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:

Act V of 2013 on the Civil Code (hereinafter: Hungarian Civil Code).

- Book Six, Part One on the Common Provisions Relating to Obligations
- Book Six, Part Two on the General Provisions on Contracts
- Book Six, Chapter XIX on Distribution and Franchise Contracts

Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter: Hungarian Competition Act).

- Chapter III on the Prohibition of the Unfair Manipulation of Business Decisions
- Chapter IV on the Prohibition of Agreements Restricting Economic Competition
- Chapter V on the Prohibition of Abuse of Dominant Position

Act CLXIV of 2005 on Trade (hereinafter: Trade Act).

Government Decree 205/2011. (X. 7.) on the block exemption of vertical agreements.

b. Link(s) to official publication:

The Hungarian version of the Hungarian Civil Code is accessible via this link.

The Hungarian version of the Hungarian Competition Act is accessible via this link.

The Hungarian version of the Trade Act is accessible via this link.

The Hungarian version of the Government Decree 205/2011 is accessible via this link.

c. Link(s) to English translation:

The English translation of the Hungarian Civil Code is accessible via this link.

The English translation of the Trade Act 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:

Hungarian Civil Code - Book Six, Part Three on Specific Contracts - Title XIX on

Distribution contract and franchise agreement

b. Link(s) to official publication:

The Hungarian version of the Hungarian Civil Code is accessible via this link.

c. Link(s) to English translation:

The English translation of the Hungarian Civil Code 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

Unfair standard contract terms in B2B contracts

Pursuant to Art. 6:102 Hungarian Civil Code:

(1) A standard contract term shall be considered unfair if, contrary to the requirement of good faith and fair dealing, it causes a significant and unjustified imbalance in contractual rights and obligations, to the detriment of the party entering into a contract with the party imposing such contract term.

(2) The unfair nature of a standard contract term shall be assessed, taking into account the nature of the services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances leading to the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

(3) The provisions relating to unfair standard contract terms shall not apply to the definition of the main subject matter specified in the contract or to the ratio between the price determined, on the one hand, and the services provided in exchange, on the other, in so far as these terms are in plain intelligible language.

(4) The standard contract terms defined by legislation or established in accordance with the provisions of the relevant legislation shall not be deemed unfair.

(5) Any unfair contract term that has been incorporated into the contract as a standard contract term may be contested by the injured party.

The unfair nature of a standard contract term are decided on case-by-case basis by the proceeding court in the light of the general rules set out above,

b. Link(s) to official publication:

Not available.

c. Link(s) to English translation:

The English translation of the Hungarian Civil Code 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:

Art. 1:3 and 6:62 Hungarian Civil Code

b. Information to be disclosed:

Art. 1:3 Hungarian Civil Code provides for the principle of good faith and fair dealing, which is also applicable to pre-contractual obligations..

Art. 6:62 Hungarian Civil Code provides a specific requirement in respect of the duty to cooperate and communicate information during pre-contractual negotiations:

The parties shall be required to cooperate during preliminary negotiations, at the time of the conclusion and termination, and during the life of the contract, and shall be duty bound to communicate information to each other

on circumstances relevant to the contract.

If the contract is concluded, the party who breaches the obligation of cooperation and proper disclosure of information shall be subject to liability for damages for loss caused by non-performance of an obligation to the other party. If the contract is not concluded, the general provisions of non-contractual liability will apply.

The law itself does not provide specific examples of the information that shall be disclosed to the other party during pre-contractual negotiations, it is examined by courts in each individual case.

Nevertheless, in the light of the relevant case-law, parties are likewise obliged to gather all relevant information to the best of their abilities before entering into a contract and may not allege the infringement of the duty to provide information with respect to rights, facts and circumstances of which they were aware, or should have known from a public register or any other source.

c. Link(s) to official publication:

The Hungarian version of the Hungarian Civil Code is accessible via this link

d. Link(s) to English translation:

The English translation of the Hungarian Civil Code 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)?

Culpa in contrahendo: in case of violation of the duty to cooperate and communicate information, the party who breaches the obligation shall be subject to liability for damages for loss caused by non-performance of an obligation to the other party.

Pursuant to Art. 6:62 (1), (3) and (5) Hungarian Civil Code

(1) The parties shall be required to cooperate during preliminary negotiations, at the time of the conclusion and termination, and during the life of the contract, and shall be duty bound to communicate information to each other on circumstances relevant to the contract.

(3) If the contract is concluded, the party who breaches the obligations referred to in Subsection (1) shall be subject to liability for damages for loss caused by non-performance of an obligation to the other party.

(5) If the contract is not concluded, the party who breaches the obligation referred to in Subsection (1) during

preliminary negotiations shall be subject to liability for damages in accordance with the general provisions of non-contractual liability.

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:

If the contract is not concluded, the party who breaches the obligation to cooperate and to communicate information to the other party on circumstances relevant to the contract during preliminary negotiations can be held liable. (Art. 6:62 (5) Hungarian Civil Code)

b. Conditions for pre-contractual liability:

See point 7.a.

c. Consequences of pre-contractual liability:

Liability for damages in accordance with the general provisions of non-contractual liability. (Art. 6:62 (5) Hungarian Civil Code)

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 the Hungarian Civil Code, a written form is not a substantive legal requirement for validity, but for evidential purposes it is strongly recommended.

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?

No.

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?

Obligations of the distributor vis-à-vis the supplier or vice versa.

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

According to Art. 6:373 and 6:374 Hungarian Civil Code:

Art. 6:373

[Protection of reputation]

(1) The parties shall protect the reputation of the product.

(2) The supplier shall inform the distributor of advertisements on the product and shall - for a fee - make available to the distributor promotional material for marketing the product.

Art. 6:374

[Instructions and checking]

(1) The supplier shall have the right to give instructions as to the proper distribution of the product.

(2) If the supplier gives unreasonable or unsuitable instructions, the distributor shall be obliged to warn him

thereof. If the supplier insists on his instruction in spite of the warning, the distributor shall carry out the instruction; any damage resulting therefrom shall be the liability of the supplier. The distributor shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.

(3) The supplier shall be entitled to check fulfilment of the contract and his instructions.

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?

No.

If only in certain instances, please explain when a distribution agreement that does not specify the term is considered to be a contract of indefinite duration.

This question relates to the interpretation of the agreement.

According to relevant provisions of the Civil Code:

Art. 6:8 (1) "In the event of a dispute, a legal statement shall be interpreted like it had to be interpreted by the addressee on the basis of the presumed intent of the party making the statement and of the circumstances of the case, and in accordance with the generally accepted meaning of words."

Art. 6:87 (2) "Previous legal statements made by the parties may be taken into consideration when interpreting the contract."

Thus, if not specified explicitly in the agreement, the term of the agreement (i.e. whether the agreement is concluded for a definite or an indefinite period) has to be determined in the light of the parties' contractual intent, the circumstances of the case, and the previous statements made by the parties. In case of dispute, this is an issue of evidencing.

If the term of the agreement cannot be determined in accordance with the above, the below auxiliary rule of the Civil Code may apply:

Art. 6:63 (5) "Any custom having been agreed between the parties in their earlier business relationship and any practice having been established by them shall become a content of the contract. Any custom widely known and regularly applied by parties to contracts of similar nature in the relevant business sector shall become a content of the contract, unless its application would be unjustified considering their earlier relationship."

Q14. Does a distribution agreement of definite duration that is continued after its expiry turn into a distribution

agreement of indefinite duration?

No.

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?

The law (the Civil Code) does not provide an explicit answer to this question and there is no clear-cut case law either. We believe that the most likely answer is that in case of non-compliance with the statutory or contractual rules of termination, then the notice does not achieve the desired legal effect and accordingly it does not result in the termination of the contract. In case the terminating party does not perform with respect to alleged termination, the rules on refusal to perform are likely to apply. According to these rules in case of failure of a party to perform the contract without a legitimate reason, the legal consequences of default or impossible performance shall apply subject to the choice of the other party. Refusal to perform could lead to, among others, damages claim from the other party against the terminating party.

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

See, Q17.a. Full compensation needs to be paid. When providing full compensation, the party causing damage shall compensate for a) the diminution in the value of the assets of the injured party; b) the loss of profit; and c) the costs necessary to eliminate the pecuniary losses of the injured party.

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)?

Art. 6:213 (3) provides for the right of termination in case of agreements of indefinite duration: "Unless otherwise provided in this Act, contracts giving rise to permanent legal relationships and concluded for an indefinite period of time may be unilaterally terminated by any of the parties while applying an appropriate notice period. The exclusion of the right of unilateral termination shall be null and void."

There is no statutory rule as to how the reasonable/appropriate notice period shall be calculated, and the case law does not provide for guidance either. The required length of a reasonable/appropriate notice period may only be determined on the basis of the circumstances of case (e.g. the nature and duration of the relationship of the parties, special characteristics of the relevant market and the products in question).

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 is no minimum notice period prescribed by the law or derived from the case law. The notice period shall be appropriate, which may only be assessed in the light of the circumstances of the case.

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 is no maximum notice period prescribed by the law or derived from the case law.

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?

The following mandatory provisions of the Civil Code can have relevance here:

- Art. 6:95 [Prohibited contracts] "Contracts violating the law or concluded by circumventing the law shall be null and void unless the law attaches other legal consequences to it."

- Art. 6:96 [Contracts contrary to good morals]: "Contracts that are obviously contrary to good morals shall be null and void."
- Art. 6:102 [Unfair standard contract term]: "(1) A standard contract term shall be unfair if it unilaterally and unreasonably, and by violating the principle of good faith and fair dealing, sets forth the rights and obligations arising from a contract to the detriment of the party contracting with the person applying that contract term. (...) (5) The aggrieved party may contest the unfair contract term that became a part of the contract as a standard contract term."

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?

The law (the Civil Code) does not provide an explicit answer to this question and there is no clear-cut case law either. We believe that the most likely answer is that in case of non-compliance with the statutory or contractual rules of termination, then the notice does not achieve the desired legal effect and accordingly it does not result in the termination of the contract. In case the terminating party does not perform with respect to alleged termination, the rules on refusal to perform are likely to apply. According to these rules in case of failure of a party to perform the contract without a legitimate reason, the legal consequences of default or impossible performance shall apply subject to the choice of the other party. Refusal to perform could lead to, among others, damages claim from the other party against the terminating party.

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

See, Q20.a. Full compensation needs to be paid. When providing full compensation, the person causing damage shall compensate for a) the diminution in the value of the assets of the injured party; b) the loss of profit; and c) the costs necessary to eliminate the pecuniary losses of the injured party.

Q21. Must the terminating party comply with certain formalities?

Yes.

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 notice must be addressed to the other party. The Civil Code does not explicitly require a written notice since the contract itself must not be in writing either, but a written notice is preferable.

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

The notice needs to contain the ground for termination (e.g. breach of contract, ordinary termination).

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

For consequences of non-compliance, see,Q20.

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.

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?

We understand extrajudicial termination to be equivalent to breach of contract or to situations where other specific grounds apply for termination (e.g. termination right of a liquidator).

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

Yes, likely possible for breach of contract.

No, e.g. in case of liquidator's termination right.

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?

See, Q20.

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?

See, Q20. This is a damage claim. If compensation is meant differently than damages, then the answer to Q26 is no.

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.

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?

No.

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?

Pursuant to Art. 6:212 Hungarian Civil Code: In the case of termination of a contract, the parties shall not owe further services and they shall settle accounts with respect to services performed before the time of termination.

Part 5: Dispute resolution

Q30. Do specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction?

Yes.

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

According to Art. 20 (3) Act CXXX of 2016 on the Code of Civil Procedure, regional courts shall have competence

of all actions where the amount in dispute exceeds thirty million forints.

Moreover, the following restriction shall prevail pursuant to Art. 27 (6), in case the parties agree on the territorial jurisdiction of a court:

(6) In property disputes, the parties, for their legal dispute or a future legal dispute that may arise from a specified legal relationship, shall not agree to the territorial jurisdiction of a) the Budapest-Capital Regional Court or the Budapest Environs Regional Court in matters that fall within the material jurisdiction of regional courts, b) the Pest Central District Court in matters that fall within the material jurisdiction of district courts.

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?

Any claim for damages for breach of contract is limited to 5 years from the date of breach of contract according to the general provision on statute of limitations (Art. 6:22 Hungarian Civil Code)