



Dispute Resolution for International Distribution

# LIST OF ARBITRATORS WITH EXPERIENCE IN DISTRIBUTION

Updated Submission Form 09-02-2018

## 1. INTRODUCTION

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The main purpose of the IDArb list of arbitrators is to help parties identifying prospective arbitrators with a specific experience in the field of distribution agreements (agency, distributorship, franchising, occasional intermediaries, etc.), having an actual understanding of the commercial background of the agreement in dispute.

The purpose of the information to be provided for inclusion in the list of the IDArb arbitrators is twofold:

- on one side, to facilitate the evaluation by the selecting committee in view of the admission, and
- on the other side, to provide users of the list with all the information required for choosing an arbitrator having the skills and experience required for the specific dispute at stake.

This second aspect is very important, since it is the very purpose of the IDArb list of arbitrators to help users in identifying a person particularly qualified for deciding their case.

## 2. REQUIREMENTS FOR SUBMITTING THE APPLICATION

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In order to submit his/her application, the prospective arbitrator is requested to:

1. be an IDI member (ordinary member, country expert, etc.);
2. having paid the IDArb annual subscription fee of € 300,00;
3. fill in the **submission form**, which contains the basic information, and
4. submit the description of a number of **cases regarding distribution he/she has been involved in**, in conformity with the format requested by IDArb, and
5. submit his/her **detailed profile/CV**, which he/she is free to draft as he/she prefers, together with a **photograph** and **two recommendation letters preferably providing reference to his/her experience as arbitrator** if he/she is applying for the list of chair/sole arbitrators.

This information will be published on the IDArb section of the IDI website and will freely available.

### **3. INSTRUCTIONS FOR THE CANDIDATES**

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#### **3.1 Submission form**

The submission form is very simple. All the questions must be answered by yes or no, except for the law firm or company (if any) of the prospective arbitrator and the e-mail address.

All further details will be included by the prospective arbitrator in the detailed profile/CV.

**Experience in distribution.** As regards the box "Experience in the field distribution", we propose to use the terms of the following list in order to warrant the highest possible uniformity:

- Commercial agency
- Intermediaries
- Distributorship
- Sales networks
- Selective distribution
- Franchising
- Distribution antitrust
- Trademark issues
- Department stores
- Distribution joint ventures
- Other

**The terms used in this box must reflect the contents of the cases submitted by the candidate.**

**Litigation and arbitration experience.** IDArb does not require an actual experience as arbitrator, since the actual experience in distribution (e.g. as in-house-counsel) may in certain cases be more important, but it is essential that the type of experience in litigation is clearly evidenced in the arbitrator's profile. Thus a person without any experience in litigation, might in certain cases be the appropriate choice for the role of party arbitrator, in consideration of his specific experience in distribution matters.

**Experience as in-house counsel.** We think that this may be of great importance because this type of experience may warrant a special understanding of the underlying economic and managerial situation.

#### **3.2 The distribution cases**

In order to give a more exhaustive information about his/her specific experience in the field of distribution the prospective arbitrator must submit the **description of a**

**number of distribution cases** (minimum 5 - maximum 10) he/she has been involved in as litigator, arbitrator or in house counsel. The selecting committee believes that this type of information constitutes an **essential characteristic of the project** which is meant to give users a tool for gathering a better understanding the actual experience of the prospective arbitrator.

The cases described by the prospective arbitrator may concern experience gained in litigation (as arbitrator or counsel in arbitration or in court litigation), but they may also describe the experience made in negotiating agreements or preventing litigation through negotiation, settlement agreements, etc..

What is important for those who consult the list is to have a clear understanding about the actual experience in distribution of the prospective arbitrator in order to make sure that he is familiar with the issues that may be raised in the litigation.

**The cases must be submitted in the format recommended by IDArb.**

We enclose some examples of cases submitted by prospective arbitrators which may be of guidance.

**Case 1.** A German company supplied its products on a continuative basis to the German company of a Tunisian distributor, which was reselling them in Tunisia on an exclusive basis. After several years the German company appointed a Tunisian company controlled by the same distributor as its exclusive distributor for Tunisia. The goods continued to be sold to the German company and were distributed by the Tunisian company who took care of promotion, advertising, etc. Some years later, the German company terminated the distributorship agreement with the Tunisian company, without notifying the same to the German company. One of the disputed issues was whether the German company was entitled to a period of notice and/or to a goodwill indemnity.

**Case 2.** A French company had a long-standing relationship with a Chilean distributor. The contract contained a pathological arbitration clause stating that disputes should be decided under the legislation of the International Chamber of Commerce, but not by the courts of the respective parties. The distributor commenced the arbitration before the ICC, but the supplier argued that there was no valid arbitration clause. The arbitrator had to decide whether the parties validly submitted the dispute to ICC arbitration and in the affirmative case, which law was to be applied. The arbitrator accepted jurisdiction and decided to apply the Unidroit Principles.

**Case 3.** An Austrian company appointed a franchisee in Romania. The contract provided that the franchisee should purchase the goods from the franchisor's master franchisee appointed for Romania. Soon after signing the contract, the franchisee objected that the prices of the products were too high and asked to be authorized to purchase them from third parties, which authorisation was refused. Thereafter the franchisee ceased to purchase the goods and the contract was *de facto* terminated. The franchisor requested the payment of a penalty for violation of the post-contractual non competition clause which was awarded. A claim regarding the insufficient transformation of the store was rejected as well a claim for violation of the rules on unfair competition since the arbitration clause (regarding "disputes arising from this franchise agreement") did not cover non-contractual claims.

**Case 4** A company had invited tenders for the construction of 720 kms of gas pipelines and associated facilities in South-East Asia. An intermediary agreed to provide its services to assist a European company in being awarded the contract, which was the case. The pipeline was completed but many difficulties occurred during construction, leading to litigation and an additional payment to the contractor. The intermediary's commission had to be calculated on the total value of the contract and the arbitral dispute between contractor and intermediary concerned the amount due to the latter (including the argument that it should be reduced because

it was excessive in regard of the services rendered). A preliminary award has decided about the law applicable to the dispute.

**Case 5.** A French company signed a trade agreement with a Portuguese company appointing such company as exclusive distributor for its products in Portugal. The agreement was entered into in the year 2000 for a fixed term of 8 years, renewable in writing prior to the end of its term. A few months before the end of the term, the distributor informed the French company of the re-organisation of its group structure following the acquisition of its mother company by a Dutch group. It therefore asked to assign the ongoing agreement to another Portuguese company which the French company refused. However, the French company accepted to enter into negotiations with the new Portuguese company in order to enter a new distribution agreement. During such negotiations and in spite of the expiration of the initial agreement and the refusal of assignment, the French company sold its products to the new Portuguese company who distributed and promoted them in Portugal. One year later, the negotiations failed and the French company informed the Portuguese company of the end of their commercial relationship, giving a six-month notice. The Portuguese company claimed that the commercial relationship had been continued and sustained since the year 2000, date of the initial trade agreement, and that it was entitled under French law to a notice period not less than 15 months or an appropriate indemnity

**Case 6.** A Swiss company had a long-standing relationship with a Greek distributor. The fixed-term contract, subject to Swiss law, was renewed twice by written agreement between the parties. Towards the end of the third term, the performances of the Greek distributor were disappointing and the parties tried to renegotiate the terms of the contract. The negotiations failed and the contract was not renewed. The Greek distributor claimed a goodwill indemnity and an indemnity for *culpa in contrahendo* for breaking off the negotiations. The Swiss company filed a counterclaim, alleging that the Greek distributor had invoiced expenses for promotion and advertising which were unjustified. There was also a trademark issue, the Greek distributor launching its own line of products, similar to the contractual products and with a similar trademark. The trademark has been challenged before the European and national trademark offices and the Greek distributor's new supplier (in Holland) as well as the supplier of its packaging (in Denmark) forbidden to supply under the similar trademark.

### 3.3 The detailed profile/CV

While the submission form must strictly follow the format requested by IDArb, in order to warrant uniformity of the presentation, the detailed profile can be drafted freely by each prospective arbitrator.

The selecting committee reserves the right to verify the profile, but will not interfere with its contents unless in very exceptional cases.

## 4. REQUIREMENTS FOR REMAINING ON THE LIST OF IDARB ARBITRATORS

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In order to remain on the list, if selected, the arbitrator is requested to pay the IDArb annual subscription fee of 300€.

The Selecting Committee is in charge of accepting or revoking arbitrators for the IDArb list of arbitrators.