

# Legal Strategies for Termination of Distributors: An International Overview

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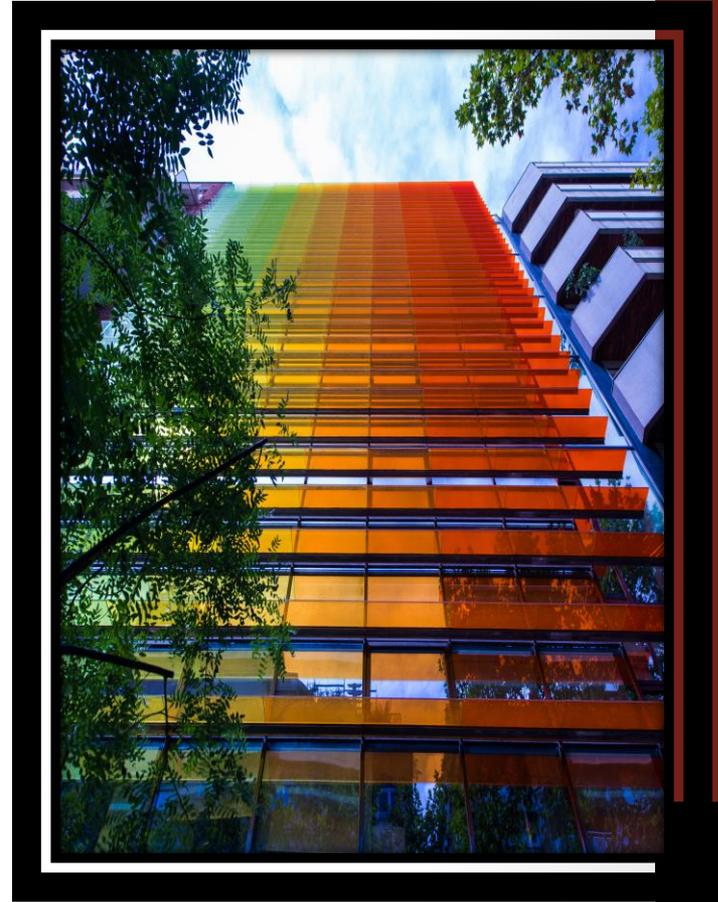
# Legal Strategies for Terminating Distributors

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# 1961

ABOGADOS Y ECONOMISTAS



# **The Supplier-Distributor Relationship**

- Supplier grants Distributor the right to resell its products or services in a territory.
- Supplier will typically state the terms of the agreement.
- Supplier will have very little or no contact with Distributor's clients.
- By contrast, an agent acting for a Supplier is an intermediary, with Supplier remaining the contractual partner of client.
- Supplier-Distributor relationship is based upon mutual trust.
- In certain sectors Distributor will have little margin to negotiate.
- Multiple jurisdictions may come into play.

# **Terminating a Distributor Relationship**

- Is there an agreement in place?
- If so, is the decision to terminate within the grounds for termination set forth in the agreement?
- Is there enough documentation/evidence supporting termination?
- What are the local regulatory risks of terminating?
- How does Supplier avoid or minimize the risk of Distributor seeking compensation?
- How does Supplier handle post-termination issues?

# Is There an Agreement in Place?

- No distribution agreement in writing (verbal understandings, e-mails, letters, purchase orders, invoices); or
- Written distribution agreement in place that:
  - sets specified duration, often providing for renewal unless a party objects;
  - is indefinite, often providing for termination on an agreed notice period;
  - comprehensively covers grounds for termination;
  - does not comprehensively cover grounds for termination.

# What Are the Local Regulatory Risks of Terminating?

## Civil Law Jurisdictions:

- have tended to favor Distributor based on assumption that Distributor is in a weaker bargaining position;
- tendency has been to allow exclusive Distributors to recoup significant investments made to meet obligations;
- principle of good faith has often prevailed over contractual terms.

## Common Law Jurisdictions:

- have tended to emphasize freedom of contract and the parties' right to terminate based upon agreed terms;
- contracts are binding and no legal principle of good faith should prevail.

# **Overview of Matters Related to the Termination of Distributors**

# 1. Terminating a Distributor for Cause/Without Cause

- How do Laws or Court rulings regulate termination for cause vs. termination without cause (or for convenience)?
- Can a Distributor be terminated unilaterally and without cause? Is fairness or good faith important?
- If a Distributor accepted unilateral termination without cause and with very short notice, could Supplier still be required to give reasonable notice and/or to be fair to Distributor?

## 2. Termination Notice

- What is a sufficient notice period to terminate a Distributor?
- Are reasonable notice periods dictated by Law?
- What can be the consequences of terminating a Distributor without adequate advance notice?

### 3. Compensation

- What type of compensation is available to a terminated Distributor?
- If a Distributor accepted no compensation whatsoever, could Supplier still be required to compensate?
- What is the time-period in which a Distributor must claim any such compensation?

## 4. Other Remedies Available to a Distributor

- What other remedies could be available to a Distributor besides compensation?

## 5. Choice of Foreign Law and Jurisdiction

- What general rules apply for enforcing a contractual choice of law provision? Must a chosen law have a substantial relationship to the parties or to the transaction?
- In which cases would a Court void a choice of law provision and apply the laws of the Distributor's jurisdiction?

## 6. Post-termination Issues

- To what extent can a non-compete obligation imposed on a Distributor be enforced? And a contractual penalty linked to such non-compete obligation?
- What kind of provisions should be included in a Distributor agreement in order to better handle any post-termination issues?

# Q&A