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Q&A DOCUMENT | 23 March 2023

Q&A on Distribution Agreements

Part I: Legislative framework

Q1. Please specify the legislative framework generally applicable to the conclusion and execution of distribution agreements (a)? Please include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and, if available, to the English translation of the legislative framework (c).

a. Legislative framework:

Act No. 513/1991 Zb., Commercial Code, as amended (the "Commercial Code"), in particular:

- Book three, Title I – General legal rules for commercial agreements;
- Book three, Title II, Chapter 1 – Purchase agreement;
- Book three, Title II, Chapter 19 – Agency agreement;
- Book three, Title III, Chapter 3, Division 4 – Exclusive distribution agreement.

Act No. 40/1964 Zb., Civil Code, as amended (the "Civil Code"), in particular:

- Book one, Title IV– General legal rules for contracts;
- Book six, Title I – Prevention of Impending Damage;
- Book six, Title II – Liability for Damage

Act No. 187/2021 Z.z., on the Protection of Competition and on Amendments and Supplements to Certain Acts (the "Competition Act").

Act No. 244/2002 Z.z., on Arbitration, as amended (the "Arbitration Act").

b. Link(s) to official publication:

The Commercial Code is accessible via this link.

An official consolidated version is accessible via this link.

The Civil Code is accessible via this link.

An official consolidated version is accessible via this link.

The Competition Act is accessible via this link.

An official consolidated version is accessible via this link.

The Arbitration Act is accessible via this link.

An official consolidated version is accessible via this link.

c. Link(s) to English translation:

Not available.

Q2. Other than for agency agreements pursuant to Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents, are there specific rules depending on the distribution format (e.g. franchising, exclusive distribution)?

Yes.

If yes, which specific rules apply (a)? Where available, please also include a link to the official publication of the applicable rules (b) and, if available, to the English translation of the legislative framework (c).

a. Specific rules depending on distribution format:

Specific rules apply to exclusive distribution agreements as governed in the Commercial Code in Art. 745-749; these provisions apply only if (i) at least one party has its registered office or place of business or, if applicable, residential address in the territory of a different country than the other participants and, (ii) if these relations are governed by Slovak law (however, it is not relevant whether Slovak law was chosen by the parties or it shall apply pursuant to applicable laws in case that no governing law was chosen by the parties). In this respect:

- The supplier undertakes that within a certain area it shall not supply respective goods to any party other than the buyer (distributor) (Art. 745 (1) Commercial Code).
- The supplier is allowed to supply the respective goods within the reserved area to (a) party(ies) other than the buyer only if it was expressly agreed by the parties in the agreement (Art. 746 Commercial Code).
- Slovak law does not explicitly regulate a joint exclusive distributorship, the appointment of two jointly exclusive distributors should be permissible pursuant to Art. 746 of the Commercial Code and the statutory provisions should apply accordingly towards each of the jointly exclusive distributors.
- An exclusive distribution agreement must be concluded in writing and must determine the area covered by the agreement and the types of goods; otherwise, the agreement is invalid (Art. 745 (2) Commercial Code).
- Other statutory provisions governing exclusive distribution agreements (Art. 746-749 of the Commercial Code) are not mandatory and may be modified (or excluded) by arrangements between the contractual parties. Therefore, parties might modify/exclude for example a provision of Art. 748 Commercial Code stipulating that if the agreement does not determine the period for which it is concluded, the agreement shall expire upon the lapse of one year from its conclusion.

b. Link(s) to official publication:

For information regarding the Commercial Code, see Q1.b.

c. Link(s) to English translation:

Not available.

Q3. Other than general contract law and competition law, are there other rules which may generally restrict the parties when drafting and concluding distribution agreements (e.g., rules in relation to unfair contract terms in B2B contracts, specific requirements in the context of a prohibition of abuse of economic dependence)?

Yes.

If yes, which general rules apply (a)? Where available, please also include a link to the official publication of the applicable rules (b) and to the English translation of the regulatory framework (c).

a. General rules

Act No. 91/2019 Z.z., on Inappropriate Conditions in Food Trade, as amended (the "Act on Inappropriate Conditions") regulates relations between buyers (food retailers) and their suppliers in connection with the purchase of food for resale in Slovakia or services related to the purchase or sale of food (e.g., marketing, logistics) in Slovakia. Even if a business relationship of the parties is governed by another law, or if requesting, agreeing or applying an inappropriate condition has been carried out outside Slovakia, if its effects have occurred or are likely to occur in Slovakia, such business relationship will be assessed under the Act on Inappropriate Conditions. No precondition of existence of substantial market power is included in the Slovak Act on Inappropriate Conditions (so the market power, the turnover, the market share of the players are not assessed).

The Ministry of Agriculture and Rural Development of the Slovak Republic is responsible for overseeing compliance with the Act on Inappropriate Conditions.

The Act on Inappropriate Conditions provides an exhaustive list of about 50 unfair contract terms which are defined as inappropriate conditions in the food trade. Under a general rule, requiring, agreeing or enforcing an inappropriate condition between the customer and its supplier in trade food is prohibited (Art. 3 (1) Act on Inappropriate Conditions).

Besides the full list of inappropriate conditions which are prohibited, the Act on Inappropriate Conditions gives the parties also the possibility to agree on certain services for which the supplier's monetary or non-monetary performance will be provided to the customer up to certain turnover limit. This applies, however, only if following services are concerned:

a. The customer's service aimed at promoting the supplier or its food product (promotion or marketing bonus);
b. Use of the customer's distribution (logistic bonus);

c. Fulfilment of a condition agreed by the parties to a business relationship regarding the purchase of a certain quantity or volume of a food product, which is charged separately (turnover or volume bonus); and
d. Placement of a food product in a specific place in the customer's establishment (food placement bonus).

At the same time, the following conditions must be met:

a. Monetary or non-monetary performance for these services shall be agreed in advance and in writing;
b. In the case of the logistic bonus, the precondition is that the supplier has not the possibility to supply the food products to the customer;
c. The total value of the agreed performances does not exceed 6% of the supplier's turnover for food products supplied to the individual customer in the respective calendar year. At the same time, it is the aggregate of the value of the performance for

i. the logistic bonus, which can be agreed separately up to a maximum of 3%; and
ii. the promotion bonus, the turnover bonus and the food placement bonus, together up to a maximum of 3%.

Under the Act on Inappropriate Conditions, for instance, monetary performance or a non-monetary performance of a party to a business relationship that was obtained for the following options is considered an inappropriate condition:

a. an inclusion of the supplier into the register of suppliers of the customer or an inclusion of the customer into the register of the customers of the supplier including changes in such register;
b. an inclusion of the supplier's food into the register of food sold by the customer, including changes in such register;
c. advance payment for future contractual penalties;
d. monetary or non-monetary performance unrelated to the subject of the contract; etc.

Full list of inappropriate conditions is available in Art. 3 Act on Inappropriate Conditions.

Violations of the Act on Inappropriate Conditions are associated with serious consequences. The Ministry of Agriculture and Rural Development of the Slovak Republic may impose on a buyer or a seller in a food trade relationship who requires, agrees or applies in the business relationship an inappropriate condition specified in the Art. 3 a fine up to EUR 500.000 (see Art. 14 (3) Act on Inappropriate Conditions).

The regulation of unfair conditions is also contained in Act No. 18/1996 Z.z., on Prices, as amended (the "Act on Prices"). The Act on Prices concerns the application, regulation, and control of prices of products, performances, works, and services intended for the Slovak market, including prices of imported goods and prices of goods

intended for export.

The Ministry of Finance of the Slovak Republic is responsible for overseeing general compliance with the Act on Prices.

Art. 12 Act on Prices prohibits agreements on unfair prices negotiated under specific conditions.

Under Art. 12 (1) Act on Prices, unfair prices cannot be agreed on by (i) the seller and the buyer in the sale or purchase of goods for export and re-import of the same goods for which subsidies are provided from the state budget or state funds or for which financial aid is provided from abroad or from the European Union (Art. 12 (1) (a) Act on Prices); (ii) the seller in a dominant position under the Competition Act (Art. 12 (1) (b) Act on Prices); (iii) the seller or the buyer if he is in a more favourable economic position when selling or buying food products (Art. 12 (1) (c) Act on Prices).

Under Art. 12 (2) Act on Prices an unfair price set by the seller under Art. 12 (1) Act on Prices will be deemed to be an agreed price which significantly exceeds economically justified costs or a reasonable profit margin.

Under Art. 12 (3) Act on Prices an unfair price set by the buyer under Art. 12 (1) (a) Act on Prices will be deemed to be an agreed price that is significantly below economically justified costs.

Lastly, under Art. 12(3) Act on Prices an unfair price set by the buyer under Art. 12 (1) (c) Act on Prices will be deemed to be an agreed price that is below economically justified costs, this, however, shall not apply to a purchase of food products, when stocks are sold out, due to an approaching expiry date or an approaching date of minimum durability, or in the event of closure of business,

Violations of the Act on Prices are associated with serious consequences. The Ministry of Finance of the Slovak Republic (or other regulatory authorities under the Act on Prices) shall impose in particular a fine (i) from EUR 30,000 to up to five times the difference between the agreed price and the price that should have been agreed in accordance with the respective price rules, or (ii) from EUR 30,000 to EUR 75,000 if the difference under point (i) cannot be quantified. In case of repeated breaches within a 12 months period, a fine of up to EUR 150,000 could be imposed and a motion to revoke the trade license could also filed by regulatory authorities.

Regarding the Competition Act, Slovak competition law generally adheres to the principles established under EU competition law, incl. imposing the fines typically only on the suppliers. However, the Slovak Competition Authority also imposed fines on both suppliers and buyers (RAJO case), which is not standard under the EU competition law. Therefore, it is possible that the Slovak Competition Authority would proceed accordingly and apply such an approach again. Otherwise, there are no specific deviations in the law or the case law to be reported.

All provisions mentioned above in Q3.a. are mandatory, and therefore cannot be ruled out or amended by the parties.

Regarding unfair contractual conditions in B2B agreements, following shall apply in this respect:

- A contractual arrangement concerning the period of payment of a monetary obligation, the rate of default interest, or lump-sum compensation of costs connected with the enforcement of a receivable, that is grossly disproportionate to the rights and obligations arising from the contractual relation for the creditor and without the existence of a justified reason for such agreement (e.g. in a distribution agreement between the distributor and its customer, the contracting parties have agreed on a maturity period of monetary obligations of 90 days; then there will be a fair reason for the distribution agreement between the distributor and his supplier to contain an identical or similar maturity period), shall be deemed to be an unfair contractual condition and shall be invalid (Art. 369d (1) Commercial Code).
- A business practice introduced between the parties concerning the period of payment of a monetary obligation, the rate of default interest, or lump-sum compensation of costs connected with the enforcement of the receivable, that constitutes a gross disproportion in the rights and obligations arising from the contractual relation for the creditor and without the existence of a justified reason for such practice, shall be deemed to be an unfair business practice and shall be prohibited (Art. 369d (2) Commercial Code).
- A contractual arrangement or business practice excluding any entitlement to default interest from arising, or a contractual arrangement or business practice that leads the creditor to waive their entitlement to default interest before a contractual obligation is breached, shall be deemed to be an unfair contractual condition or unfair business practice. This shall equally apply to a contractual arrangement or business practice excluding any entitlement from arising to the lump-sum compensation of costs connected with the enforcement of a receivable (as specified in Art. 369c (1) Commercial Code), unless the debtor proves such exclusion of entitlement to lump-sum compensation of costs is not considered unfair under Art. 369d of the Commercial Code (Art. 369d (3) Commercial Code).
- The assessment whether a contractual condition or business practice is unfair or not shall be based on all circumstances of the case, particularly on

a. compliance with the principle of honest business relations,
b. the nature of the subject of fulfilment of the obligation,
c. the existence of a justified reason for the debtor’s deviation from the default interest rate, the period of payment of the debtor’s monetary obligation or the amount of the compensation of costs connected with the enforcement of a receivable under the Commercial Code.

Shall the contractual arrangement or business practice between parties be considered unfair in accordance with the above-described rules, such contractual agreement or business practice is considered invalid. As a result,

rights and obligations of parties would be governed by mandatory provisions of the applicable law, remaining provisions of the agreement and the non-mandatory provisions of the applicable which have not been excluded or amended by the parties by remaining provisions of the agreement (Art. 369d (7) Commercial Code).

b. Link(s) to official publication:

The Act on Inappropriate Conditions is accessible via this link. An official consolidated version is accessible via this link.

The Act on Prices is accessible via this link. An official consolidated version is accessible via this link.

For information regarding the Competition Act, see Q1.b.

For information regarding the Commercial Code, see Q1.b.

c. Link(s) to English translation:

Not available.

Part 2: Pre-contractual phase

Q4. Are there mandatory provisions in relation to the disclosure of pre-contractual information prior to concluding and/or executing distribution agreements?

Yes.

If yes, which mandatory provisions apply (a) and which information must be disclosed (b)? Where available, please also include a link to the official publication of the applicable rules (c) and, if available, to the English translation of the regulatory framework (d).

a. Mandatory provisions:

There is no explicit pre-contractual obligation to disclose certain information concerning distribution agreements under Slovak law; however, some general obligations related to the pre-contractual phase might apply that, in fact, could be interpreted as provisions regulating the disclosure of pre-contractual information.

Following provisions apply:

- Art. 3 Civil Code (the principle of good morals);
- Art. 49a Civil Code (the principle of good faith);
- Art. 415 Civil Code (the principle of preventing of any damage);
- Art. 265 Commercial Code (the principle of fair trade).

b. Information to be disclosed:

As discussed above, there is no general requirement to provide the other contracting party with specific information during pre-contractual negotiations.

Under Slovak law, so-called pre-contractual liability is based on the principle of fair trade (Art. 265 Commercial Code), good morals (Art. 3 Civil Code), good faith (Art. 49a Civil Code) and, in particular, on the principle of preventing any damage (Art. 415 Civil Code). Accordingly, everyone is obliged to act fairly in legal relations and no one may benefit from an unfair or unlawful act or from an unlawful situation which he/she caused, or over which he/she has control.

More specifically, Art. 49a Civil Code requires that all agreements are executed in good faith. This principle sets an obligation for a negotiating party to provide (or not to omit to provide) the contracting partner with information such that the partner is not misled into entering the agreement. As a general rule, if one of the parties has information about the reasons for invalidity or nullity of the contract being concluded or of circumstances in which the other party would not have entered the agreement, it is obliged to provide such information to the other party. The information obligation is not fulfilled in cases in which information is not provided at all, or in which false or incomplete information is provided. The legal consequence of a breach of the obligation to act in good faith is a relative invalidity of the agreement (See, Q6).

c. Link(s) to official publication:

For information regarding the Commercial Code, see Q1.b.

For information regarding the Civil Code, see Q1.b.

d. Link(s) to English translation:

Not available.

Q5. Is there a standstill obligation linked to the requirements imposed for the pre-contractual phase?

No.

Q6. Does the relevant regulatory framework impose sanctions if the pre-contractual obligations are not (fully) respected?

Yes.

If yes, which sanctions apply (e.g., nullity of contract, penalty payment)?

Under specific circumstances, the aggrieved party is entitled to damages caused by the breach of the pre-contractual obligations. For instance, under Art. 415 et seq. Civil Code the aggrieved party could seek damages caused by misleading information provided within the pre-contractual phase. In case of an unreasonable termination of contract negotiations the party could claim damages also under Art. 424 Civil Code. Lastly, Art. 271(1) Commercial Code implies that the party who breaches the obligation not to disclose confidential

information provided during the negotiations should compensate the aggrieved party (See, Q7.b.).

Furthermore, agreements executed in disrespect of the principle of good faith (Art. 49a Civil Code) or good morals (Art. 39 Civil Code) could be, under certain circumstances, declared null and void. Art. 49a of the Civil Code provides that the act is afflicted by relative invalidity. Therefore, the legal act shall be deemed valid until the aggrieved party claims the invalidity of the legal act. Such invalidity, however, may not be claimed by the party which caused the invalidity. Art. 39 Civil Code governs an absolute invalidity, which occurs even if the parties had no knowledge about the conflict. The legal act is considered invalid *ex tunc*.

Art. 265 Commercial Code provides that the performance of rights in disrespect of the principle of fair trade is not protected by law, and is thus unenforceable.

Q7. Can a party be held liable if it terminates the pre-contractual negotiations?

Yes.

If yes, on what grounds (a); under what conditions (b); and what consequences are generally linked to such liability (c)?

a. Grounds for pre-contractual liability:

Art. 424 Civil Code;

Art. 271 Commercial Code.

b. Conditions for pre-contractual liability:

The Slovak law does not provide for general pre-contractual liability, with the exception of the information obligation under Art. 271 Commercial Code (See, Q8). Thus, the general principles regulating liability regulation should apply accordingly.

Under Art. 424 Civil Code liability for damage applies to a party who causes damage by intentional immoral conduct. Therefore, if a party commences or continues to negotiate an agreement without intending to enter into that agreement, such conduct could be considered immoral and liability under Art. 424 Civil Code can potentially arise. The prerequisite for the right to compensation for damages is (i) an unlawful act of the negotiating party that breaches the principle of good morals (Art. 39 Civil Code); (ii) damage caused to the aggrieved party; (iii) causal link between the unlawful act and the damage; (iv) the intention of the wrongdoer (negotiating party) to cause damage.

c. Consequences of pre-contractual liability:

General rules on liability and compensation will apply to any damage resulting from a pre-contractual liability.

Under Art. 420 and 424 Civil Code both the actual damage and lost profit (e.g., profit lost because of the aggrieved party's failure to contract with another party because of unnecessary negotiations with the unfairly

acting party) will be compensated (provisions of Art. 442-450 Civil Code apply).

In the event of a breach of the obligation provided for in Art. 271 Commercial Code, the liability regime under Art. 373-386 Commercial Code applies. A party who breaches the confidentiality of information provided during the negotiations will compensate the other party for the foreseen damage (or damage that could have been foreseen) and lost profit.

For the sake of completeness, under Art. 386 (1) Commercial Code it is not permissible to exclude liability for damage in advance and any such exclusion would be invalid. In general, only a limitation of liability for damage in advance is permissible and only in relation to damage caused by a breach of contractual obligations under the Commercial Code (provided that such a limitation cannot circumvent the law or infringe the principle of good morals, otherwise it could be considered invalid).

Q8. Are there other relevant rules and/or restrictions that apply during pre-contractual negotiations between supplier and distributor?

Yes.

If yes, what do these specific rules and/or restrictions entail?

Under Art. 271(1) Commercial Code, if during discussions on concluding a contract the parties provide each other with information designated as confidential, the party to which such information was provided must not disclose it to a third party or use it contrary to its purpose for its own needs, irrespective of whether the agreement will be concluded. The party that breaches this obligation is obliged to compensate the damage accordingly under the provision of Art. 373 et seq. Commercial Code. The prerequisite for the right to compensation for damages is (i) an unlawful act of the negotiating party (i.e. a breach of obligation under Art. 271 Commercial Code); (ii) damage caused to the aggrieved party; (iii) causal link between the unlawful act and the damage. Please note that unlike the Civil Code, the liability under the Commercial Code does not require fault as a prerequisite for the right to claim damages and a party is liable unless proven that a breach of the obligation was due to circumstances excluding liability under Art. 374 Commercial Code that need to be assessed on a case-by-case basis. The circumstances excluding liability shall be deemed to be the obstacles that occurred independently of the intent of the obliged party and that prevent the party from fulfilling their obligation, if it may not be reasonably assumed that the obliged party could have averted or overcome this obstacle or its consequences, or that they could have foreseen this obstacle at the time when the obligation was established. Thus, under the Commercial Code, there must be an unlawful act (objective breach of obligation) to claim damages, but the fault of the breaching party (subjective / psychological aspect of acting in a certain way) is not required in order to claim damages. The damaged party may claim damages even if the unlawful act was not associated with fault. Please note that Art. 271(1) Commercial Code is a mandatory provision, and as such it cannot be excluded.

Part 3: Contractual phase

A. Form of distribution agreements

Q9. Must a distribution agreement be executed in writing to be valid and enforceable?

Only in certain instances.

If only in certain instances, please explain when a written agreement is required.

Under Art. 272 (1) Commercial Code, an agreement must be made in writing in order to be valid only in the cases stipulated by law (See, Art. 745 (2) Commercial Code: special provision concerning exclusive distribution agreements). Furthermore, if at least one party expresses the intent during discussions on concluding the agreement to conclude it in writing, the distribution agreement must be made in writing.

Written form is required in case of an exclusive distribution agreement (Art. 745 (2) Commercial Code). This provision applies only if at least one party has its registered office or place of business or, if applicable, residential address in the territory of a different state than the other participants and, if these relations are governed by Slovak law.

There are also other arrangements that require a written form, e.g. contractual penalties (Art. 544 (2) Civil Code) or retention of title (Art. 444-445 Commercial Code). The written form may also be required in other specific cases required e.g., by special laws.

All abovementioned provisions are mandatory provisions, and as such cannot be excluded.

The Act on Inappropriate Conditions does not impose a general obligation on executing distribution agreements in food trade in writing. However under Art. 3 (5) ag) Act on Inappropriate Conditions the buyer's refusal to confirm the terms of the food supply contract in writing, if the supplier has requested it, can be considered an unfair contract term.

Q10. Are there any (other) requirements as to the form of the distribution agreement for it to be valid and enforceable?

No.

B. Content of distribution agreements

Q11. Other than restrictions imposed by EU competition law (including Regulation (EU) 330/2010), do specific rules and/or restrictions apply in distribution agreements with respect to

- the territory in which or the customers to whom the goods/services will be sold;

- an exclusivity granted to the distributor;
- (exclusive) sourcing/purchasing obligations;
- resale prices;
- non-compete clauses?

Yes, specific rules apply with respect to non-comepte clauses.

If yes, what do these specific rules and/or restrictions entail?

Slovak law does not contain a general regulation of non-compete clauses. However, in accordance with the case law on non-compete clauses, Art. 672a Commercial Code (implementing Article 20 (3) of Directive (EU) 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents) that limits the length of non-compete clause to the maximum of 2 years after the termination of the agreement, applies accordingly to distribution agreements.

Q12. Do specific rules and/or restrutions apply in distribution agreements with respect to

- obligations of the supplier vis-à-vis the distributor, including in relation to the remuneration of the distributor;
- obligations of the distributor vis-à-vis the supplier or vice versa;
- a non-solicitation clause during and/or after the term of the distribution agreement;
- minimum sales quota imposed on the distributor;
- specific sector rules?

Yes, specific sector rules apply in distribution agreements.

If yes, what do these specific rules and/or restrictions entail?

The Act on Inappropriate Conditions contains sector-specific regulations in relation to the purchase of food for resale and related services (see, Q3.a).

C. Term and termination

1. Term

Q13. Is an oral or written distribution agreement that does not specify the term always considered to be an agreement of indefinite duration?

No.

If only in certain instances, please explain when a distribution agreement that does not specify the term is considered to be a contract of indefinite duration.

Under the Slovak jurisprudence, if a duration of an agreement is not determined by agreement of the parties, or if the duration does not stem either from the law or from the nature of the obligation, there is a rebuttable presumption that the agreement is considered to be an agreement of indefinite duration. Given the repetitive nature of distribution agreement, unless the intention and conduct of the parties indicate otherwise, a distribution agreement that does not specify the term might be considered to be a contract of indefinite duration.

However, the above rebuttable presumption is not applicable to an exclusive distribution agreement in the international trade (See, Q2.a.), as any exclusive distribution agreement that does not determine the period for which it is concluded shall expire upon the lapse of one year from its conclusion (Art. 748 Commercial Code).

Q14. Does a distribution agreement of definite duration that is continued after its expiry turn into a distribution agreement of indefinite duration?

No.

2. Termination

Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of definite duration

Q15. Can a distribution agreement of definite duration be terminated for convenience?

Yes.

If yes, is an express provision allowing for termination for convenience necessary?

Yes.

Q16. Must a reasonable notice period be observed in order for the termination to be valid even if the distribution agreement provides for the immediate termination for convenience?

No.

Q17. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

a. Will the termination continue to have effect?

The effect of termination of the distribution agreement of definite duration for convenience (if this is agreed between the parties; see, Q15) depends on circumstances of the case.

Regarding the prescribed rules for termination, the law governs particularly (i) a form of the termination notice, (ii) an expression of intent to terminate the distribution agreement, (iii) a reason/cause for termination, (iv) a delivery of termination notice to the other party, and (v) a notice period. Failure to comply with these rules results in

absolute or relative invalidity of the termination notice depending on the nature of non-compliance.

b. Will damages have to be paid, and, if yes, how are those damages calculated?

The injured party might be entitled to a claim for compensation of damage if the damage arose due to a breach of the contract by the terminating party (Art. 373 et seq. Commercial Code; i.e., not observing the prescribed rules for termination etc; see above) or if the damage arose due to a breach of the statutory provisions (Art. 757 Commercial Code).

In both cases, the prerequisite for the claim for compensation of damage is (i) a breach of a contractual obligation or statutory provision; (ii) a damage caused to the aggrieved party; (iii) a causal link between the unlawful act and the damage. A fault as a prerequisite for the claim for compensation of damage is not required in B2B relations and a party is liable unless it proves that a breach of the obligation or statutory provision was caused under the circumstances excluding liability (See, Q8 for more details).

Under Art. 379 Commercial Code the aggrieved party may claim actual damage and lost profit. Actual damage includes in particular (i) reduction of the aggrieved party's property, (ii) the cost of averting the damage, and (iii) costs incurred in connection with the harmful event. In addition to the actual damage, the aggrieved party is also entitled to compensation for loss of profit, i.e., the profit that the aggrieved party would have made if the harmful event had not occurred. The extent of the damage, whether in the form of actual loss or loss of profit, must be proved by the aggrieved party. Instead of the actual lost profit, the injured party can demand a so-called customary lost profit, i.e., a compensation for the profit achieved, as a rule, in honest business relations under conditions similar to those of the breached contract within the specific ??business field (Art. 381 (1) Commercial Code).

Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of indefinite duration

Q18. Can a distribution agreement of indefinite duration be terminated for convenience even if the agreement does not provide for termination for convenience?

Yes.

If yes, must a reasonable notice period be observed?

Yes.

If a reasonable notice period must be observed, how is this reasonable notice period calculated (e.g. 1 month per year) (a)? Should a minimum notice period be observed (b), is there a maximum notice period (c)?

a. How is this reasonable notice period calculated (e.g. 1 month per year)?

If the distribution agreement does not determine the length of the notice period, the statutory regulation shall

apply (if the parties agreed on notice period in the distribution agreement, such contractual provisions shall prevail over the statutory regime). Under statutory rules, the distribution agreement may be terminated at the end of a calendar quarter with a notice period of three months (Art. 582 Civil Code).

Special regulation applies to exclusive distribution agreement in the international trade (See, Q2.a.) concluded for indefinite period, which may be terminated by either party by a termination notice, which becomes effective at the end of the calendar month following the month in which the termination notice was delivered to the other party. (Art. 748 Commercial Code).

b. Should a minimum notice period be observed? If yes, how long is this minimum notice period and are the parties allowed to contractually deviate from this minimum notice period

Yes. See Q18.a.

c. Is there a maximum notice period? If yes, how long is this maximum notice period and are the parties allowed to contractually deviate from this maximum notice period?

Yes. See Q18.a.

Q19. Is a contractual notice period always legally valid and enforceable?

No.

If not, which rules of mandatory law can have an impact on this?

The contractual notice period must respect particularly the principle of good faith (Art. 49a Civil Code), the principle of good morals (Art. 39 Civil Code), and the principle of fair trade (Art. 265 Commercial Code); see, Q6 for more details on potential consequences if these principles are not followed. Whether or not the notice period could be contrary to the mentioned principles will depend on the specific context, taking into account e.g. the commercial practices in the relevant sector and the nature of the products and services.

Q20. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

a. Will the termination continue to have effect?

The effect of the termination for convenience of the distribution agreement of indefinite duration depends on circumstances of the case.

In case of termination for convenience on the statutory grounds (see, Q.18.a.), a non-compliance with the prescribed statutory rules shall be considered as a breach of the law and shall result in invalidity of the termination notice (Art. 39 Civil Code); such termination notice has no effect.

If the distribution agreement of indefinite duration is terminated for convenience pursuant to rules agreed upon by

the parties, a non-compliance with the prescribed contractual rules shall be considered as a breach of the contract and the effect of the termination shall depend on the nature of the non-compliance.

b. Will damages have to be paid, and, if yes, how are those damages calculated?

See, Q.17.b. above.

Q21. Must the terminating party comply with certain formalities?

Only in certain instances.

If yes or only in certain instances, when is a written notice required (a), must the notice contain a motivation in order for the termination to valid (b) and what are the consequences if any of the formalities are not observed (c)?

a. Is a written notice required? If yes, is a registered letter (or similar) required?

In the case of a distribution agreement concluded in writing, a written form of termination notice is required (Art. 40 (2) Civil Code). Failure to comply with the written form results in its absolute invalidity (Art. 40 (2) Civil Code; See, Q6).

The termination notice must be delivered to the other party. In general, it is not required to deliver the termination notice to its addressee by a registered mail or similar; instead, the termination notice shall be considered effectively delivered if it reaches the addressee's sphere of disposition (Art. 45(1) Civil Code). Without a proper delivery of the notice to the other party, the termination notice shall not have any legal effects.

b. Must the notice contain a motivation in order for the termination to valid?

No. Unless it is required by agreement of the parties.

c. What are the consequences if any of the formalities are not observed?

See, Q.20.a. and 20.b. The party that received the notice of termination shall invoke the invalidity of the notice before the court.

Q22. Can the parties stipulate the formalities in the distribution agreement?

Yes.

If yes, what are the consequences if those formalities are not observed?

See, Q.20.a. and 20.b.

Q23. Is the terminated party entitled to damages or another type of compensation even if the correct notice period has been observed?

No.

Immediate extrajudicial termination on account of serious breach or exceptional circumstances

Q24. Is immediate extrajudicial termination possible even if the distribution agreement does not provide for early termination?

Yes.

If yes, on what grounds (a)? Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement (b)?

a. On what grounds?

Immediate extrajudicial termination of a distribution agreement is possible in the following instances:

- If the delay of the debtor or the creditor establishes a material breach of his contractual obligation, the other party is entitled to terminate the distribution agreement if it notifies the defaulting party without undue delay after it has become aware of the breach (Art. 345 (1) Commercial Code). For this purpose, a breach of the contract is material if the party breaching the contract knew at the time of its conclusion, or if it could reasonably be assumed at this time with respect to the purpose of the agreement which followed from its content or from the circumstances under which it was concluded, that the other party would not be interested in the fulfilment of obligations in the event of such breach of contract; in case of doubt, it shall be deemed that a breach of the contract is non-material (345 (2) Commercial Code).
- If the party entitled to demand the fulfilment of the contractual obligation of the other party announces that it insists on the fulfilment of that obligation, or if it does not exercise the right to withdraw from the distribution agreement in time under Art. 345 (1) Commercial Code, it is entitled to withdraw from the distribution agreement only in the manner established for a minor breach of the contractual obligation; if it sets an additional period for performance, it has the right to withdraw from the distribution agreement after the expiry of that additional period (Art. 345 (3) Commercial Code).
- If the debtor's or creditor's delay establishes non-material breach of the contractual obligation (as specified in Art. 345 (2) Commercial Code, see above), the other party may withdraw from the distribution agreement in the event that the defaulting party fails to fulfil its obligation even within the additional reasonable period provided to it for this purpose (Art. 346 (1) Commercial Code).
- However, if the defaulting party declares that it will not fulfil its obligation, the other party may withdraw from the distribution agreement without providing an additional reasonable period for performance or before its expiry (Art. 346 (2) Commercial Code).
- Regarding the obligation to be fulfilled in the future:
- the distribution agreement may be withdrawn when it is undoubtedly evident from the behaviour of the obliged

party or from other circumstances, even before the time determined for the fulfilment of the contractual obligation, that this obligation will be breached in a material manner, and the obliged provide fails to provide without undue delay a sufficient security after being requested by the authorised parties (348 (1) Commercial Code).

- it is possible to withdraw from the distribution agreement even if the obliged party declares that it will not fulfil its obligation (348 (2) Commercial Code).

b. Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement?

Yes.

Q25. Will an (extrajudicial) termination continue to have effect if the court rules that the agreement was wrongfully terminated on account of serious breach and/or exceptional circumstances?

No.

If not or only in certain instances, what are the consequences of the termination not being upheld?

If a court would consider the termination of the distribution to be invalid, the termination of the agreement will be without effect. In such case, the agreement shall continue to remain in full force and effect and the sanctions for breach of contract and contractual liability shall apply (See , Q26).

Q26. Does the terminated party have a right to compensation if it appears that the agreement was wrongfully terminated or dissolved on account of serious breach and/or exceptional circumstances?

Yes.

If yes, is this right based on statute or case law (a) and how is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill) (b)?

a. Is this right based on statute or case law and what this right entail?

The right to compensation for damage is based on statue (Art. 373 Commercial Code); it entails in particular a right for compensation of the actual damage and the lost profit (See, Q17.b.).

b. How is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill)?

See, Q17.b.; claim for additional compensation (e.g., goodwill) might be applicable subject to the specific circumstances of the case.

Q27. If a party believes that the distribution agreement has been wrongfully terminated or dissolved, can it apply to the judge in interim relief proceedings to have the effects of the termination suspended?

Yes.

Part. 4: Post-contractual phase

Q28. Is the supplier required to repurchase the stock that is still at the distributor's disposal when the distribution agreement ends?

No.

Q29. Are there other post-contractual obligations that generally apply to either of the parties in the context of the termination of the distribution agreement?

Yes.

If yes, which obligations apply?

In the event of termination of the agreement by unilateral withdrawal (i.e., a termination of the agreement under the statutory provisions (See, Q24.a.) or on the basis of the termination grounds stipulated in the agreement), unless agreed otherwise by parties, the party that received performance from the other party before withdrawal is required to return such performance under Art. 351 (2) Commercial Code; in the case of a monetary obligation, together with interest at the rate agreed in the agreement for this case, otherwise as stipulated under Art. 502 Commercial Code. If performance is being returned by the party that withdrew from the distribution agreement, such party is entitled to compensation of the related costs. These obligations shall not apply in case of termination by notice under Art. 582 Civil Code (See, Q18.a.).

Part 5: Dispute resolution

Q30. Do specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction?

No.

Q31. Can the parties opt for arbitration?

Yes.

If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in distribution agreements?

Yes.

If yes, what do these specific rules and/or restrictions entail?

For an arbitration agreement (clause) to be valid and enforceable, it must comply with the general rules set out in the Arbitration Act. In particular, the arbitration agreement must be in writing; failure to do so may be replaced by a declaration of the parties in the form of minutes before the arbitrator declaring that the parties submit the case to

the jurisdiction of the arbitration tribunal.

Q32. What is the statute of limitations applicable to claims regarding the performance of a distribution agreement?

General statute of limitations regarding the performance of a distribution agreement is four years (Art. 397 Commercial Code); special provisions apply in relation to the beginning of the limitation period or the length of the limitation period, in particular:

Under Art. 391 (1) Commercial Code for rights claimable before the court, the limitation period begins to run from the day when the right could have been exercised at the court. Under Art. 391(2) Commercial Code for rights to perform a legal act (e.g., a notification of defects of the goods to the seller etc), the limitation period runs from the day when the legal act could have been undertaken.

Art. 392 (1) Commercial Code states that for the right to fulfilment of an obligation, the period of limitation runs from the day when the obligation was to be fulfilled or when its fulfilment should have begun (due date). If the content of the obligation consists of the obligation to continuously conduct a certain activity, to refrain from a certain activity or to tolerate something, the limitation period begins to run from the breach of this obligation.

In case of the right to partial fulfilment, the limitation period for each partial fulfilment runs independently. If the entire obligation becomes due as a result of non-fulfilment of a partial obligation, the limitation period runs from the due date of the unfulfilled obligation (Art. 392 (2) Commercial Code).

In accordance with Art. 393 (1) Commercial Code for rights arising from breach of an obligation, the limitation period begins to run on the day when the obligation was breached, unless special regulation is stipulated for limitation of certain such rights

Under Art. 394 Commercial Code for rights arising from withdrawal from contract, the limitation period runs from the day when the entitled party withdrew from the agreement (Subsection. 1) and for the right to the return of performance provided under an invalid agreement, the limitation period begins to run on the day when the performance took place (Subsection. 2).

For the right to compensation of damage, the limitation period runs from the day when the aggrieved party learned or could have learned of the damage and of the party that is obliged to compensate the damage; however, it ends at the latest upon the lapse of ten years from the day when the obligation was breached (Art. 398 Commercial Code) and rights arising from damage to transported items and from late delivery of a consignment with respect to the consignor and to the carrier become statute-barred upon the lapse of one year (Art. 399 Commercial Code).

For the right to compensation of damage caused by the invalidity of a legal act under Art. 268 Commercial Code, the limitation period begins to run on the day when the legal act became invalid (Art. 394 (3) Commercial Code). This provision shall be deemed as a special and shall prevail over general provisions of Art. 398 Commercial

Code (see above).

Finally, under Art. 399 Commercial Code for rights arising from total destruction or loss of the consignment, the limitation period runs from the day when the consignment should have been delivered to the consignee; for other rights, from the day when the consignment was delivered. For deliberately caused damage, the general limitation period of four years applies (Art. 397 Commercial Code).

Under Art. 401 Commercial Code the debtor may extend the period of limitation for the other party by a written declaration, even repeatedly; the total period of limitation must not be longer than 10 years from the day when the period first began to run. Such written declaration may be executed even before the limitation period begins to run.