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:

In Finland, there is no general legislation directly regulating the relationship between distributors and suppliers. In addition to the general principles of contract law, the national legislative framework applicable to the conclusion and execution of distribution agreements comprises of the following laws:

- the Contracts Act 228/1929,
- the Act on Contractual Terms between Businesses 1062/1993,
- the Unfair Business Practices Act 1061/1978,
- the Act on Payment Terms in Commercial Agreements 30/2013, and
- the Sale of Goods Act 355/1987.

In addition, various types of legislation must be taken into account when concluding a distribution agreement, such as employment, data protection and IPR related provisions. However, as such requirements and rules are not specific to distribution agreements and depend on the nature and content of the contract, such provisions are not included in the scope of this questionnaire. It should equally be noted that sector-specific legislation may also include specific rules or restrictions applicable to distribution agreements. Such sector-specific rules are not, however, discussed in this general-level questionnaire.

The Act on Commercial Representatives and Salesmen 417/1992 (FIN: *laki kauppaedustajista ja myyntimiehistä*), which implements Directive 1986/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents, has been excluded from the scope of our answers to this Q&A as it has been excluded from the Q&A in Q2.

b. Link(s) to official publication:

The Finnish version of the The Contracts Act (228/1929) is accessible via this link.

The Swedish version of the The Contracts Act (228/1929) is accessible via this link.

The Finnish version of the The Act on Contractual Terms between Businesses (1062/1993) is accessible via this link.

The Swedish version of the The Act on Contractual Terms between Businesses (1062/1993) is accessible via this link.

The Finnish version of the Unfair Business Practices Act (1061/78) is accessible via this link.

The Swedish version of the Unfair Business Practices Act (1061/78) is accessible via this link.

The Finnish version of the Act on Payment Terms in Commercial Agreements (30/2013) is accessible via this link.

The Swedish version of the Act on Payment Terms in Commercial Agreements (30/2013) is accessible via this link.

The Finnish version of the Sale of Goods Act (355/1987) is accessible via this link.

The Swedish version of the Sale of Goods Act (355/1987) is accessible via this link.

c. Link(s) to English translation:

An unofficial English translation of the Sale of Goods Act (355/1987) is accessible via this link.

Other translations are outdated or not 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

In B2B contacts such as distribution agreements, the principle of contractual freedom is especially strong. This principle entails that businesses can, as a rule, choose whether and how to enter into a contract, and also determine the contents of their contract rather freely. Once the parties have exercised their contractual freedom and entered into a contract, the contract is generally considered binding upon the parties.

Nonetheless, certain provisions in Finnish law set out restrictions for the formation and contents of a contract to

protect the weaker party, or limit the binding effect of a contract due to unfair contract terms. Such mandatory rules relating to unfair contractual terms or abuse of economic dependence must always be taken into account when entering into a distribution agreement.

1. Adjustment of unfair contractual terms

Section 36 of the Contracts Act includes a general provision enabling courts and arbitrators to adjust or set aside unfair contract terms. In determining what is unfair, the entire contents of the contract, the positions of the parties, the circumstances prevailing during and after the conclusion of the contract, and other factors are taken into account. If an unfair term is of such nature that it is not reasonable for the contract to remain in force, the contract may be adjusted or the entire contract may be set aside. Generally, however, the aim is to keep the contract in force.

2. Non-binding nature of unreasonable non-compete clauses

According to Section 38 of the Contracts Act, non-compete clauses are not binding insofar as they unreasonably restrict the freedom of action of a party. This means that such a clause is not legally enforceable. Accordingly, non-compete clauses included in distribution agreements must not be overly restrictive either in terms of time or in scope.

3. Unfair contract terms in B2B contracts

The Act on Contractual Terms between Businesses 1062/1993 includes a general prohibition of contractual terms or practices, which are unreasonable due to the other party's weaker position or other factors necessitating a higher level of protection. Such other situations may include e.g. situations of economic dependency, where the distributor's business is dependent on a single supplier. The purpose of the provision is to safeguard small businesses and companies that are economically dependent on their contractual parties against unfair contractual terms, especially in contractual relationships with large businesses. In the case of an unreasonable term, the Market Court may prohibit the other party from continuing to use or applying the provision or renewing the use or practical application of the provision or an equivalent thereof. The Market Court may reinforce the prohibition with a conditional fine.

4. Maximum terms of payment

In accordance with the Act on Payment Terms in Commercial Agreements 30/2013 (FIN: *laki kaupallisten sopimusten maksuehdoista*) in B2B relationships, the term of payment may exceed thirty days only, if the parties have expressly agreed so. In addition, a contractual term stating that the creditor is not entitled to interest for delay is invalid. A contractual term stating that the creditor is not entitled to reimbursement of collection charges

as provided by the Debt Collection Act 513/1999 (FIN: *laki saatavien perinnästä*) is considered to be invalid unless there is no justifiable cause for this.

In addition to the above requirements concerning the terms of the contract, the parties entering into a distribution agreement must take into account the general duty of loyalty (FIN: "*lojaliteettivelvollisuus*"), which requires taking into account the interests of the opposing party and, among others, imposes a duty to inform the other party also during the contractual negotiations. Although Finnish law does not include any specific pre-contractual information obligations for B2B distribution agreements, the general provisions underlining the importance of correct pre-contractual information must be taken into account (See, Q8).

b. Link(s) to official publication:

The Finnish version of the Act on Contractual Terms between Businesses (1062/1993) is accessible via this link.

The Swedish version of the Act on Contractual Terms between Businesses (1062/1993) is accessible via this link.

The Finnish version of the Act on Payment Terms in Commercial Agreements (30/2013) is accessible via this link.

The Swedish version of the Act on Payment Terms in Commercial Agreements (30/2013) is accessible via this link.

The Finnish version of the The Contracts Act (228/1929) is accessible via this link.

The Swedish version of the The Contracts Act (228/1929) is accessible via this link.

The Finnish version of the Unfair Business Practices Act (1061/78) is accessible via this link.

The Swedish version of the Unfair Business Practices Act (1061/78) is accessible via this link.

c. Link(s) to English translation:

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?

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:

As a rule, each party has the right to terminate pre-contractual negotiations without liability. In other words, taking part in contractual negotiations does not lead to an obligation to conclude a final agreement. However, a party can be held liable for terminating the pre-contractual negotiations in certain limited situations based on case law and the general principles of contract law.

In addition, certain pre-contractual arrangements, such as the use of non-binding letters of intent or binding pre-contracts, may limit a party's freedom to withdraw from the pre-contractual negotiations. However, the impact of such arrangements largely depends of the content and nature of the instrument and is not further elaborated in this questionnaire.

b. Conditions for pre-contractual liability:

Generally, while in general pre-contractual negotiations do not result in liability, a party may have pre-contractual liability under three circumstances. Firstly, liability for the termination of pre-contractual negotiations can take place if a party has negotiated in 'bad faith' and used prohibited negotiation practices. This generally requires negligence or intent. Based on case law of the Supreme Court of Finland (KKO 1999:48 and KKO 2009:45) such prohibited negotiation practices could include, inter alia, providing misleading or false information about products and practices, or carrying on the negotiations despite the fact that the party is clearly not able to fulfil the agreement in terms of expertise, or its financial situation.

Secondly, in certain situations the termination of long-lasting negotiations might result in liability for termination of pre-contractual negotiations (such as in the Supreme Court of Finland's decision in KKO 2009:45) . Such liability could take place if a party has given an overly positive image of the likelihood of concluding the agreement. When pre-contractual negotiations have been going on for a long time, the general principle of loyalty between the parties becomes more profound and their mutual trust that the agreement will be concluded increases. However, the legal position on how liability for pre-contractual negotiations would be assessed is unclear.

Thirdly, liability for termination of pre-contractual negotiations can take place when the parties have specifically agreed on the content of the pre-contractual negotiations. This can relate to, for instance, compliance with principles of procurement or other code of conduct or sharing of expenses related to the negotiation process.

c. Consequences of pre-contractual liability:

A party may be entitled to damages by the party who has caused the termination of the pre-contractual negotiations. As a rule, the party that is held liable must restore the other party's financial situation to the state that would have taken place if no negotiations had occurred. The party who has suffered damage should be compensated for the damage that has resulted due to the party relying on the conclusion of the final agreement. The compensation is calculated by comparing the party's position with and without the actions taken in the pre-contractual negotiations. Generally, the damages consist of the costs incurred due to the negotiations, such as required travelling, inquiries, expert opinions and attorney's fees.

A party is entitled to claim damages for the loss of revenue as a result of not concluding the agreement only in very limited situations and where there are specific grounds for claiming such damages. Based on the case law of the Supreme Court of Finland (KKO 1999:48), such specific grounds mainly relate to breaches of statutory requirements to conclude an agreement.

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

Yes.

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

Although Finnish law does not include specific mandatory provisions governing the disclosure of pre-contractual information prior to concluding and/or executing distribution agreements, Section 33 of the Contracts Act, reflecting the general principle of loyalty, is interpreted as a general obligation on the parties to consider the other party's interest and to share information with the other party. According to Section 33 of the Contracts Act, a transaction is not enforceable if it is entered into under circumstances which would be considered incompatible with 'honour and good faith' for anyone knowing of those circumstances to invoke the transaction. Moreover, the person to whom the transaction was directed must have known of the circumstances.

Further, according to Section 2 of the Unfair Business Practices Act 1061/1978 the use of false and misleading expressions concerning one's own, or another party's business operations are prohibited if they are of such nature that they could affect the supply or demand of a product. In their marketing, a manufacturer and a distributor must take into account the provisions of the Unfair Businesses Act and refrain from activities in their marketing that could be considered as unfair business practices.

It should also be kept in mind that Section 17(2) subsection 2 and section 19(1) subsections 1 and 2 of the Sale of Goods Act 355/1987 contain certain non-mandatory provisions governing the provision of pre-contractual information, which apply only if the parties to the distribution agreement have not agreed otherwise.

Part 3: Contractual phase

A. Form of distribution agreements

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

No.

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. Further, agreements that are excluded from the scope of application of EU competition law since they are not capable of appreciably affecting trade between the member states, may be assessed under national competition law including similar prohibitions as EU competition law.

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

Please see the section on "non-binding nature of unreasonable non-compete clauses" under Q3.a.

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?

There are sector specific rules concerning i.a. trade in agricultural and food products. These rules also implement the Directive (EU) 2019/633 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain.

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

Please see, Q3, where the general rules and restrictions are described. With regard to e.g. non-solicitation clause, the general EU competition rules apply.

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 legal literature and case law of the Helsinki Appeal Court (such as Helsinki HO 21.1.2022 S 20/613), continuation of a contract may be based on the passivity of the parties or an agreement by which the parties agree to continue the contract after the previous contract has expired. In order for a contract to continue based on passivity the other party must consciously allow, at least to a certain extent, the continuance of the contract and does not intervene, for instance by explicitly informing that it does not accept the continuance of the contract. If the parties conclude an agreement to continue the contract they often agree on whether the contract will continue as indefinite or definite.

b. What should a party do to avoid this?

Parties should avoid passively continuing contracts and instead conclude an agreement to continue the contract for a definite duration.

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?

Only in certain instances.

If only in certain instances, please explain when a reasonable notice period is in any case required?

In line with the principle of freedom of contract, the parties are basically free to determine the applicable grounds for termination as well as the respective notice periods. In the case of an unreasonably short notice period or other unreasonable terms, it is nevertheless possible to invoke Section 36 of the Contracts Act according to which if a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. In determining what is unfair, the entire contents of the contract should be considered. Whether a notice period is unreasonably short requires an overall assessment, wherein factors such as the contract period, the purpose of the contract and the contributions of the parties, are considered.

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?

Wrongful termination of a distribution agreement is ineffective in the sense that the party affected by the termination may insist on the continuation of the contract and fulfilment of the contract obligations. If it has become practically impossible to continue the contract an alternative course of action is to accept the termination of the contract and claim damages for the harm caused by the wrongful termination of the contract.

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

Wrongful termination may result in a damages claim. The remedy for wrongful termination is often damages when there is no legal basis for continuing the contract, or if no such claim is made.

The damages are calculated for the remaining contractual period of the agreement of definite duration. The liability is limited to the losses for the period that the contract would have been in force. The damages to be compensated is determined with a view to the losses that would have been avoided if the contract had been terminated in the permitted manner.

The terminated party may have an obligation to limit the damage caused by the wrongful termination of an agreement. This might consist of, for example, an obligation to conclude a contract for the remaining contract period with a third party, replacing the one that was wrongfully terminated. In the case law of the Supreme Court of Finland (KKO 1995:32 and 1999:48), the terminated party's obligation to limit its damages caused by wrongful termination has been considered strict. This means that the obligation to pay damages remains narrow when the terminated party has a good chance of concluding a replacement contract with a new contractor.

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)?

The length of a reasonable notice period is calculated on a case-by-case basis and must be assessed in light of the contractual relationship as a whole. The length depends, for example, on the duration of the contractual relationship and the investment made in the resale of the product or service.

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

There are no mandatory laws regulating minimum notice periods of distribution agreements. However, a reasonable notice period is usually required.

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?

There are no mandatory laws regulating maximum notice periods. However, a reasonable period of notice has been considered to be up to six months in most cases if the parties have not agreed on a longer period of notice.

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 line with the principle of freedom of contract, the parties are basically free to determine the applicable grounds for termination as well as the respective notice periods. In the case of an unreasonably short notice period or other unreasonable terms, it is nevertheless possible to invoke Section 36 Contracts Act (See, Q16).

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?

Wrongful termination of a distribution agreement is ineffective in the sense that the party affected by the termination may insist on the continuation of the contract and fulfilment of the contract obligations. If it has become practically impossible to continue the contract an alternative course of action is to accept the termination of the contract and claim damages for the harm caused by the wrongful termination of the contract.

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

Wrongful termination may result in a damages claim. The damages are calculated on the basis of the losses that would have been avoided if the contract had been lawfully terminated.

Where the contract could have been terminated for convenience but only from a later date, the loss of profit and the damages resulting from the inability to implement the contract are calculated on the basis of the minimum notice period of the contract. Liability is limited to losses for the minimum period for which the contract would have been in force.

The terminated party may have an obligation to limit the damage caused by the wrongful termination of an agreement. This might consist of, for example, an obligation to conclude a contract for the remaining contract period with a third party, replacing the one that was wrongfully terminated. In the case law of the Supreme Court of Finland (KKO 1995:32 and 1999:48), the terminated party's obligation to limit its damage caused by wrongful termination has been considered strict. This means that the obligation to pay damages remains narrow when the terminated party has a good chance of concluding a replacement contract with a new contractor.

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?

The parties are free to agree on the requirements for termination for convenience. Unless otherwise agreed, termination is an informal measure. Written notice is required only if the parties have agreed so.

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

The parties are free to agree on the requirements for termination for convenience. A notice must contain a motivation in order for the termination to be valid only if the parties have agreed so.

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

If the parties have agreed on formalities regarding the notice and if such formalities are not observed, the termination is considered to be ineffective. The parties may also agree on the consequences of non-compliance of such formalities.

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

Yes.

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

If the required formalities are not observed the termination is considered to be ineffective.

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

No.

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?

The general principle is that the avoidance of a contract requires that the breach of contract is of substantial importance.

Sections 25(1) and 39(1) of the Sales of Goods Act 355/1987 (FIN: *Kauppalaki*) entail that the right to avoid a contract requires that the breach of contract has a substantial importance to the creditor and the debtor should have realized this.

In order to avoid a contract, an informal notice of termination is sufficient.

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?

If a contract has been unlawfully avoided, the party that has been subject to the wrongful avoidance may request for the contract to be continued or claim damages for the premature termination of the contract.

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?

The terminated party's right to compensation is based on contractual liability (FIN: "*sopimusperusteinen vahingonkorvaus*") and results from the general doctrines of Finnish contract law. When an agreement is terminated prematurely the terminated party can claim damages on the basis of the losses that would have been avoided if the contract had been terminated in a permissible manner.

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 damages are calculated on the basis of the losses that would have been avoided if the contract had been terminated in a permissible manner (See, Q17.b.).

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. However, an arbitration clause is not valid unless made in writing.

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

Sections 4-7 of the Finnish Act on Statute of Limitations 728/2003 (FIN: *laki velan vanhentumisesta*) contains the general rules relating to the statute of limitations applicable to claims concerning the performance of a distribution agreement. The general limitation period is three years. As a rule, the limitation period starts to run when a debt is due for payment or when a party becomes aware of a breach of contract. If the limitation period is interrupted by the party, a new limitation period starts to run from the date of the interruption.

Part 6: Additional comments

Finnish competition law adheres to the principles established under EU competition law. There are no specific deviations in the law or the case law to be reported.