

Q&A DOCUMENT | 29 September 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:

The Cabinet of Ministers Regulation No.797 “Regulations Regarding Non-subjection of Certain Vertical Agreements to the Prohibition of the Agreement Specified in Art. 11, Paragraph One Competition Law” adopted 29 September 2008

The Civil Law

The Commercial Law

The Competition Law

The Consumer Rights Protection Law

The Unfair Trade Practices Prohibition Law (enters into force on 1 November 2021 and it repeals the Unfair Retail Trade Practices Prohibition Law)

b. Link(s) to official publication:

The Cabinet of Ministers Regulation No.797 “Regulations Regarding Non-subjection of Certain Vertical Agreements to the Prohibition of the Agreement Specified in Art. 11, Paragraph One Competition Law” adopted 29 September 2008 is accessible via [this link](#).

The Civil Law is accessible via [this link](#).

The Commercial Law is accessible via [this link](#).

The Competition Law is accessible via [this link](#).

The Consumer Rights Protection Law is accessible via [this link](#).

The Unfair Trade Practices Prohibition Law is accessible via [this link](#).

c. Link(s) to English translation:

An English translation of the Cabinet of Ministers Regulation No.797 “Regulations Regarding Non-subjection of Certain Vertical Agreements to the Prohibition of the Agreement Specified in Art. 11, Paragraph One Competition

Law" adopted 29 September 2008 is accessible via [this link](#).

An English translation of the Civil Law is accessible via [this link](#).

An English translation of the Commercial Law is accessible via [this link](#).

An English translation of the Competition Law is accessible via [this link](#).

An English translation of the Consumer Rights Protection Law is accessible via [this link](#).

An English translation of the Unfair Trade Practices Prohibition Law is accessible via [this link](#).

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:

Agency agreements

Apart from the obligations provided in the Directive 86/653 (EEC), the Latvian Commercial Law stipulates additional requirements for agency agreements with respect to *delcredere* (Art. 53 Commercial Law), the statute of limitation (Art. 55 Commercial Law), the rights to a retainer (Art. 56 Commercial Law)

and the obligation to keep commercial secrets (Art. 60 Commercial Law). For more information, we refer to the Q&A on agency agreements.

Franchising agreements

Art. D, XXI, Part 7 Latvian Commercial Law sets mandatory requirements for franchising agreements.

Art. 475 Commercial Law requires that a franchising agreement is concluded in written form.

(i) Franchisor's obligations (Art. 476 Commercial Law)

A franchisor is required to disclose particular information to a franchisee during the pre-contractual phase, ensure validity of IP rights during the period of the franchising agreement, provide necessary support and training to a franchisee and supply the franchisee with all documents necessary for the performance of the agreement. The franchisor must ensure delivery of goods within a reasonable time and in due time inform the franchisee of the failure to deliver goods within a timely manner or in the correct quantity. Further, the franchisor is liable to engage in marketing and brand recognition activities for the franchise.

(ii) Franchisee's obligations (Art. 477 Commercial Law)

During the pre-contractual phase, a franchisee must disclose to the franchisor information which is of significance for the purpose of entering into a franchising agreement. During the term of the agreement, the franchisee must employ the franchise in accordance with the agreement terms, abide by reasonable instructions from the franchisor, respect franchisor's IP rights and refrain from activities that could harm reputation of the franchise. The franchisee must also provide to the franchisor information necessary for the franchising agreement and allow the franchisor's inspections during business hours. During the agreement and five years post-term, the franchisee must not disclose to third parties and not use against the purpose of the agreement commercial secrets which the franchisee learned due the franchise.

(iii) Termination of the agreement (Art. 478 Commercial Law)

The franchising agreement may be terminated based on the terms of the franchising agreement itself or on legal grounds.

Each party may unilaterally terminate an agreement if the counterparty has provided false information during the pre-contractual phase regarding issues which are material for the conclusion of the agreement.

Each party may also unilaterally terminate the agreement if fulfilment of the agreement became too burdensome due to "objective changes in circumstances", in which case the parties must enter into negotiations to either change terms of the agreement or terminate the agreement. "Objective changes in circumstances" exist if these changes occurred after the conclusion of the agreement, a party could not foresee such changes during the conclusion of the agreement and the party did not accept a risk of changes in circumstances. If the negotiations do not succeed within one month, each party may ask the court to either terminate the agreement or amend it.

(iv) Post-term non-compete clause (Art. 479 Commercial Law)

A post-term non-compete clause must be provided in a written agreement and cannot exceed one year. The franchisor is obliged to reimburse the franchisee for the non-compete obligation, except when the agreement was terminated by the franchisor due to reputational risks or on valid grounds which are the franchisee's fault.

b. Link(s) to official publication:

The Commercial Law is accessible via [this link](#).

c. Link(s) to English translation:

An English translation of the Commercial Law is accessible via [this link](#).

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

The Unfair Trade Practices Prohibition Law ("UTPPL") which enters into force on 1 November 2021 prescribes rules in relation to unfair contract terms in B2B contracts in (i) the food and agricultural sector and (ii) the non-food sector, against retailers with significant buying power. The UTPPL transposes the requirements under Directive 2019/633 (EU) on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, and contains national rules, and prescribes additional rules aimed at prohibiting abuse by retailers with significant market power, both in food and non-food sectors.

Unfair Trade Practices in the Food and Agricultural Sector

The UTPPL applies to "buyers" of agricultural and foods products when the buyer is a public authority or a private buyer with an annual turnover of more than 2 million EUR.

The UTPPL prohibits "unfair trade practices" in line with the regulation under the Directive 2019/633 (EU). In addition to prohibited practices under the Directive, the UTPPL prohibits buyers to require from suppliers a best price guarantee.

Unfair Retail Practices in the Non-Food Sector

The UTPPL requirements also apply to non-food retailers in cases when they have significant market power against suppliers. Under the UTPPL, in such cases retailers are prohibited from the following:

- (i) requesting payment for conclusion of an agreement, except when there is a need for a special assessment of a new supplier;
- (ii) requesting slotting fees, except when there is a written agreement regarding product placement on specific shelves;
- (iii) requesting payments related to expenses due to the opening of new stores or repairing the existing ones;
- (iv) return of unsold products, subject to three exceptions: (1) the products are of poor quality; (2) the products are new for consumers and the supplier has taken the initiative to supply the products or to increase their amount.; (3) the return of the unsold products is initiated by the supplier.
- (v) providing and applying unfair sanctions;
- (vi) providing and applying unfair trade terms.

b. Link(s) to official publication:

The Unfair Trade Practices Prohibition Law is accessible via [this link](#).

*c. Link(s) to English translation:*

The English translation of The Unfair Trade Practices Prohibition Law is accessible via [this link](#).

## 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:*

A requirement to disclose pre-contractual information applies to franchising agreements, both for a franchisor and a franchisee (Art. 476 and 477 Commercial Law).

*b. Information to be disclosed:*

The franchisor must disclose the following information to the franchisee in the pre-contractual phase:

- 1) a general description of the offered franchise, which corresponds to the actual circumstances;
- 2) evidence of the existence of the rights included in the franchise and a description of the know-how;
- 3) the term of the franchising agreements and options to prolong the term;
- 4) the remuneration and payment terms for the use of the franchise;
- 5) other information, which the franchisor considers necessary for the purpose of entering into a franchising agreement.

The franchisee must disclose to the franchisor information which is of significance for the purpose of entering into a franchising agreement.

*c. Link(s) to official publication:*

The Commercial Law is accessible via [this link](#).

*d. Link(s) to English translation:*

An English translation of the Commercial Law is accessible via [this link](#).

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)?

In case of franchising agreements, each party may unilaterally terminate the agreement if the counter-party has disclosed false information during the pre-contractual phase (Art. 478(2) Commercial Law).

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?

Only in certain instances.

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

The Commercial Law requires a written agreement for specific types of agreements, such as commercial agency agreements (Art. 46 Commercial Law) and franchising agreements (Art. 475 Commercial Law).

Further, a written form is required in relation to the following provisions in distribution agreements for supply of food and agricultural products:

- Payment for product placement on special shelves (Art. 5(1)2)c) UTTPPL);
- Provision of volume or promotional rebates (Art. 5(1)16) UTTPPL);
- Reimbursement for advertisements or related expenses (Art. 5(2)1) UTTPPL);
- Reimbursement for marketing activities (Art. 5(2)2) UTTPPL);
- Payment for logistics services (Art. 5(2)3) UTTPPL);
- Requirement that a supplier purchases goods, services or estate from a third party designated by the buyer (Art. 5(2)4) UTTPPL);

- Requirement to apply a rebate for goods during a promotional period if the goods have not been sold during this period (Art. 5(2)5) UTTPPL).

An agreement that a supplier pays for product placement on special shelf places also requires a written form in non-food retail if the retailer holds significant market power (Art. 6(2) UTTPPL).

Written form requirement also applies to a post term non-compete in commercial agency agreements (Art.61(1) Commercial Law) and in agency agreements (Art. 479(1) Commercial Law).

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 non-compete clauses.

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

There are specific rules for non-compete clauses in franchising and commercial agency agreements.

Post-term non-compete clauses in franchising agreements (Art. 479 Commercial law) must be provided in a written form and cannot exceed 1 (one) year. The franchisor is obliged to reimburse the franchisee during the post-termination non-compete period, except when the agreement was terminated by the franchisor due to reputational risks or on valid grounds which are the franchisee's fault.

For non-compete clauses in commercial agency agreements (Art. 61 Commercial law) reference is made to the Q&A on agency agreements (Q19 and following).

Further, the Latvian national vertical block exemption regulation (the Cabinet of Ministers Regulation No. 797 "Regulations Regarding Non-subjection of Certain Vertical Agreements to the Prohibition of the Agreement Specified in Art. 11, Paragraph One Competition Law" adopted 29 September 2008, hereinafter – "Regulations

797”), is largely based upon and harmonized by the Regulation (EU) 330/2010, but provide for different exemption thresholds to be applied for agreements under Latvian jurisdiction.

Under the EU Regulation, the relevant market share threshold is 30% for the buyer and the supplier, whereas under Regulation 797 the following market share thresholds apply:

(i) The market share of the supplier and the buyer each does not exceed 10% (Art. 3 Regulation 797). It is worth noting that in strict legal terms, the 10% limit is not the *de minimis* (there are no express national law provisions following the de minimis notice), however, the Latvian Competition Council has referred to such agreements in its RPM Guidelines as agreements with “negligible effect on competition”, making a reference to the EC De Minimis Notice. In practice, the Latvian Competition Council would also likely to follow the de minimis approach when assessing the agreements; or

(ii) The market share of the supplier does not exceed 30%, except for exclusive distribution agreements; (Art. 4 Regulation 797); or

(iii) The market share of the buyer does not exceed 30% in case of exclusive distribution agreements (Art. 5 Regulation 797);

(iv) The market share of each undertaking does not exceed 10% in case of an agreement between an undertaking (a retailer) and retailer’s association; or an agreement between a retailer’s association and a supplier (Art. 10 Regulation 797).

For (i) and (ii):

- if a market share is initially not more than 30% but subsequently rises above that level without exceeding 35%, the exemption shall continue to apply for a period of 2 (two) consecutive calendar years following the year in which the 30% market share threshold was first exceeded (Art. 6 of Reg.797);
- if a market share is initially not more than 30% but subsequently rises above 35%, the exemption shall continue to apply for one (1) calendar year following the year in which the level of 35% was first exceeded; (Art. 7 of Reg.797).

Q12. Do specific rules and/or restrictions 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?

Specific rules apply to (i) obligations of the distributor vis-à-vis the supplier or vice versa and (ii) specific sectors.

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

Please see Q3 and 9. The UTTPPL prescribes specific sector rules for distribution agreements in (i) the food and agricultural sector; (ii) the non-food retail if the retailer has significant market power.

## 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'?*

According to Art. 57(4) Commercial Law: "A commercial agency agreement, which is entered into for a specified time period, and which both parties continue after the expiration of the contracted for time period, shall be considered to have been entered into for an indefinite time period. [..]"

Please consider changing this sentence in: As regards other types of distribution agreements, please note, that under Latvian law, no written form is required for a distribution agreement. This means that according to the general principles of Civil Law, an agreement is considered to be valid even in the absence of a written form, on the basis of "concludent actions," meaning actions by which both parties perform the agreement.

Such a position is also upheld by Latvian courts.

Further, please note that under Art. 1491 Civil Law, when the law does not prescribe mandatory written form for a transaction, in case there is an earlier draft agreement that includes all the essential elements and ancillary provisions of the transaction, and that earlier draft is signed by the participants to the transactions, such a draft shall have an equal effect to the written agreement (written deed), and either of the parties could request that the other party signs such a deed.

*b. What should a party do to avoid this?*

Means to avoid "continuation" of the agreement post-expiry is not to continue its performance.

## 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?*

As a general rule, contractual arrangements apply to determine the consequences. There are no statutory prescribed termination notice periods applicable to agreements entered into for a definite period of time, thus, whether the agreement is still in force, whether the termination notice is effective, and what damages (if any) could be claimed will be primarily determined by the agreement.

#### Agency

As for agency agreements, the paramount factor will be to determine whether the agreement is concluded for a “definite” or an “indefinite” period. An agency agreement, which is concluded for a “definite” period, but that is continued after the term expiry, will be considered as an agreement concluded for an “indefinite” period (Art. 57(4) Commercial Law) in which case specific rules on termination notices apply (see Q18).

In case the agency agreement is concluded for a “definite” period, no specific terms apply, except that in case the parties to an agency agreement have not agreed on specific termination notice terms, the termination notice shall be given at the end of a calendar month (Art. 57(3) Commercial Law).

#### Franchising

Pursuant to Art. 478(1) Commercial Law, the franchising agreement may be terminated based on the terms of the franchising agreement itself or based on statutory laws (the Commercial Law).

Thus, the termination notice that does not comply with the franchising agreement and/or the Commercial Law will

be void.

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

Provisions on agency agreements do not provide for specific damages for early termination. However, pursuant to Art. 59(3<sup>1</sup>) Commercial Law, a commercial agent has the right to compensation for losses caused due to the termination of a commercial agency agreement, especially for unearned expenses and investments which the commercial agent has performed upon the proposal of a principal in fulfilling the commercial agency agreement. However, pursuant to Art. 59(4) Commercial Law, the agent loses the right to claim compensation if:

- it was the commercial agent who has terminated the agency agreement, except for cases when the actions of the principal have given a substantiated cause for a notice of termination, or also the commercial agent is unable to continue his or her activities due to old age or illness;
- the principal has cancelled the commercial agency agreement for such a significant cause, the basis of which is an action of the commercial agent who is at fault;
- on the basis of an agreement between the principal and the commercial agent a third party has replaced the commercial agent in the commercial agency agreement relations. Such an agreement may not be concluded prior to the cancellation of the commercial agency agreement.

Statutory provisions on agency do not provide for more specific regulations on damages calculations.

As regards other distributorship agreements, the damages would depend on contractual arrangements (Art. 1785 Civil Law). A general civil law principle would apply, whereby the party claiming the damages would need to prove the causal link between the early termination and occurrence of damages, as well as the value of damages.

**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)?*

Not applicable.

*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*

Agency agreements

Pursuant to Art. 57(1) Commercial Law, for agency agreements concluded for an indefinite period, each party may unilaterally terminate the agreement by giving the other party a termination notice by respecting the following termination terms:

1. one month, if the agency agreement is cancelled in its first year of operations;
2. two months, if the agency agreement is cancelled in its second year of operations;
3. three months, if the agreement is cancelled in its third year of operations;
4. four months, if the agency agreement is cancelled in its fourth or subsequent years of operations.

Parties to an agency agreement may agree on longer termination notice periods, however, the notice period which the principle must abide by must not be shorter than that by which the agent must abide by (Art. 57(2) Commercial Law).

However, either of the parties to an agency agreement may terminate the agency agreement immediately, disregarding the statutory termination notice terms, in case of a “serious cause” (Art. 58(1) Commercial Law), which is a general clause.

Other agreements

There are no statutory laws that would prescribe specific notice periods as regards other types of distributorship agreements. Thus, termination notice periods would depend on contractual arrangements.

*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?*

Not applicable.

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?

For agency agreements, if the contractual term is shorter than the statutory term, the statutory term will apply (Art. 57(2) Commercial Law)

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?

Please note that for distributorship agreements other than agency no specific mandatory rules regarding termination notices exist. Therefore, the consequences for early termination will be primarily dependent on the contractual arrangements.

As for the agency agreements, early termination (disregarding the statutory termination notice periods) will be considered void.

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

Provisions on agency agreements do not provide for specific damages for early termination. However, pursuant to Art. 59(3<sup>1</sup>) Commercial Law, a commercial agent has the right to compensation for losses caused due to the termination of a commercial agency agreement, especially for unearned expenses and investments which the commercial agent has performed upon the proposal of a principal in fulfilling the commercial agency agreement. However, pursuant to Art. 59(4) Commercial Law, the agent loses the right to claim compensation if:

- it was the commercial agent who has terminated the agency agreement, except for cases when the actions of the principal have given a substantiated cause for a notice of termination, or also the commercial agent is unable to continue his or her activities due to old age or illness;
- the principal has cancelled the commercial agency agreement for such a significant cause, the basis of which is an action of the commercial agent who is at fault;
- on the basis of an agreement between the principal and the commercial agent a third party has replaced the commercial agent in the commercial agency agreement relations. Such an agreement may not be concluded prior to the cancellation of the commercial agency agreement.

Statutory provisions on agency do not provide for more specific regulations on damages calculations.

As regards other distributorship agreements, the damages would depend on contractual arrangements (Art. 1785 Civil Law). General civil law principles would apply, whereby the party claiming the damages would need to prove the causal link between the early termination and occurrence of damages, as well as the value of damages.

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?

This would depend on contractual arrangements. E.g., the formalities may concern the procedure and timeframe for placing a termination notice, and a failure to comply with the prescribed formalities may result in that the agreement is considered effective not terminated.

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.)?

Agency agreement

Pursuant to Art. 59(1), in case of agency agreements, post-termination the agent may request from the principal an indemnity, if and insofar as:

1. the principal even after the termination of the commercial agency agreement gains substantial benefits from transaction relations with new clients which were attracted by the commercial agent;
2. the commercial agent in connection with the termination of the commercial agency agreement loses the right to a commission or remuneration, which he or she would have had in respect of transactions already concluded or to be concluded in the future with clients attracted by him or her if the commercial agency agreement relations were continued;
3. the payment of indemnity, taking into account all the circumstances, shall be expected from the principal on the basis of fairness.

However, if the agency agreement was terminated by a party on grounds of "serious cause" due to actions at fault of the other party, then the party which is at fault is obliged to compensate losses resulted from termination of the agency agreement (Art. 58 Commercial Law).

Further, pursuant to Art. 59(3<sup>1</sup>) Commercial Law, a commercial agent has the right to compensation for losses caused due to the termination of a commercial agency agreement, especially for unearned expenses and investments which the commercial agent has performed upon the proposal of a principal in fulfilling the commercial agency agreement. However, pursuant to Art. 59(4) Commercial Law, the agent loses the right to claim compensation if:

- it was the commercial agent who has terminated the agency agreement, except for cases when the actions of the principal have given a substantiated cause for a notice of termination, or also the commercial agent is unable to continue his or her activities due to old age or illness;

- the principal has cancelled the commercial agency agreement for such a significant cause, the basis of which is an action of the commercial agent who is at fault;
- on the basis of an agreement between the principal and the commercial agent a third party has replaced the commercial agent in the commercial agency agreement relations. Such an agreement may not be concluded prior to the cancellation of the commercial agency agreement .

Statutory provisions on agency do not provide for more specific regulations on damages calculations.

As regards other distributorship agreements, the damages would depend on contractual arrangements (Art. 1785 Civil Law). General civil law principles would apply, whereby the party claiming the damages would need to prove the causal link between the termination and occurrence of damages, as well as grounds for calculating the value of damages.

**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?**

For agency agreements, according to Art. 58 Commercial Law, each party may, at any time, terminate a commercial agency agreement, not observing the specified terms for notice of termination if there is “serious cause” for it. An agreement which revokes or restricts such notice of termination rights, shall be void.

If the immediate notice of termination of the commercial agency agreement has given rise to such actions for which the other party is liable, then they shall have an obligation to compensate the losses, which have occurred in relation to the termination of the agreement .

For franchising agreements, according to Art. 478 Commercial Law, each party may unilaterally terminate an agreement if the counterparty has provided false information during the pre-contractual phase regarding issues which are material for the conclusion of the agreement.

Each party may also unilaterally terminate the agreement if fulfilment of the agreement became too burdensome due to “objective changes in circumstances”, in which case the parties must enter into negotiations to either change terms of the agreement or terminate the agreement. “Objective changes in circumstances” exist if these changes occurred after the conclusion of the agreement, a party could not foresee such changes during the

conclusion of the agreement and the party did not accept a risk of changes in circumstances. If the negotiations do not succeed within one month, each party may ask the court to either terminate the agreement or amend it.

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

No.

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?

The agreement being effective.

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?*

Such a right is based on general principles of civil law and is also court jurisprudence.

The party claiming the damages would need to prove the causal link between the wrongful termination and occurrence of damages, as well as grounds for calculating the value of damages.

*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 above.

There are no specific statutory procedures for calculation of damages.

Based on case law, the amount of compensation would depend on various circumstances, most notably, proving the causal link between the occurrence of damages and the wrongful conduct (wrongful termination). Various types of damages could be claimed (including lost profits and reputational damages), if they can be proven.

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?

The statute of limitations for commercial transactions is 3 (three) years (Art. 406 Commercial Law). As an exception, the statute of limitation for claims arising from commercial agency agreements is 4 (four) years starting from the end of the calendar year during which the claim arose (Art. 55 Commercial Law).

## Part 6: Additional comments

Latvian competition law adheres to the principles established under EU competition law.

Please note that the Latvian national vertical block exemption rules applicable to vertical agreements falling under Latvian jurisdiction, though are harmonized with the EU vertical block exemption regulation, however, provide for different market share thresholds (see Q11).

Further, notably the practice of the Latvian Competition Council regarding setting fines for violations of competition law infringements differs from the EC practice in that the fine is calculated from the total turnover of



the undertaking, and not the part of the turnover attributable to the competition law infringement.