Distribution Law Center
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Q&A on Distribution Agreements

Part 1: 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:

- Swedish Competition Act (2008:579)
- Act on Block Exemption for Vertical Agreements (2008:581)
- Act on Block Exemption for Vertical Agreements in the Motor Vehicle Sector (2008:584)
- The Contracts Act (1915:2018)
- The Sale of Goods Act (1990:931)
- Commercial Agency Act (1991:351)
- Commission Act (2009:865)
- The Franchise Act (2006:484)

b. Link(s) to official publication:

The Swedish version of the:

- Swedish Competition Act (2008:579) is accessible via this link.
- Act on Block Exemption for Vertical Agreements (2008:581) is accessible via this link.
- Act on Block Exemption for Vertical Agreements in the Motor Vehicle Sector (2008:584) is accessible via this link.
- Contracts Act (1915:2018) is accessible via this link.
- Sale of Goods Act (1990:931) is accessible via this link.
- Commercial Agency Act (1991:351) is accessible via this link.
- Commission Act (2009:865) is accessible via this link.
- Franchise Act (2006:484) is accessible via this link.

c. Link(s) to English translation:

There is no official English translation 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)?

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:

The Franchise Act (2006:484) for franchise agreements and the Commission Act (2009:865) for commission agreements.

b. Link(s) to official publication:

- Commission Act (2009:865) is accessible via this link.
- Franchise Act (2006:484) is accessible via this link.

c. ???????Link(s) to English translation:

There is no official English translation available.

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

According to Section 1 Act on Terms of Contract Between Traders (1984:292), the Patent and Market Court may prohibit a trader from enforcing unfair terms on other traders. The meaning of an unfair term has not been assessed by the Swedish Patent and Market Court to a greater extent. However, an example could be a unilateral right to change certain terms in an agreement during the contract period (MD 1985:16).

b. Link(s) to official publication:

The Swedish version of Act on Terms of Contract Between Traders (1984:292) is accessible via this link???????.

c. Link(s) to English translation:

There is no official English translation 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?

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:

There are no general rules on the disclosure of pre-contractual information to be disclosed prior to concluding and/or executing distribution agreements. However, there are rules on franchising. According to Section 3 Franchise Act, the franchisor is required to provide the franchisee with information about the agreement, in writing, as dictated by the circumstances.

b. Information to be disclosed:

The information that shall be provided includes (i) a description of the franchisor's business, (ii) information on other franchisees with whom the franchisor has entered into agreements, (iii) information on compensation and financial conditions of the franchise business, (iv) information on intellectual property rights to be granted to the franchisee, (v) information on the goods or services that the franchisee is obligated to buy or rent, (vi) information on applicable non-compete clauses, (vii) information on the duration of the agreement (incl. conditions for modification, extension and termination) and (viii) information on dispute settlement.

c. Link(s) to official publication:

The Swedish version of the Franchise Act (2006:484) is accessible via this link.

d. Link(s) to English translation:

There is no official English translation available.

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:

In general, either party is free to terminate the negotiations at any time and without any liability. However, if a party, either through negligence or an intentional act, causes damage or loss to the other party, Swedish contractual law principles indicate that said party may under some instances be obligated to compensate the other party for such damage or loss.

b. Conditions for pre-contractual liability:

The party responsible for the damage must, through negligence or an intentional act, have caused the damage or loss to the other party by terminating the negotiations. One common scenario involves the damaging party acting disloyally vis-à-vis the other party, e.g. by entering into negotiations regarding an agreement which needs regulatory approvals, while being aware that such regulatory approvals will not be granted and not informing the other party hereof. Another scenario would be if a party negotiates with no intention of actually entering into an agreement. It may be difficult to prove that the damaging party has actually acted intentionally or with negligence given that the general rule is that either party is free to terminate negotiations at any time without liability, which is a strong presumption in favour of the party responsible for the damages.

c. Consequences of pre-contractual liability:

Liability for damages due to pre-contractual liability corresponds to the proven and actual damage suffered by the other party. For example, a proven loss could be the costs related to the negotiations with the other party.

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?

No, never.

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 specific rules and/or restrictions apply.

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 with regard to (i) obligations of the supplier vis-à-vis the distributor, including in relation to the remuneration of the distributor, (ii) obligations of the distributor vis-à-vis the supplier or vice versa and (iii) specific sectors.

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

Different rules apply depending on the type of distribution agreement. In classic distribution agreements (resale relationships), no specific legislative requirement applies, thereby granting the involved parties flexibility within the boundaries of contract law. However, specific rules apply to agency and commission agreements. For example, whereas a retailer purchase the products and bears the risk of the products, an agent will not bear the risk for the product. The commission, in this context, is determined by the profit margins from the sales. A commissioner does not own the products, but has the right to sell the products under their own name and/or label, while the supplier remains the owner of the products until the products are sold to the customer.

With respect to commission relationships, the Commission Act contains a framework of rules which, in many instances, are not mandatory and may be deviated from in an agreement, e.g. provisions on reasonable remuneration, commission after the expiry of the agreement, instructions and information exchange. However, the Commission Act stipulates that if the principal is a consumer and the commission agent a trade comissioner, provisions in a commission agreement which are less beneficial to the principal than the provisions under the Commission Act are null and void.

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. In general, and in relation to e.g. a classic distribution agreement, it is stipulated that the agreement between the concerned parties shall expire upon the agreed-upon date. Nevertheless, the agreement can be extended by implication.

Commission agreements and agency agreements are subject to specific provisions, set out in the Commission Act and the Agency Act, respectively, according to which implicitly extended contracts are considered agreements with indefinite duration (Section 25, Commercial Agency Act and Section 34 the Commission Act). Such contracts may be terminated with one months' notice during the first year, two months' notice during the second year, and so on, up to a maximum notice period of six months (Section 24 the Commercial Agency Act, and Section 33 the Commission Act). The principal's notice period may not be shorter than the commissioner's/agent's notice period in such cases.

If yes, what is meant by 'continuation' (a) and what should a party do to avoid this (b)?

a. What is meant by 'continuation'?

Regarding distribution agreements in general, agreements expire at the expiry date. However, agreements can be extended without a formal extension procedure, e.g. if the parties continue to act similarly as under the agreement after the expiry date. The relationship may under such circumstances be considered an implicit contract.

Commission and agency agreements may also be extended implicitly. The question whether the agreement is extended, must be determined after an overall assessment of the circumstances of the individual case.

b. What should a party do to avoid this?

In order to avoid a continuation of a contract, it is advisable to either enter into a new agreement or inform the other party that it will not accept any new deals. With regards to agents/commissioners, if any new orders are placed by customers, the agent/commissioner should, in addition to refusing to deal, inform the principal that it does not wish to continue the relationship.

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?

Distribution agreements, including agent/commission agreements of definite duration, are not covered by any specific regulation under Swedish law and are as such covered by general contract law. According to the Swedish Contracts Act, Section 36, the notice period shall be reasonable.

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 a party to a distribution agreement (non-agent/commission agreement) terminates the agreement without complying with the stipulated termination clauses, the party may be obligated to continue to perform under the contract. Thus, the termination will have no effect and the terminating party may be liable for economic compensation instead.

Regarding agency or commission agreements governed by the Commercial Agency Act or the Commission Act, a termination will take effect if carried out in accordance with the agreement or the Commercial Agency Act, which includes adhering to stipulated notice periods. Even though the termination does not align with the terms outlined

in the agreement or mandatory legal provisions, it will still be effective. However, the party initiating the termination may be obligated to compensate the other party for breaching the agreement.

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

Regarding distribution agreements in general, the prevailing principle stipulates that there is no entitlement to enforce specific performance if a party terminates an agreement without adhering to the stipulated termination provisions in the agreement. In such cases, the rendered economic compensation shall put the claimant party in the same position as they would have been in if the contract had been performed, encompassing compensation for various elements, including expenses, price differences, profit loss, and any other direct or consequential loss arising from the breach of contract.

In agency and commission relationships, negligent or intentional breaches of the contract or the relevant act may result in liability under Section 34 Commercial Agency Act and Section 43 Commission Act.

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)?

For distribution agreements not subject to specific legislation, no general rule applies. However, the Swedish Supreme Court has previously ruled that a distributor, party to a long term distribution agreement without a fixed notice period, had the right to a six-month notice period. However, the determination of the notice period depends on the length of the relationship (Supreme Court case reference NJA 2018 p. 19).

Regarding commission agreements governed by the Commission Act and agency agreements governed by the Commercial Agency Act, a distribution agreement without specific notice terms can be terminated with one month's notice in the first year, two months' notice in the second year and so on, up to a maximum notice period of six months (Section 24 Commercial Agency Act and Section 33 oCommission Act). If the parties agree on a longer notice period than specified in the Commercial Agency Act or the Commission Act, the principal's notice period must not be shorter than that of the commissioner's or agent's notice period.

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

For distribution agreements not subject to specific legislation, no general rule applies.

In relation to commission agreements subject to the Commission Act and agency agreements subject to the Commercial Agency Act, please refer to the response in Q18.a. The parties are generally not permitted to deviate from the minimum notice period in advance, except for when the parties mutually agree that the commercial agent can terminate the contract with a three-month notice period, even if the relationship has extended beyond three years. After giving notice, the parties may mutually decide on a notice period shorter than the ones mentioned above and in the answer to Q18.a., as specified in Section 33 Commission Act and Section 24 Commercial Agency Act.

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?

For distribution agreements not subject to specific legislation (non-agency/commission agreements), no maximum notice period applies.

Regarding agency and commission agreements, the notice period for the principal may not be shorter than that applicable to the termination by the agent or the commissioner, as stipulated in Section 33 Commission Act and Section 24 Commercial Agency Act.

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?

Non-agency/commission distribution agreements are not subject to any specific regulation under Swedish law, and are as such regulated by general contract law. The notice period must be reasonable, according to Section 36 Swedish Contracts Act.

Regarding agency and commission agreements governed by the Commercial Agency Act and the Commission Act, respectively, the provisions on notice periods are mandatory. Nevertheless, there are a few exceptions to these notice period rules, as stated previously in Q18.b. & Q18.c. Should the parties agree on a notice period exceeding such specifications, the principal's notice period may not be shorter than the agent's stipulated notice period.

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?

For distribution agreements not subject to specific legislation (non-agency/commission agreements), no general rule applies. However, distribution agreements are subject to the application of general contract law. When a party terminates the agreement without complying with the contractual provisions on termination, the party may be required to perform under the contract or be liable for damages.

In case of a termination in breach of provisions on termination in the Commercial Agency Act or the Commission Act, the relevant act will still have effect and the party terminating the agreement may need to pay damages to compensate the other party. Neither party can however be forced to fulfill their obligations by carrying out specific performance (i.e., only monetary compensation is possible).

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

Yes, damages may have to be paid for termination in breach of prescribed rules. Negligent breaches of the Commercial Agency Act or the Commission Act, may result in liability for damages. The rendered economic compensation aims at putting the claimant party in the same position as they would have been in if the contract had been performed, encompassing compensation for various elements, including expenses, price differences, profit loss, and any other direct or consequential loss arising from the breach of contract.

Q21. Must the terminating party comply with certain formalities?

No.

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

Yes.

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

Such clauses are subject to general contract law. If one party fails to observe agreed formalities, the action may be considered void. However, if both parties mutually waive these formalities (orally or in writing), the action may be valid.

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

Only in certain instances.

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.)?

No general rule applies to general distribution agreements. A commissioner or agent is entitled to severance pay under the Commission Act and the Commercial Agency Act, respectively, to the extent that the commissioner or agent has introduced the principal to new customers or substantially increased business with the existing

customer base and the principal will benefit substantially from this. The severance payment must be reasonable.

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?

Distribution agreements in general are subject to general contract law. General rules regarding termination apply.

Commission and commercial agency contracts are subject to specific rules. According to Art. 26 Commercial Agency Act and Art. 35 Commission Act, each party retains the right to terminate the agreement in two scenarios. Firstly, the agreement may be terminated if one of the parties fails to perform its obligations under the agreement or the relevant act, the breach is of substantial importance to the terminating party and the breaching party was aware or should have been aware of the substantial importance attached to the breach by the other party. Secondly, termination is permitted if there is a good reason for early termination.

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?

Distribution agreements are in general subject to general contract law. If the party terminates the contract without complying with the termination rules in the contract, it may be required to continue to perform under the contract or be liable for damages.

In the case of agency or commission agreements covered by the Commercial Agency Act or the Commission Act, termination is effective if it is carried out in accordance with the contract or the relevant act, e.g. compliance with the notice period. An unlawful termination is still effective, but the terminating party must compensate the other party.

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?

With regard to distribution agreements (non-agency/commission agreements), economic compensation must be paid in accordance with contractual law. Economic compensation is intended to put the claimant party in the same financial position as if the contract had been performed, encompassing compensation for various elements, including expenses, price differences, profit loss, and any other direct or consequential loss arising from the breach of contract.

In certain cases, however, the other party can instead force the other party to perform the specific obligation. The obligation to perform under the contract may apply, for example, to the sale of goods in accordance with the Sale of Goods Act or to consumer purchases in accordance with the Consumer Sales Act. Such an obligation to perform does not apply if it would be unduly burdensome, e.g., involve unreasonable costs or inconvenience, contrary to law or accepted principles of morality. To assess what is unduly burdensome, a balancing of interests is required, taking into account the interests of both parties. It must be assessed whether the non-terminating party can be satisfied by another party's performance and whether the enforcement of specific performance is transactionally efficient. If the termination is attributable to a lack of trust between the parties, it may be unduly burdensome to require performance of the specific obligation(s).

According to Section 34 Commercial Agency Act and Section 43 Commission Act respectively, a principal or commissioner/agent must compensate the other party for negligent breaches of the agreement or the applicable law.

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 general rule is that damages in contractual relationships are limited to the economic effects of the breach of contract, (i.e. damages shall put the contracting party in the same position as if the contract had been performed). The breaching party is only obligated to pay additional compensation if the costs are considered to be proportionate to the breach of contract and if the resulting loss is financial.

In the case of agency agreements subject to the Commercial Agency Act and commission agreements subject to the Commission Act, neither party can be forced to perform the specific performance (i.e., only economical compensation is possible). The economic compensation shall put the claimant party in the same position as they would have been in if the contract had been performed, encompassing compensation for various elements, including expenses, price differences, profit loss, and any other direct or consequential loss arising from the

breach of contract

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?

No such obligations apply to non-agency/commission distribution agreements.

According to Section 28 Commission Act, the commissioner shall return any stock or material provided by the supplier under the commission relationship. However, the commissioner may keep stock and other materials as security. In addition, upon expiry of the commission agreement, the commissiooner shall take measures to protect the principal from loss until such time as the principal can protect its interests. The commissioner shall be entitled to reasonable compensation for taking such measures.

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.

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

The general limitation period is ten years, unless the parties have agreed otherwise. In commercial relationships, the parties can agree on a longer or shorter limitation period. There are also special rules, e.g. in relation to the limitation period for the buyer's defective goods, which provid that if the buyer has not notified the seller of the defect within two years of receiving the goods, the buyer has forfeited the right to rely on the defect, unless a warranty or similar undertaking provides otherwise. Notwithstanding the foregoing, the buyer may claim that the goods are defective if the seller has acted with gross negligence or against good faith and honour.

Tort claims have a general limitation period of ten years, with shorter limitation periods for claims based on strict liability, i.e. where a defendant is liable for committing an act regardless of his intention or state of mind at the time of committing the act.

Part 2: Additional comments

Swedish competition law adheres to the principles established under EU competition law so that there are no specific deviations in the law or the case law to be reported.