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:

Distribution agreements are not explicitly regulated under Slovenian law. However, rules on agency and sales agreements shall also apply in case of distribution agreements. On the one hand, issues related to distribution agreements which concern the general distribution framework agreement are interpreted according to the rules applicable for agency agreements as provided for in chapter XIX (Agency agreement) of the Slovenian Obligations Code (hereinafter: OC) (Official Gazette of the RS, No. 83/01, as amended). On the other hand, issues which relate to individual supplies under such framework agreements are regulated according to sales contract law as provided for in chapter I (Sales agreement) OC. In particular, rules applicable to agency agreements shall be used in respect of questions related to the form and termination of the distribution agreement, protection of business secrets and non-compete obligations. Rules applicable to sales agreements shall apply to delivery of non-conforming goods, takeover and payment of individual deliveries of goods and transfer of risk in respect of delivered goods.

Provisions on vertical agreements contained in the Prevention of Restriction of Competition Act (hereinafter: PRCA) (Official Gazette of the RS, no. 130/22, as amended), are also applicable to distribution agreements.

b. Link(s) to official publication:

- The Slovenian version of the Obligations Code is accessible via this link.
- The Slovenian version of the Prevention of Restriction of Competition Act is accessible via this link.

c. Link(s) to English translation:

- The unofficial English translation of the Obligations Code is accessible via this link.
- The English translation of the Prevention of Restriction of Competition Act is not yet 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)?

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. 134 PRCA prohibits acts of unfair competition. An act of unfair competition is defined as an act of an undertaking operating on a market in contradiction with honest commercial practices and by which harm is or may be caused to other undertakings.

PRCA further provides examples of unfair competition: providing information about other undertakings, if this harms or potentially harms the reputation and business of another undertaking; selling goods with labels or information that cause or may cause confusion regarding the origin, method of production, quantity, quality or other characteristics of goods; acts focused on the termination of a business relation between other undertakings or that prevent or make such relations difficult; unjustified non-fulfilment or termination of agreements with an undertaking in order to conclude an identical or similar agreement with another undertaking, etc.

If harm is caused by acts of unfair competition described in Art. 134 PRCA, the harmed party may seek compensation; lodge an action in litigation proceedings for the prohibition of any further acts of unfair competition; demand destruction of objects by which the act of unfair competition was committed and restitution, if possible; and in some cases publication of the judgement in the media.

Under the OC, business customs as well as customs and practices established between parties shall be taken into consideration in the assessment of the required behaviour and effects thereof in commercial contractual relationships.

b. Link(s) to official publication:

See, Q1.

c. Link(s) to English translation:

See, Q1.

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:

See Art. 5 (principle of diligence and fairness), Art. 46 (fundamental mistake), Art. 49 (deceit) OC.

b. Information to be disclosed:

The OC does not explicitly impose an obligation to disclose specific information about the subject of the contractual relationship, about the party or other circumstances which could be deemed important for the conclusion of a contractual relationship. However, such obligation derives from one of the basic principles of law of obligations: principle of diligence and fairness in Art. 5 OC, which requires the participants to duly consider this principle already during the conclusion of contractual relationships and act in accordance with good business practices.

In case law principle of diligence and fairness is often linked to mistake and deceit. The mistaken party may, according to Art. 46, Paragraph 2 OC, demand annulment of the agreement under two conditions: (i) the mistake shall be material (i.e., shall apply to (a) essential characteristic of the object of the contractual relationship; (b) the party with whom an agreement is being concluded, if it is being concluded in respect of such party; or (c) decisive circumstances) and; (ii) the mistake must be justifiable, meaning that the mistaken party has acted with such care as expected in legal transactions. However, the mistaken party shall not be able to annul the agreement if the other party is prepared to fulfil the agreement as if no mistake occurred.

Under Art. 49 OC deceit is considered as a qualified form of mistake and foresees that the party in possession of certain information intentionally hides such information from the other party with the intention to lead the other party to the conclusion of the agreement. In such cases mistake shall be taken into account even if it is not material and the other party may request the annulment of the agreement.

c. Link(s) to official publication:

See, Q1.

d. Link(s) to English translation:

See, Q1.

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 cases of fundamental mistake and deceit, the agreement may be annulled by the mistaken or deceived party (Art. 46 and 49 OC). In cases of fundamental mistake, the party that was not mistaken may demand damages from the mistaken party due to the annulment of the agreement. In cases of deceit the deceived party may request annulment of the agreement and a repayment of damages from the other party that caused the deceit.

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. 20 OC (*culpa in contrahendo*).

b. Conditions for precontractual liability:

Negotiations prior to the conclusion of an agreement shall not be binding and may be terminated by either party whenever the party so desires. A party that negotiated without the intention to conclude an agreement or with the intention to conclude an agreement but abandons the intent without justifiable grounds, thus inflicting damage on the other party, shall be liable for such damage.

c. Consequences for precontractual liability:

A party which unjustifiably terminates pre-contractual negotiations shall not be required to conclude the agreement, but may be liable for damages to the other party as described in b) above. The party which suffered damages in pre-contractual negotiations shall only be entitled to negative interest and no loss of potential revenue. Each case shall be assessed on a case-by-case basis, taking into account the freedom of each party to terminate pre-contractual negotiations on the basis of justified reasons.

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.

According to provisions on agency agreements, which also apply to issues regarding the form of distribution agreements, each party may request that a document on the content of the agreement (including all the latest changes) is compiled and signed by the other party. This right cannot be waived. Furthermore, the parties may agree that a written agreement is a condition for the validity of the agreement and any amendment thereto (Art. 808 OC). Also, according to rules on agency agreements, a prohibition on competition after termination of the agreement shall only be valid if concluded in writing (Art. 836, paragraph 2 OC).

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

Yes.

If yes, which formalities apply?

According to provisions on sales agreements, which apply also to individual supplies of goods under a distribution agreement, a retention right by the seller shall be effective against the buyer's (distributor's) creditors only if the signature of the buyer on the agreement containing the retention right is notarized before the buyer's bankruptcy or attachment of goods (Art. 520, paragraph 2 OC).

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?

Specific rules and/or restrictions apply in distribution agreements with respect to non-compete clauses.

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

According to provisions on agency agreements, which also apply to issues regarding non-compete obligations in distribution agreements, a non-compete clause may bind the distributor for a maximum of two years after the termination of the agreement (Art. 836, paragraph 4 OC).

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?

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.

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

According to provisions on agency agreements, which also apply in certain cases, the principal must pay the distributor a commission for agreements concluded with the latter's mediation, and also for those agreements concluded directly by the distributor, if so authorised. The distributor shall also have the right to a payment for those agreements concluded directly by the principal with parties found by the distributor. A distributor that only works in a specific area or with specific parties shall also have the right to a payment for those agreements concluded by the principal with parties from that area or with those specific parties without the distributor's mediation. The distributor shall only have the right to a commission for an agreement concluded after the termination of the relationship between the principal and the distributor, if the agreement is the result of the distributor's efforts during the relationship with the principal and was concluded a reasonable time after the termination of this relationship, or if the third party's offer to conclude the agreement came to the principal/distributor prior to the termination of their relationship and this involves any of the beforementioned agreements (Art. 823 OC).

Every three months the principal must formulate an overview of the commission to which the distributor is entitled, separately for each month, and send it to the distributor. The overview must contain all the essential components based on which it was formulated. The principal shall be obliged to pay the commission for the entire period by

the end of the month following the last month of the said period. An agreement may stipulate that the relevant period is shorter than three months (Art. 826 OC).

In order to secure due claims, the distributor shall hold a lien on the sums collected thereby for the principal and on all the principal's goods received in connection with the agreement from the principal or any other party, in order to secure the distributor's due claims. Such lien shall be valid as long as the sums and/or goods are with the distributor or with a party that holds them in possession for the latter, or as long as a document allowing the disposal thereof is held by the distributor (Art. 829 OC).

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'?

If the elements of the distribution agreements are such that provisions on agency agreements shall apply, an agreement for a definite period shall be deemed to be an agreement concluded for an indefinite period, provided that the parties continue to perform such an agreement after the period for which it was concluded (Art. 831 OC).

The term continuation is not defined in the OC, but shall instead be considered on a case?by?case basis by the relevant court. Generally, court practice established that continuation occurs when the parties continue to perform the agreement as if it had not expired (e.g. provide the goods under the same conditions, etc.).

b. What should a party do to avoid this?

There is no clear statutory provision on this, but generally in cases where tacit continuation of the distribution was not contractually excluded, it is advisable that the party explicitly opposes the continued performance of the expired distribution agreement by the other party.

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?

Only in certain instances

If only in certain instances, please explain when an express provision is required?

In accordance with the general rule of disposability of the provisions of the OC, the parties may contractually agree that the agreement can be terminated for convenience at any point. However, due to lack of an express provision specifically allowing termination, it is essential that the parties expressly provide for this in the distribution agreement.

Furthermore, the parties may also mutually agree on the termination of the distribution agreement at any point.

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?

If the prescribed rules for termination are not observed, the termination shall be without effect and the distribution agreement shall continue to remain in full force and effect.

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

The party loyal to the agreement may be entitled to damages by the terminating party for the loss suffered by the terminated party. The latter shall be determined under the general rules on the reimbursement of damage inflicted by a breach of an agreement.

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)?

Where and to the extent that a distribution agreement is found to constitute an agency agreement, the notice period shall depend on the duration of the agreement and shall amount to one month for each year begun prior to its duration. If the latter lasts longer than five years, the notice period shall be six months. The parties may not stipulate shorter periods of notice by contract, but may agree upon longer notice periods, which must apply equally to both parties. Unless stipulated otherwise by the agreement, the notice period shall begin on the first day of the next calendar month and shall end on the last day of the relevant calendar month (Art. 830 OC).

However, where and to the extent that a distribution agreement is found to constitute a sales agreement, the notice period shall be determined in line with the general rules on terminating a long-term debtor relationship. In such case, the notice of termination may be given at any time, but not at an inappropriate time. The debtor relationship shall terminate when the notice period stipulated by the agreement expires, or if no such period is stipulated by the agreement after the expiry of the legally prescribed, customary or appropriate notice period. The parties may also agree that their relationship shall terminate without any notice period with the delivery of a termination notice, unless in the given situation a statutory provision provides otherwise (Art. 333 OC).

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

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?

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?

In case the distribution agreement is found to constitute an agency agreement, Art. 830 OC provisions a minimal notice period, which cannot be shortened by the parties (unless they mutually agree on the termination of the agreement).

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?

If the prescribed rules for termination are not observed, the termination shall be without effect and the distribution agreement shall continue to remain in full force and effect.

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

The terminated party may be entitled to damages by the terminating party for the loss suffered by the terminated party. The latter shall be determined under the general rules on the reimbursement of damage inflicted by a breach of an agreement.

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?

Where and to the extent a distribution agreement is found to constitute a sales agreement, the OC expressly provisions that the notice of termination must be delivered to the other party (Art. 333 OC). The form of the notice is not determined, however, a written notice delivered through registered mail is recommended. For the termination to be effective it is crucial that the other party is actually notified of the termination.

In case a distribution agreement is found to constitute an agency agreement, the OC does not include any express provisions on the notice of termination. However, as it is required that the will to terminate the agreement is unambiguous and clear, a written termination notice is recommended.

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

No, the terminating party is not obliged to provide a reason for terminating the agreement.

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

If the prescribed rules for termination are not observed, the termination shall be without effect and the distribution agreement shall continue to remain in full force and effect.

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, Q20.a. & Q20.b.

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

Yes.

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.)?

See, Q17.b. and Q20.b.

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?

Where and to the extent a distribution agreement is found to constitute an agency agreement, either party may, on the basis of serious grounds, which must be cited, in particular the non-performance of obligations by the other party, or because of exceptional circumstances, withdraw from an agreement without any notice period or before the stipulated time. This right may not be limited or excluded by an agreement. If the declaration thereon does not cite serious grounds, the termination shall be deemed to be made with the ordinary notice period. Each party shall have the right to compensation if no serious grounds were cited for termination. An unjustified termination shall give the other party the right to withdraw from the contract without notice (Art. 832 OC).

If the distribution agreement would constitute a sales agreement, general provisions applicable to sales agreements shall apply. In such case, either party may have a right to terminate the agreement in certain cases (e.g. delay in the fulfilment, etc.).

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?

Only in certain instances.

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

If a court would consider the extrajudicial termination of the distribution to be unlawful or abusive, the termination

would be without effect. However, in such case the distribution agreement would be considered to be regularly terminated, taking into consideration the respective notice period (Art. 832, Paragraph 2 OC).

Under the rules applicable to sales agreements, the termination would be without effect and the agreement would continue to remain in full force and effect. Furthermore, the sanctions for breach of contract and contractual liability may apply.

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 on a statutory provision (Art. 832, Paragraph 3 OC), which gives each party a right to compensation if no serious grounds were cited for 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)?

See, Q20.b.

Furthermore, if a distribution agreement is found to constitute an agency agreement, the agent (distributor) shall be entitled to a special compensation if he has obtained new clients for the principal (supplier) or has made a significant contribution in terms of increasing the principal's business with existing clients, and the principal has derived significant benefits from such clients after the agreement has ended, and if the circumstances warrant such reimbursement, particularly in case of loss of commission in transactions with such clients. When determining the special compensation, an account shall be taken of the commission paid to the agent for agreements concluded after the cessation of the agreement, as well as of a possible ban or restriction imposed on the agent regarding their business activities following the cessation of the agreement. The amount of such special compensation may not exceed the amount of the average annual commission in the last five years. Payment of special compensation shall not exclude the right of the agent to demand compensation of damages which exceeds the amount of special compensation (Art. 833 OC).

In addition, if the agreement concluded for an indefinite period is terminated before five years have passed since it was concluded, the agent shall have the right to appropriate severance pay in the amount of the difference between the costs incurred by the agent in connection with the introduction of the product to the market and all the other costs incurred by the agent in connection with the performance of the agreement, and the revenues obtained by the agent on the basis of the performance of the agreement and the revenues the agent would in all

likelihood obtain in the five year period from the conclusion of the agreement (Art. 833, Paragraph 4 OC).

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?

According to provisions on agency agreements, which also apply to issues regarding protection of business secrets in respect of distribution agreements, the distributor shall be obliged to safeguard the business secrets of which he learns in connection with the agreement. In case of misuse, the distributor shall be held liable, even after the termination of the agreement (Art. 817 OC).

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?

Under the general rules on arbitration, the arbitration clause shall be concluded in writing and such clause must be clear and unambiguous.

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

Claims from commercial agreements and claims for the return of expenditure arising in connection with such agreements shall become statute-barred after three years. The prescription period shall run separately for each supply of goods, performance of work and provision of services (Art. 349 OC).