Distribution Law Center
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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:

- The Contract Law, Chapter (Cap.) 149
- The Protection of Competition Law of 2022 (Law 13(I)/2022)

b. Link(s) to official publication:

- The Contract Law, Chapter (Cap.) 149 (as amended) is accessible via this link.
- The Protection of Competition Law of 2022 (Law 13(I)/2022) is accessible via this link.

c. Link(s) to English translation:

- The English version of The Contract Law, Chapter (Cap.) 149 is accessible via this link.

  This 1959 (original) edition of the Contract Law, Chapter (Cap. 149) is available in English in pdf. We note that this edition does not include the two amendments that do not relate to distribution contracts and are therefore not important in this regard.

- There is no official or unofficial translation yet of the Protection of Competition Law of 2022 (Law 13(I)/2022), which entered into force on 23 February 2022.

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)?

No.

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

Art. 6(2)(a) Protection of Competition Law of 2022 provides that any abuse by one or more undertakings of a relationship of economic dependence vis-à-vis a client, supplier, producer, representative, distributor or trading partner, which does not have an alternative equivalent solution, shall be prohibited, even when this involves a specific kind of products or services.

Art. 6(2)(b) Protection of Competition Law of 2022 further provides that abuse of a relationship of economic dependence may, in particular, be constituted through the imposition of unfair trading conditions, the application of discretionary treatment, or of sudden and inexcusable interruption of long-term trade relationships.

For an abuse of economic dependence to be established, three cumulative conditions must be fulfilled:

- There must be a position of economic dependence between the two undertakings;
- The dependent undertaking does not have an alternative equivalent solution; and
- This relationship has been abusively exploited, which is determined based on weighing the interests of the parties involved.

The abuse of economic dependence is a separate form of anticompetitive behaviour than the abuse of a dominant position (similar to Art. 102 TFEU) and the existence of anti-competitive agreements (similar to Art. 101 TFEU).

b. Link(s) to official publication:

The Protection of Competition Law of 2022 (Law 13(I)/2022) is accessible via this link.

c. Link(s) to English translation:

The English version of The Protection of Competition Law of 2022 (Law 13(I)/2022) is 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?

No.

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?

No.

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

No.

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

No.

Part 3: Contractual phase

A. Form of distribution agreements

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

No, never.

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 to (i) (exclusive) sourcing/purchasing obligations and (ii) non-compete clauses.

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

Generally, a non-compete clause having effect post termination of the distribution contract may fall foul of Art. 27

Contract Law, Chapter (Cap.) 149 which provides that "every agreement by which one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void".

As explained in Q3. above, in relation to "(exclusive) sourcing / purchasing" and "non-complete clauses", care should also be taken not to breach Art. 6(2) Protection of Competition Law of 2022, which prohibits the abuse of relationships of economic dependence.

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 rules apply to (i) obligations of the distributor vis-à-vis the supplier or vice versa, (ii) a non-solicitation clause during and/or after the term of the distribution agreement; and (iii) minimum sales quota imposed on the distributor.

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

Such matters may become relevant to allegations of abuse of economic dependence on the basis of Art. 6(2) Protection of Competition Law of 2022.

For example, in *Case 22/2018 – Alpha Electric House Ltd v. Fissler GmbH*., the Cypriot Commission for the Protection of Competition (CPC) found that Fissler had abused its relationship of economic dependence in violation of Art. 6(2) Protection of Competition Law of 2008 by imposing arbitrary trading terms to its distributor, Alpha Electric. The arbitrary terms that were incorporated into the distribution agreement included, inter alia:

- a minimum sales quota per category of product imposed on the distributor and a termination clause in case of failure by the distributor to reach the quota without taking into account the possibility of an economic crisis in the market, and
- a non-compete clause for a period of one year after the termination of the agreement and the imposition of a fine in case of breach of this obligation.

Further, in *Case 141/2008 - Paphos Farmers Cooperative Ltd (*ΣΥΝ.Ε.ΚΤΗ*) v. Athanasis Olymbiou & Sons Ltd*, the CPC found that ΣΥΝ.Ε.ΚΤΗ had abused its relationship of economic dependence with Athanasis Farm. It ruled that the way ΣΥΝ.Ε.ΚΤΗ terminated the supply of sheep's milk to Athanasis Farm constituted a violation of Art. 6(2) Protection of Competition Law of 2008 under the circumstances, as it led the termination of the

production of sheep yogurt by the Athanasis Farm, which was their sole activity.

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?

Yes.

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

Yes.

If yes, what is meant by 'continuation' (a) and what should a party do to avoid this (b)?

a. What is meant by 'continuation'?

Continuation occurs when the parties continue to perform the agreement as if it had not expired.

b. What should a party do to avoid this?

There are no absolute rules as to what a party should do in order to avoid continuation of the contract, but since the (continuation or affirmation) of an "expired" contract could be implied by reason of conduct by Courts quite easily, a party that does not wish the contract to continue should:

i. stop performing,
ii. avoid taking any actions or making any representations that could be misinterpreted as continuing the agreement beyond the expiry date, and
iii. communicate to the other party in writing that it considers the agreement/relationship to have come to an end

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?

From a contract law perspective the answer is yes; but a court may order the parties to perform specific obligations that can be found to be surviving the termination or to do certain things (e.g. to deliver certain goods or to vacate premises etc.).

One needs to also bear in mind the risk of a sudden termination amounting to an abuse of a relationship of economic dependence in breach of Art. 6(2) Protection of Competition Law of 2022. Following the termination of a distribution relationship, an aggrieved party may file a complaint to the Commission for the Protection of Competition and/or file an action for damages in the civil courts relying on that provision.

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

With regard to the compensation, no statutory fixed right exists. In general, damages awarded will reflect the average profit per month, multiplied by the period of notice that should have been granted. The amount of the profit per month is a matter of proof and will depend on the evidence presented, including expert evidence. (Decro-Wall v Practitioners in Marketing [1971] 1 WLR 361, Alpha Lettings & Neptune Research and Development Inc. [2003] EWCA Civ 704)

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)?

What constitutes a “reasonable notice” falls within the discretion of the court, having in mind the merits and

specific facts of the case as a whole. In general, according to the main authorities on the issue and common law principles, in determining what constitutes a reasonable notice, the court may take into account, amongst others, factors such as the following:

i. The proportion that the supplied products represent in the distributor's turnover.

ii. The total investment made by the distributor in promoting the supplied products and in particular any recent investments.

iii. The length of time that the distribution agreement and relationship between the parties has been in place. Generally, the longer the duration of the agreement, the shorter the period of notice must be, but that is not an absolute rule. This relies on the premise that a distributor may have to spend or invest considerable capital at an early stage of the supplier-distributor relationship in order to build up the business and may thereafter run with moderate annual expenditure. As stated in the landmark UK judgment of Alpha Lettings & Neptune Research and Development Inc. [2003] EWCA Civ 704 at 32 *"[…] while initial capital investment and business expenses out of the ordinary run of things may well be relevant to the amount of notice, ordinary and recurring expenditure is unlikely to have much relevance*." (see also Decro-Wall v Practitioners in Marketing [1971] 1 WLR 361).

iv. Whether the distributor was allowed to sell competing products.

v. How long it will take the distributor to find an alternative supplier.

vi. Whether the distributor has made any recent major investment in relation to the supplier's products.

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

N/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?

N/A

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

Yes.

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?

Yes.

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

With regard to the compensation, no statutory fixed right exists. In general, damages awarded will reflect the average profit per month, multiplied by the period of notice that should have been granted. The amount of the profit per month is a matter of proof and will depend on the evidence presented, including expert evidence. (Decro-Wall v Practitioners in Marketing [1971] 1 WLR 361, Alpha Lettings & Neptune Research and Development Inc. [2003] EWCA Civ 704)

One needs to also bear in mind the risk of a sudden termination amounting to an abuse of a relationship of economic dependence in breach of Art. 6(2) Protection of Competition Law of 2022. Following the termination of a distribution relationship, an aggrieved party may file a complaint to the Commission for the Protection of Competition and/or file an action for damages in the civil courts relying on that provision. Cypriot law permits follow-on claims in case of a finding of a breach of Art. 6(2) Protection of Competition Law of 2022 but also stand-alone claims.

Q21. Must the terminating party comply with certain formalities?

No.

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

Yes.

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

In cases where there are also other provisions in the agreement governing termination which have not been complied with, the aggrieved party may also be entitled to damages that reflect the loss resulting from the agreement not being terminated in accordance with its terms.

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

Only in certain instances.

If yes, does this concern goodwill compensation or another type of compensation? Do the legal consequences vary depending on the type of agreement (definite/indefinite duration; exclusive/non-exclusive; franchise etc.)?

Compensation aims to bring the innocent party to the position they would have been had the position not occurred. The legal consequences do not vary depending on the type of agreement, but the type of agreement could affect the quantity of damages (for example, it is likely that more damages would be awarded in cases of exclusive distribution agreements as compared to cases of non-exclusive distribution agreements)

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?

A right for extrajudicial termination may arise either (i) pursuant to a right of termination expressly provided for in the agreement (for example upon the occurrence of an event), or (ii) when there is breach of a condition or a repudiatory breach of an innominate/intermediate term* that deprives the other party of substantially the whole benefit of the agreement

* Under common law there are three types of contractual terms:

a. conditions which are terms that are vitally important to the contract and once breached give a right of termination of the contract and compensation to the innocent party,
b. warranties are contractual terms which are not as important for the performance of the contract as conditions and once breached simply give a right to claim compensation (do not give a right to termination), and
c. innominate terms (also called “intermediate terms”), which are terms that are neither conditions or warranties, and they may give rise to a right to terminate if the breach deprives the innocent party of substantially the whole benefit of the contract.

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?

Yes.

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?

This right is based both on legislation (Art. 73 Contract Law / Chapter (Cap.) 149) and common law (i.e. case law). The wrongful termination will constitute a repudiatory breach itself and the terminated party will have an action for breach of agreement and may claim for damages for loss caused as a consequence of the unlawful termination.

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

The aim of compensation is to put the innocent party in the position they would have been should the termination not have occurred. This may include loss of profits but it cannot be excluded that other damage can also be recovered.

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?

No.

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?

No.

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

According to Art. 7 Limitation of Actionable Rights Law of 2012 (Law 66(I)/2012)), any action based on a contractual claim must be brought before a court within 6 years from the day of completion of the basis of the claim. The “basis of the claim” is defined in Art. 2 of said Law as “all events that give rise to an actionable right concerning a claim”.

Additional Comments

Cyprus’ contract law and consequently Cyprus’ distribution law is still heavily influenced by English common law and the decisions of the English courts. The Contract Law, Chapter (Cap.) 149, besides very few exceptions, is based on English contract law principles and that is reflected in Art. 2 which provides that it shall be interpreted in accordance with the principles of legal interpretation in England and expressions shall be used within the meaning given to them in English law. Also, it should be noted that according to Art. 29(1)(c) Courts of Justice Law, the Cypriots Courts must apply the principles of common law and equity unless the contrary is provided by statute or in the Cypriot Constitution.