Legal Strategies for Termination of Distributors: An International Overview

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Today’s Panel

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Legal Strategies for Terminating Distributors

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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?