebvre, 2020.

²⁹ V. Roppo, *Il contratto*, in *Trattato di diritto privato* edited by Iudica – Zatti, Milan, Giuffrè, 2001, 182.

for the failure to perform a professional service that must be accurate, expert and transparent.

3.5.1 Practical Perspective: Interview with Yacht Broker Marco Fiorani.

In order to complement the theoretical and legal analysis developed in the previous sections, it appeared useful to include a practical perspective drawn directly from professional experience within the luxury brokerage sector.

The following interview was conducted with Marco Fiorani, an experienced yacht broker operating in the international luxury yachting market. The interview provides insight into the operational dynamics of high-end brokerage activity, with particular attention to networking practices, contractual structures, allocation of commissions, conflict-management mechanisms, and the practical functioning of the Memorandum of Agreement (MOA) commonly adopted in international yacht transactions.

The yachting sector represents a particularly significant case study for luxury brokerage because it combines high-value transactions, international contractual frameworks, technical due diligence procedures, reputational intermediation, and complex negotiation mechanisms. For these reasons, it constitutes an especially useful field for understanding the concrete operational implications of the broker's duties, liabilities, and professional standards analysed throughout this chapter.

The interview results are reported below, preceded by the questions submitted to the interviewee.

Q: How important is networking in the luxury sector and, in particular, in yachting?

A: Networking is extremely important in the yachting sector and, more generally, in the world of luxury, because this is an environment that lives on connections. In this market, it is not enough to know the product from a technical standpoint: what matters greatly is knowing how to be present in the right contexts, frequenting the right people, and building relationships of trust over time.

For example, I have been living in Monaco for many years; before that I was in Malta and I also worked in the United States. In this sector, I have seen companies which, although they did not have particularly in-depth technical expertise on boats, still managed to have very important vessels in their portfolio simply because they frequented the best international circles, from Dubai to Porto Cervo, from Milan to Cortina, all the way to St. Moritz and Crans-Montana. This shows that yacht brokerage is a highly relationship-driven world.

As far as I am concerned, I have a more technical approach: I have been doing this job for over thirty years, I know boats well, and I know how to assess them from an operational and structural standpoint. Nevertheless, even with this experience, I can say that today the principal asset of a brokerage company is represented by its listings, that is, its sale mandates. A broker is worth as many listings as he has, and listings are obtained above all through established relationships.

I see this also with younger people. I recently employed a junior, a well prepared young man with a good technical foundation, but in such a closed market he still has enormous difficulty obtaining mandates of his own. This makes it clear that, in order truly to enter the sector, networking is not merely useful: it is vital.

Today, moreover, traditional networking is supplemented by the growing weight of social media. I can say with certainty that, even in our field, social media have become decisive. I know of a French company that sold a 50-metre yacht through Instagram to a Brazilian client. So today what matters is not only the network of relationships built offline, but also the ability to communicate effectively online, to position oneself properly, and to create visibility with an international audience.

Q: What are the most recurring contractual clauses in brokerage agreements entered into with HNWI clients?

A: In yacht brokerage, the reference contractual document is the Memorandum of Agreement (MOA). The main models are those of MYBA and FYBA, which are very

similar to one another and represent the standards most commonly used in international yacht sale and purchase transactions.

If I have to identify the most important clauses, I would undoubtedly say those relating to the Sea Trial and the Condition Survey, which normally correspond to points 26 and 27 of the MOA. These are the most delicate clauses because the success or failure of the deal effectively passes through them.

The Sea Trial (**Fig. 1**) is the vessel's sea trial. At that stage, the yacht must demonstrate that it complies with the technical characteristics provided for in the contractual specifications. For example, in the sale of a Palmer & Johnson 120 that I was handling, one of the two engines was not correctly reaching the required output: the port engine reached the required RPM, whereas the starboard engine, once it reached 2,100 RPM, dropped and did not maintain performance steadily. At first it seemed to be a serious problem, but it was then discovered that it was simply a dirty valve in the high-pressure rail system. Once cleaned, the problem was resolved. This is to say that the Sea Trial is a decisive stage: even an apparently minor technical detail can block a transaction.

The Condition Survey, on the other hand, is the in-depth technical inspection that the buyer has carried out by a surveyor of his own choosing. At that stage, everything is checked: structure, functionality, electronic, electrical and hydraulic parts, systems, mechanical components, in fact the entire vessel from bow to stern. Where necessary, the buyer may also decide to have the vessel hauled out, at his own expense, in order to have the hull and appendages inspected. After the inspection, the surveyor draws up a list of comments and findings, the so-called remarks, which are then transmitted to the parties and the brokers.

At that point, the broker plays a very significant role, because from the completion of the Condition Survey there are normally seven days to find a meeting point between buyer and seller concerning the works to be carried out, any defects found, and the necessary price adjustments. The MOA, generally speaking, tends to exclude everything that is cosmetic, but includes what is functional. This means that very costly works may

also emerge, in the order of EUR 100,000 or 200,000, and the seller is not always willing to reach a compromise.

In addition to these clauses, there is one which for us brokers is even more delicate from a commercial standpoint: the approval clause. In both the MYBA MOA and the FYBA MOA, the buyer retains a very broad margin of discretion. In substance, even after months of work, after viewings, sea trials, negotiations and surveys, the buyer may still decide not to proceed. For a broker, this is a very risky clause, because it means that the deal may be lost after four or five months of work.

If, on the other hand, we wish to identify the most important clause from the standpoint of the legal effectiveness of the contract, then I would say the deposit. Everything normally begins with a Letter of Intent (LOI), that is, an initial offer by which the buyer proposes a price, subject to viewing, approval, and subsequent checks. Once the LOI has been accepted, the buyer undertakes to sign the MOA. However, even if the MOA has been signed by all parties, it does not actually produce effects until the stakeholder, who often coincides with the buyer's broker, receives in the dedicated escrow account 10% of the price by way of deposit.

That deposit is essential because it protects the parties, gives seriousness to the transaction, and also serves to cover any outstanding liabilities, debts, or unresolved matters that may arise in relation to the yacht. From this point of view, therefore, if the Sea Trial and the Condition Survey are the most delicate clauses on the technical level, the deposit is probably the most decisive clause on the level of the MOA's actual operative validity.

Q: In your experience, how important have legal and financial skills been? Did you develop them mainly through practical work experience?

A: Legal and financial skills have both been very important. From a legal standpoint, they are fundamental because, in international yacht brokerage, one works almost exclusively with contracts structured under common law principles. The MOA, for example, is a contract drafted in English and structured according to legal logic that

does not coincide with that of Italian law. We may also have an Italian translation for the client's convenience, especially if the client does not speak English, but that translation has no real operative value: it serves only for understanding, it is not the document that actually governs the relationship.

Moreover, in the more important transactions, the parties' lawyers almost always intervene as well, both for the buyer and for the seller. Therefore, the broker must know how to read the contract, understand where the risks lie, grasp the scope of the clauses, know what can be negotiated and what instead falls within market standards. The choice of forum is also a relevant aspect: by default London is often proposed, precisely because these are contracts based on common law principles, but the forum may then be changed and the parties may choose venues such as Genoa or Rotterdam, depending on convenience and the clients' wishes.

From the financial and tax standpoint, these skills are equally important. Until a few years ago, especially in Italy, many boats were sold through financial instruments that made it possible to obtain significant advantages. Subsequently, with the evolution of European legislation, many of these possibilities were reduced or disappeared, and this had a very negative impact on the Italian and European market.

As regards large yachts, one often works with more complex structures. Many boats are owned by companies and classified as commercial vessels, especially where they are employed in charter activity. In such cases, the VAT issue changes radically. All this means that, in order properly to handle a negotiation, it is not enough to understand the boat: one must also understand the economic, tax, and financial structure of the transaction.

For this reason, I can say that legal and financial skills are not ancillary, but essential. They enable you to interact with clients, lawyers, tax advisers, surveyors, and companies, and to manage the negotiation with a complete overall view.

Q: On the basis of which characteristics are commission levels determined?

A: In international yacht brokerage, the standard commission is generally equal to 10% of the yacht's sale price. In the international market, this commission is usually divided according to the 60/40 criterion: 60% goes to the broker representing the buyer, while 40% goes to the broker holding the listing, that is, the sale mandate.

This is the standard that is found substantially throughout the world. Italy, however, represents a particular case. Formally, in Italy it is commonly said that 5% is paid by the buyer and 5% by the seller, but in practice the system is far less orderly. Often the seller does not truly recognise his own share, or the broker works without a structured mandate, without an exclusive appointment, and without a clear professional framework.

In the more developed markets, by contrast, the broker works under an exclusive mandate, that is, through a Central Agency Agreement Listing, by means of which he assumes specific obligations: he arranges the photographic shoot, organises the marketing, promotes the yacht on the appropriate portals, and coordinates viewings, negotiations, and documentation. In this model, the commission is perfectly consistent with the value of the work performed.

In Italy, unfortunately, the problem is also cultural and professional. Many operators are unable to make the client understand that the price of the boat should be regarded as net, and that the commission for the professional service rendered is added on top of that price. This leads many brokers to undersell their work, accepting much lower compensation and contributing to the deterioration of the market.

Therefore, in theory, the commission level is determined according to fairly clear standards; in practice, however, it depends greatly on the degree of market structuring, on the presence or absence of an exclusive mandate, on the broker's professionalism, and on his ability to make the value of his work perceived.

Q: What tools do you use to avoid conflicts of interest?

A: The principal tool is strict control of the listing, especially when working on an exclusive basis. The most frequent problem is that the same yacht is published by several parties at the same time, perhaps with different prices, different information, and inconsistent descriptions. When this happens, the market becomes confused and the asset loses credibility.

If a client sees the same yacht repeated several times across different portals, with differing data, he begins to think that something is wrong. The yacht becomes, in essence, less exclusive on the market, and this damages its saleability. For this reason, control of the listing is fundamental not only in order to avoid conflicts among brokers, but also to protect concretely the commercial value of the yacht.

In order to manage this aspect, one must constantly monitor the international portals and verify that no one has duplicated one's listing without authorisation. In the more organised structures, there is even a person specifically dedicated to this activity, who spends the day checking the main sector portals to see whether the listing has been copied by others.

Therefore, if I have to summarise, I would say that the real tools for avoiding conflicts of interest are: the exclusive mandate, continuous monitoring of the listing's dissemination, uniformity of the published information, and direct control over the yacht's commercialisation.

Q: If another broker publishes your listing without authorisation, how do you deal with the situation?

A: The first thing we do is send a formal communication to the colleague who published the listing, requesting the immediate removal of the advertisement. It is a sort of initial cease-and-desist notice, a preliminary step intended to resolve the matter without immediately escalating into a harsher confrontation.

If, however, the colleague does not remove the listing, we then contact directly the portal on which the advertisement was published and send the documentation proving

that we are the holders of the exclusive mandate. At that point, once the portal has verified the documentation, it normally proceeds to remove the duplicated listing.

There are also more serious and more qualified platforms, especially international ones, which require proof of mandate from the outset in order to publish the yacht. In such cases, the risk of duplication is greatly reduced, because the system prevents multiple parties from listing the same yacht without title.

There are also particular cases, such as co-central agency arrangements, in which two companies formally collaborate on the same yacht. In that case the presence of two brokers is legitimate, but the information must be identical, the price must be the same, and the level of knowledge of the product must be uniform. That, however, is a structured collaboration between professionals; it is a completely different situation from the disorganised and unauthorised duplication that is often seen in less organised markets.

The interview confirms how luxury brokerage activity, particularly in the yachting sector, extends far beyond simple intermediation and increasingly requires legal, technical, financial, and reputational expertise. The practical issues highlighted by the interviewee demonstrate the centrality of networking, due diligence, contractual governance, and confidentiality management within contemporary luxury transactions.

(26) SEA TRIAL

Prior to the date at Clause (9) and prior to the **VESSEL** being placed ashore for the Condition Survey, the **SELLER** at his/its own expense is to make the **VESSEL** available to the **BUYER** for a Sea Trial of a maximum of four hours duration at a time to be mutually agreed between the parties hereto. It is at the **BUYER's** discretion to take advantage of this facility. In the event that the **BUYER** or his/its nominee does not attend such Sea Trial or otherwise take advantage of this facility then the **BUYER** shall be deemed to have accepted the **VESSEL** subject to Clause (27). Notwithstanding what is contained elsewhere in this Agreement, if for any reason whatsoever and in his/its discretion the **BUYER** considers that the **VESSEL** has not performed to his/its satisfaction on the Sea Trial and he/it does not therefore wish to proceed with the purchase, he/it shall give written notice of his/its rejection of the **VESSEL** to the **SELLER** or the **BROKER** within twenty-four hours of completion of the Sea Trial or prior to the placing of the **VESSEL** ashore for the Condition Survey as mentioned in Clause (27) hereof, whichever shall be the sooner. In the event that notice of rejection is given by the **BUYER**, all expenses incurred by the **BUYER**, if any, in relation to such Sea Trial shall be payable and shall be paid from the Deposit and the balance of the Deposit shall be returned to the **BUYER** forthwith and this Agreement shall thereafter be deemed null and void. If such notice of rejection is not given, the Sea Trial shall be deemed to have been to the **BUYER's** satisfaction.

(27) CONDITION SURVEY

The **BUYER** may at his/its own cost place ashore and/or open up the **VESSEL** and her machinery for the purpose of completing a Condition Survey no later than the date shown at Clause (9) herein, time being of the essence in this respect.

(a) If on completion of the Condition Survey any defects in the **VESSEL** or her machinery have been found other than those disclosed to the **BUYER** in writing prior to the date of this Agreement and thereby accepted by the **BUYER**, the **BUYER** may within seven days of completion of the Condition Survey give to the **SELLER** or the **BROKER(s)** either:

(i) written notice requiring the **SELLER** forthwith either to make good any or all of the defect(s) and/or alternatively to make a reasonable and sufficient reduction in the Sales Price to enable the **BUYER** after completion of the Sale to make good the same. All agreed items of work shall be completed by the **SELLER** without undue delay in all the circumstances and shall be carried out so as to satisfy the expressly specified requirements of the **BUYER's** Surveyor in respect of defect(s) mentioned in the Surveyor's Report and notified to the **SELLER**, in which case the Completion Date shall be extended by such period as the **SELLER** and the **BUYER** may agree to allow the remedial works to be completed; or

(ii) written notice of his/its rejection of the **VESSEL** identifying and specifying in that notice the defect(s). If the **BUYER** shall serve written notice under Clause (27) (a) (ii) then this Agreement shall be deemed terminated and the terms and conditions of Clause (29) shall apply.

(b) If the **BUYER** shall serve written notice under Clause (27)(a)(i) above and if after seven days of service of such notice one or a relevant combination of the following circumstances applies:

(i) the **SELLER** has not agreed in writing to make good without delay any defect(s) specified in such notice; or

(ii) the **BUYER** and **SELLER** have not agreed in writing as to the amount by which the Sales Price is to be reduced; or

(iii) the **SELLER** and the **BUYER** do not agree the period within which the remedial works are to be completed,

then this Agreement shall be deemed terminated and the terms and conditions of Clause (29) herein shall apply.

A defect shall be regarded as a defect for the purposes of this Clause (27) if an officially appointed Marine Surveyor (to be defined as a Marine Surveyor whose day to day business is occupied with the surveying of vessels of a similar quality to and value of the **VESSEL**) shall have certified in writing that the defect(s) affect(s) the operational integrity of the **VESSEL** or her machinery or her systems or renders the **VESSEL** unseaworthy. For the purposes of any time limits herein, the survey shall be deemed to be completed immediately following completion of the physical inspection by the Surveyor.

For the avoidance of doubt, the period of the Condition Survey and the completion thereof shall not depend on the production or provision of any written report by the Surveyor to the **BUYER**.

The **BROKER(s)** is/are not responsible for any errors or omissions of the Surveyor, although the **BROKER(s)** may have suggested a choice of surveyors and may have been made responsible for the engagement of the Surveyor selected by the **BUYER**.

Figure 1 (MOA Sea Trial and Condition Survey clauses)

3.5.2 Heads of Damages: Loss, Causal Link, Evidence.

Compensation for damages involving high-net-worth clients (HNWI) is a complex legal issue, often linked to erroneous investments, fraud or disloyal asset management. Disputes may involve extremely high amounts, reaching tens of millions of euros. The causal link between the damage suffered by the client and the broker's non-performance is the fundamental prerequisite for obtaining compensation for damage, based on breach

of professional and diligence obligations (artt. 1176 and 1710 c.c.). The broker is required to compensate for the damage when, through negligence or failure to comply with information duties, he or she causes a reduction in the client's assets. Proof of damage incumbent on the client against a broker (insurance, financial or luxury-goods broker) requires demonstration of negligent or disloyal conduct on the part of the professional and of the direct causal link³⁰ between such conduct and the economic prejudice suffered. Under art. 2697 c.c., whoever seeks to assert a right must prove the facts constituting its basis. The client must prove that the broker was in breach through violation of information duties, diligence duties, incompetence or imprudence; the client must prove the damage suffered by quantifying the actual patrimonial loss. The damage, economic and/or reputational, must be a direct consequence of the broker's conduct. The professional relationship must be proved by the intermediation agreement, and all communications exchanged with the broker must be produced from which advice, inaccurate information, omission of important warnings, or discrepancies between what was agreed and what was obtained may be seen. All payment receipts and expert reports that can define the extent of the damage must be produced, which damage includes the reduction in assets caused by the mistaken transaction and the profits the client would have obtained absent the non-performance (*lucro cessante* and *danno emergente*). The intermediary, for his or her part, must provide positive proof of having complied with the applicable rules of conduct and of having acted diligently. In conclusion, for both parties there is a burden of proof: the intermediary must "prove that he or she did", whereas the investor must "prove the damage" suffered.

³⁰ Il Contratto; Bianca, *Diritto Civile*, Vol III – Giuffrè Francis Lefebvre - 2019

Chapter 4: Contractual Architecture, Fees, and Compliance: Protection and Risk Management.

4.1 Structure of the Brokerage Agreement: subject matter, scope and key definitions.

The brokerage agreement in the luxury sector, referring primarily to high-value assets, art, yachting, or luxury real estate, is generally based on contractual schemes functionally connected to mediation, mandate, agency, or advisory relationships between a specialised operator (the broker) and a client (private clients, collectors, family offices, or corporate entities). The agreement is intended to facilitate the purchase, sale or management of exclusive assets. Within the luxury sector, a significant element of the contractual mechanics is the discretion with which the contractual commitments are performed. The contractual structure must further ensure technical expertise and the protection of the value of the assets. It is readily understandable that, in such contexts, reputation is a central issue and, if not protected, could even affect the valuations adopted by the market for these specific luxury assets³¹.

In practice, luxury brokerage agreements tend to present a relatively recurring contractual structure, although they remain largely shaped by party autonomy and by the specific characteristics of the asset and transaction involved.

Due to the high economic value, reputational sensitivity, and international dimension of luxury transactions, such agreements generally contain a series of clauses aimed at regulating not only the intermediation activity itself, but also confidentiality obligations, exclusivity arrangements, due diligence procedures, compliance requirements, remuneration mechanisms, and dispute resolution systems.

³¹ Reputation; Jean-Noël Kapferer & Vincent Bastien, *The Luxury Strategy* (Kogan Page 2012).

The following sections analyse the principal clauses most frequently encountered in luxury brokerage agreements, highlighting their operational function and their relevance within the context of high-end transactions.

1. Subject Matter of the Agreement.

The subject matter of the agreement is the conferral of the mandate upon the broker for: Intermediation in the purchase and sale: Search for purchasers or sellers of luxury assets (real estate, boats, works of art, vintage cars).

- Consultancy and Valuation: Analysis of market value, due diligence and appraisal of the assets.
- Management of relations: Management of negotiations, documentation and bureaucratic procedures.

2. Scope of the Service

The scope defines the geographical, temporal and objective boundaries of the mandate:

- Exclusivity: a decisive element in brokerage agreements is the exclusivity of the mandate (the broker is entitled to the commission even if the asset is sold by others) or its non-exclusive nature.³²
- Specific subject matter: Detailed description of the asset (e.g. “Yacht Model X, hull number Y”) with a meticulous search for details in order to represent as precisely as possible the technical, artistic and functional qualities of the assets.
- Geographical Area: Territorial limits within which the broker operates.
- Term: Duration of the mandate with an option for automatic renewal.

3. Key Elements of the Agreement Commission (Compensation Structure)

- Clear definition of the percentages (commissions) on the sale price, payment terms (usually at closing) and reimbursement of expenses.

³² Cass. civ., sez. III, 20 August 2015, n. 17098.

- Confidentiality and NDA (Non-Disclosure Agreement): fundamental contractual components in the luxury sector to protect the identity of the parties and the details of the transaction. Relevant in this respect are the statements of the persons who will handle the information and their status as disclosing parties.
- Liability and Due Diligence: Clauses determining the broker's liability in verifying the condition of the assets (compliance, absence of defects, provenance).
- “Tail” or Protection Clause: Recognition of the broker's commission, by reason of the professional effort performed, for negotiations commenced during the term of the agreement and concluded after its expiry (e.g. in the following 6–12 months).³³
- Termination and Withdrawal: Conditions for early termination of the agreement.

4. Typical Structure of the Agreement

- Recitals: Description of the nature of the luxury asset and of the broker's expertise, including through the declaration of professional qualifications.
- Mandate: Definition of whether the mandate is exclusive or non-exclusive.
- Broker's Obligations: Due diligence and verification of the asset in its various components, marketing, negotiation, reporting and progress of activities.
- Client's Obligations: Provision of truthful information, payment of commissions.
- Consideration and Payment Terms.
- Confidentiality.
- Indemnity and Limitation of Liability.
- Applicable Law and Jurisdiction.

³³ International Chamber of Commerce (ICC), brokerage and intermediary practice guidelines.

In the luxury sector, it is crucial that the agreement be drafted in writing, setting out in detail the obligations and duties requiring the broker to act with the utmost professionalism and independence.

4.2 Protection Clauses and Contractual Constraints.

In brokerage agreements, particularly within the luxury sector in its various components, protection clauses and contractual constraints are fundamental in defining the broker's areas of liability and protecting the client's interests, also for the purposes of preserving the reputation of the parties concerned.

The principal elements and clauses commonly used are set out below:

1. Client Protection Clauses

Broker Clause: This is a decisive clause in brokerage contracts, distinctive of insurance contracts, but also applicable in the luxury sector. It highlights that the client has entrusted the management of the relationship to the broker. This extension of representational authority sometimes goes so far as to mean that payment made to the broker is deemed equivalent to payment made to the seller.

- **Best Advice / Duty of Care:** The broker is obliged, within the scope of his or her professional capabilities, to propose solutions appropriate to the client's specific needs, assessing the different offers available on the market (principle of best advice). The broker must be able to identify the best conditions available on the market known to him or her, by virtue of his or her ability to operate in the specific sectors concerned. Breach of this advisory duty gives rise to civil liability.

2. Contractual Constraints:

The broker acts in the client's best interest, in compliance with ethical rules, transparency and independence.

- **Exclusivity Clause:** Often, the client entrusts the brokerage mandate on an exclusive basis to a single party for a specified period, in order to ensure greater efficiency in the management of contractual commitments and obligations.
- **Invariability of the compensation:** The broker's compensation (commission) is usually borne by the seller who, through the use of this professional figure, finds interesting outlets in the relevant markets.

4.2.1 Exclusivity (content, duration and scope).

In the granting of exclusivity within a brokerage Agreement, the definition of the content of the mandate conferred is of fundamental importance. This contractual element is decisive and determinative in the performance of the mandate. The content of the agreement must be determined by objective and subjective qualifying elements in order to guide the conclusion of the transaction in accordance with the adopted criteria (for example; quality of the client, membership of certain entrepreneurial classes, upgrade of previously used models, etc. etc.). Such clauses may obviously limit the seller's freedom of action, since once exclusivity has been granted for a certain period of time (duration) and in particular geographical and/or sectoral contexts (scope), the seller finds itself in a condition of legal subjection vis à vis the broker, such subjection being, of course, limited to the contractual scope so defined.

4.2.2 Non circumvention / *non aggiramento*.

Within that principle of legal subjection of the principal vis-à-vis the broker, the non circumvention and/or *non-aggiramento* clause³⁴ finds significant room for application. It is a contractual non avoidance clause defined by means of a contractual non *aggiramento* covenant. This contractual provision prevents one party from bypassing the intermediary or commercial partner (broker) by dealing directly with the seller of the luxury asset and, conversely, prevents the entrepreneur from approaching the

³⁴ International Chamber of Commerce (ICC) Model Non-Circumvention Clause.

purchasing client directly. In its practical application, this clause prevents the theft of contacts. In this context, the precision with which the protected contacts are identified in the drafting of the agreement is of fundamental importance.

4.2.3 Confidentiality (NDA), non-solicitation, penalties.

In the definition of contractual agreements relating to brokerage activities, so called confidentiality clauses find their place. Very frequently, agreements on the non-disclosure of information acquired in the exercise of business and professional activities are governed by additional contractual side letters, effectively removing the content from the main agreement and regulating the non-disclosure arrangements through separate agreements. Non-Disclosure Agreements (NDAs)³⁵ set out the parties' commitments not to disclose to third parties the information emerging in the course of performing the mandate conferred, often extending such confidentiality obligations also to persons who in some way must use such information (for example, knowledge of the assets and/or income of a potential purchaser of a Yacht, initially disclosed to the broker and subsequently made available to the shipyard building the Yacht, where sales employees operate). This scenario, of significant importance in the relevant sector, if breached may result in the payment of substantial penalties by the unauthorised disclosing party.

4.3 Compensation Architecture.

In order to make payment of the compensation transparent and not open to challenge, brokerage agreements define elements of contractual mechanics determining the methods of payment of the consideration due for the performance of the mandates.

³⁵ Practical Law Company (PLC), *Confidentiality and Non-Disclosure Agreements* – 2018.

4.3.1 Basis of calculation, accrual and “trigger” of the entitlement to fees.

Of fundamental importance is the definition, within the contractual framework, of the fee calculation mechanism. This element is frequently illustrated through concrete examples, in order to mitigate and even eliminate elements of uncertainty in the calculation of the compensation.

Of no lesser importance is the concrete definition of the moment at which payment of the fees is triggered (whereas in the purchase of a real estate asset, for example, the canonical moment of transfer of ownership may be represented by the execution of the notarial deed and the payment of the consideration before the notary, thereby defining a measurable and identifiable contractual “trigger”, in other cases the choice of the event triggering payment of the fees is more difficult to identify. One may think of the sale of a Yacht and all the risks related to delivery of the asset and the taking of possession by the purchasing party.

4.3.2 Payment mechanisms: escrow, conditions precedent, anti-dispute provisions.

In order to settle possible disputes connected with the conclusion of transactions and therefore with payment of the related consideration referable to the contractual synallagma of each agreement (Deed of Sale with payment of the price, brokerage Agreement with payment of the fees and any other agreement), contractual arrangements aimed at mitigating the risks involved in the performance of the individual contracts are increasingly being used.

Escrow accounts, for example, are of significant importance. Under this mechanism, the persons obliged to make payment divest themselves of the sums of money necessary for contractual performance, delivering them to a custodian (often Banks or Notaries) upon whom a payment mandate is conferred in favour of identified persons and upon the occurrence of certain conditions that render the contract effective. These instruments for the protection of the parties, while mitigating situations connected with non-performance, do not in fact reduce contractual performance risks. It is not uncommon

to see formal notices sent by the principals themselves to the agents appointed in escrow agreements in order to prevent the latter from performing. Not infrequently, the inertia of the parties, caused by notices and warnings of legal action, must find a solution through the activation of civil law procedures compelling the interested parties to contract (Specific performance ex art. 2932 c.c. in the form of a judicial remedy allowing the performing party to obtain a constitutive judgment producing the effects of the contract not concluded).

4.4 Enforcement tools and dispute resolution.

In order to avoid the pathologies highlighted above, contracts provide for amicable dispute resolution instruments such as recourse to arbitration, which represents an alternative to ordinary justice for the resolution of disputes (Artt. 806–840 Codice di Procedura Civile, recently amended by the Cartabia reform, with the issuance of the so-called award). Other forms of resolution are ADR (Alternative Dispute Resolution)³⁶, which offer further alternative solutions through mediation and out-of-court conciliation mechanisms.

4.4.1 Termination Clauses, Arbitration, ADR, Law and Forum.

In order further to mitigate the pathological effects of a contract, including in the luxury sector, termination clauses (art 1456 c.c.) are identified in contractual agreements and, in the specific case, in brokerage Agreements. This legal device allows the parties to a contract to establish in advance that, in the event of a breach of specific obligations undertaken, the contract shall be automatically terminated and lose effectiveness. The termination of the contract, even where clauses for that purpose are present, does not occur automatically, but takes place when an interested party declares to the other party that it intends to rely on it. These civil law instruments make it possible to avoid complex judicial disputes by removing from the judge the assessments relating to breaches. Also in order to avoid lengthy periods of uncertainty, in cases of evident pathologies of the contractual arrangements, a further resolution instrument is

³⁶ Directive 2008/52/EC on mediation in civil and commercial matters.

represented by attempts at mediation and reconciliation before non-judicial bodies established ad hoc through the implementation of European directives (for example Directive 52/2008 concerning consumer protection). Reconciliation bodies are entities entered on a specific register of the MIMIT (Ministero del Made In Italy). Access to these resolution mechanisms is possible through highly simplified procedures.

4.5 Compliance in the Luxury Sector.

Compliance with legal rules applicable to activities carried out in the world of luxury, and in particular in the context of the performance of mandates connected with contractual agreements in the various forms described, remains central in order to avoid non-compliance risks which, while not always significantly affecting the economic aspects of the contracts, may instead decisively affect reputational aspects which, indirectly, often also produce economic and patrimonial impacts (i.e. decline in sales of a luxury asset linked to reputational effects connected with money laundering incidents).

4.5.1 Client identification, beneficial owner and risk-based approach.

The parties involved in mandates that in fact result in the transfer of luxury assets may be directly and/or indirectly subject to the rules laid down in Decreto Legislativo 231/2007 and subsequent amendments and additions (including D. Lgs 125/2019). The provisions relating to the so called Anti-Money Laundering Law impose customer due diligence obligations and document retention requirements for the purpose of defining risk profiles relating to money laundering or terrorist financing. The luxury sector is, by definition, an area in which the risk of money laundering may underlie transactions. The persons obliged to identify clients for the purposes of due diligence and to determine the beneficial owners of a legal relationship are specifically identified and regulated by law. It is evident that, in such contexts, where one of the persons identified by law were to detect a high anti-money laundering risk profile and therefore make a suspicious transaction report in relation to the transaction carried out (i.e. one may think, for example, of the notary executing a deed of sale for a luxury real estate asset Trophy

Asset while suspecting that the origin of the funds for payment of the consideration is unlawful), any opening of an investigation by the competent authorities may lead to inquiries involving all subjects concerned, including agents, intermediaries, finders and/or brokers. This implies that, in the context of negotiation activities, the gathering of information and the structuring of transactions must always be carried out with the utmost professional diligence required by the specific mandates. Superficial performance may always compromise not only the scope of contractual obligations, but also areas related to criminal liability not assessed *ex ante*.

4.5.2 Cultural assets and provenance: due diligence, constraints and circulation.

The management of cultural assets in Italy is governed by the Codice dei Beni Culturali (D.lgs. 42/2004), which imposes constraints, reporting obligations and authorisations for circulation. Lawful provenance is fundamental; transfers of ownership (sale, succession) must be reported to the *Soprintendenza dei Beni Culturali*, which is a peripheral body of the Ministry of Culture in Italy entrusted with the protection, conservation and enhancement of the historical, artistic, archaeological and landscape heritage within its territorial area of competence. The typical activities of the Sovrintendenza relate to authorisations for restoration works or renovation works concerning assets subject to constraints. In the archaeological field, for example, it must supervise works in order to ensure the protection of historical artefacts. It also approves restoration works on works of art and, finally, protects the landscape and monitors transformations of the territory. It is therefore clear that, in the luxury sector, the professional expertise of the subjects involved in transactions concerning assets is of fundamental importance. There are multiple nuances, including of a technical and urban planning nature, when reference is made to real estate assets, which must be assessed and examined in depth. These conditions are frequently set out in documents containing the full analysis of the technical requirements of the asset. This type of professional activity is shared in a final document called Due Diligence. Due diligence in the luxury sector is an in depth investigation into a target asset, its provenance, and the company that produced it (brand, supplier, atelier). It is carried out to assess the risks of defects

and/or eviction (art 1470 codice civile), value and compliance before an investment or acquisition. It includes checks on intellectual property, supply chain, sustainability and reputation. This process of analysis and evaluation protects the purchaser from hidden liabilities and guarantees the integrity of the investment made. Some examples of due diligence typical of the luxury sector are set out below:

- Intellectual Property (IP): Verification of trademark portfolios, patents and design protection to avoid counterfeiting or legal disputes.
- Supply Chain and Sustainability: Analysis of the traceability of raw materials (leather, gold, precious stones), working conditions of personnel, environmental impacts of the activities carried out, and alignment with ESG (Environment, Social and Governance) principles.
- Reputation and Compliance: Rigorous control of third parties, origin of funds and anti-money laundering compliance, fundamental for brands that rely on reputation and luxury.
- Financial Valuation: Typically carried out in connection with valuations relating to purchases of income-producing Trophy Assets in the real estate sector in order to measure the return on the investment.

4.5.3 Privacy and Data Management (GDPR): minimisation, retention, data breach.

The GDPR (General Data Protection Regulation)³⁷, is EU Regulation 2016/679 in force since 25 May 2018. The Regulation governs the protection of natural persons with regard to the processing of personal data, guaranteeing control over their own data and harmonising privacy laws across Europe. The subjects involved in this protective activity are natural persons as data subjects, those who manage the data as data controllers, and third parties who process data on behalf of the controllers as external data processors. The so called Privacy Law in the luxury sector takes on certain specific features due to the type of client and the assets being transferred. To identify certain

³⁷ *Regolamento Generale sulla Protezione dei Dati*” (GDPR)

elements typical of the luxury sector, one may think of the principle of data minimisation established by the GDPR (art 5, comma 1, lett. c). The latter provides that personal data collected and processed must be adequate, relevant and limited to what is strictly necessary in relation to the purposes pursued. Companies and appointed professionals must not collect superfluous information or information exceeding the declared purpose. It is clear that, in the luxury sector, in order to achieve significant levels of customer satisfaction, the principle according to which personal data must be adequate, relevant and limited to the purposes pursued finds a different breadth. A distinctive aspect is, for example, linked to the low frequency of purchase of Luxury goods. One may think of the purchase of a Trophy Asset in the real estate sector, the latest Yacht model of a renowned shipyard, or a painting by a contemporary artist. It is evident that this type of transaction takes place over greatly extended timeframes. A new Yacht model may enter the market even after four or five years, a luxury real estate asset may be purchased and used for long periods of life, and a painting by an artist may be held for many years and only resold and replaced after a long period of retention. This context requires, for example, subject to authorisation by the Garante, the extension of the retention of marketing profiling data beyond the canonical 12–24 months. In order to personalise purchasing experiences, luxury companies and professionals use complex CRM systems to collect identity, contact and purchase-detail data. In the context of the acquisition of sensitive data, particular attention must be paid to the processing of any special categories of data (i.e. specific purchasing preferences revealing religious beliefs or biometric data). In order to implement significant data protection (accountability), the luxury sector adopts very strict technical and organisational security measures, through the use of encryption-related methodologies and rigorous access tracking. Although such conditions are not defined by the levels of personal data protection established by law, which express non discriminatory levels of protection, they are voluntarily introduced to protect the data of high-profile clientele. With reference to the principle of consent to be given by each natural person, such consent must be freely given and informed. This implies that the acquisition of information from high-spending clients must be carried out in a context of absolute

transparency. As can be understood, the information provided by clients is manifold and high-profile. In this context, a data breach (Data Breach (art. 33-34 GDPR)), even where companies are organised to comply with the time limits imposed by the legislation for notifications to the Garante within 72 hours from the moment in which the event becomes known, and to the data subject by immediate communication, may significantly affect the company's reputation to the point of causing declines in turnover and a reduction in purchases by loyal customers precisely because of a loss of trust that may compromise years of positioning, especially where VIP clients feel insufficiently protected. Here the risk is not only related to non-compliance and lack of conformity with the legislation, but may also affect the patrimonial and economic structure of the companies and professionals operating in the sector. The regulatory obligations to periodically carry out a data protection impact assessment (DPIA) for high-risk processing such as advanced profiling are often not enough. To protect itself, the luxury sector is increasingly investing in Data Loss Prevention (DLP) solutions and in strict compliance rules, treating cybersecurity as a business priority and not merely a technical one.

Conclusion.

The analysis carried out throughout this thesis has sought to investigate the legal role of the broker within the luxury market, a sector whose distinctive characteristics challenge many of the assumptions traditionally underlying both contract law and commercial intermediation. The research has demonstrated that luxury is not merely an economic category defined by price or quality, but rather a complex ecosystem in which value is generated through the interaction of scarcity, reputation, trust, exclusivity, and symbolic significance. Within such a framework, the intermediary occupies a position that is far more sophisticated than that traditionally associated with the simple facilitation of transactions.

The existence of luxury markets is intrinsically linked to the presence of significant informational asymmetries. Authenticity, provenance, reputation, and access are often impossible to assess independently by market participants and frequently constitute a substantial portion of the value exchanged. As a consequence, trust emerges not simply as a desirable element of commercial relations, but as a fundamental precondition for the functioning of the market itself. It is precisely within this context that the broker assumes a strategic role, acting as a mechanism for the reduction of uncertainty and as a guarantor of reliability between parties operating in environments characterized by high economic value and elevated reputational sensitivity.

From a legal perspective, the study has shown that the traditional categories of mediation, mandate, commission agency, and commercial agency continue to provide an indispensable interpretative framework. However, contemporary luxury intermediation increasingly operates through hybrid and atypical contractual structures that often transcend the rigid boundaries of classical legal models. The practical reality of the luxury market reveals professionals who do not merely introduce parties to one another, but who advise, verify, negotiate, coordinate, supervise, and manage risks throughout the entire lifecycle of the transaction. Such evolution inevitably raises questions concerning contractual qualification, professional diligence, liability standards, remuneration mechanisms, and the allocation of risk.

A central conclusion of this research is that the economic importance of the intermediary and the legal complexity of his activity grow proportionally with the degree of exclusivity and informational opacity characterizing the underlying transaction. The greater the scarcity of the asset, the stronger the reputational implications associated with its transfer, and the more difficult it becomes for parties to evaluate independently the relevant information, the more valuable the intermediary's contribution becomes. In this sense, the broker performs a function that extends beyond mere market efficiency: he contributes directly to the preservation of the conditions upon which luxury itself is founded.

Particular attention has been devoted to the contractual dimension of luxury intermediation. The analysis has highlighted how contractual drafting constitutes not merely a technical exercise but a fundamental instrument of risk management. Exclusivity clauses, non-circumvention provisions, confidentiality agreements, compensation structures, dispute-resolution mechanisms, and compliance obligations are not ancillary elements of the relationship; rather, they are essential tools through which parties seek to protect economic interests, preserve confidential information, safeguard reputational capital, and ensure the stability of transactions whose value often extends well beyond their financial dimension.

The growing importance of compliance further confirms the transformation of the broker's role. Anti-money laundering regulations, beneficial ownership verification, provenance investigations, cultural property restrictions, privacy obligations, and increasingly sophisticated due diligence requirements have significantly expanded the responsibilities of intermediaries operating in the luxury sector. The contemporary broker is therefore no longer solely a commercial actor but increasingly functions as a gatekeeper positioned at the intersection between private autonomy, market integrity, and regulatory oversight.

More broadly, the findings of this thesis suggest that the legal significance of luxury intermediation extends beyond the confines of the luxury industry itself. The issues examined throughout this work reflect broader transformations affecting modern

markets, where intangible assets, reputation, information, and trust often generate more value than the underlying physical goods. In an economy increasingly driven by data, relationships, and symbolic capital, the intermediary's ability to create confidence between parties acquires a relevance that transcends traditional transactional logic.

Ultimately, luxury may be understood as a market built upon confidence as much as upon exclusivity. The broker, in turn, emerges as one of the principal architects of that confidence. His function is not limited to facilitating exchanges; rather, it consists in creating the conditions under which exchanges become possible, reliable, and economically meaningful. The true value of luxury intermediation therefore lies not only in connecting supply and demand, but in protecting the delicate equilibrium between trust, reputation, and legal certainty upon which the entire luxury ecosystem depends.

As luxury markets continue to evolve under the combined influence of globalization, digitalization, technological innovation, and increasing regulatory scrutiny, the role of the broker will likely become even more central. Future legal developments will undoubtedly be required to address new challenges and emerging forms of intermediation. Yet, regardless of the transformations that may occur, one principle is likely to remain unchanged: where value depends upon trust, the intermediary remains indispensable. In the luxury market, perhaps more than anywhere else, law and trust are not alternative mechanisms of governance but complementary forces, and the broker stands precisely at the point where they converge.

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