



International Distribution Institute

Organizing the termination of agency and distributorship agreements

The critical issues

2007 Annual Meeting of the International Distribution Institute

FRIDAY 15 JUNE AND SATURDAY 16 JUNE 2007, VIENNA (AUSTRIA)

The **International Distribution Institute (IDI)**, the leading organisation dealing with the law of international distribution, will hold its 2007 annual conference in Vienna.

The conference is addressed to **lawyers and businessmen** involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of «hot» issues which have been identified between the most topical themes of this year.

The first session (Friday, 15 June) is devoted to a number of selected issues regarding **termination of agency and distributorship agreements**, which are still one of the main issues (if not the main issue) in this field.

The purpose of this session is analyze a number of critical issues regarding contract termination, which are often overlooked, but which are nevertheless of fundamental importance for those who actually draft and manage agency and distributorship contracts, like for example:

- the determination of a **reasonable period of notice**, especially for distributorship contracts for which no minimum periods of notice are provided by law;
- the means of **communication of the termination notice** and their effectiveness;
- **what the parties may and may not do during the notice period** (e. g. seeking a new counterpart, informing customers, etc.);
- how to determine **circumstances which justify termination for cause** and how they may be included into the contract;
- in which cases **termination for non attainment of agreed turnover may exclude the goodwill indemnity**.

The second session (Saturday June 16, morning) will deal with three parallel **workshops** on the following themes:

- **Update of distribution law and jurisprudence in Central Europe;**
- **Antitrust rules applicable to franchising agreements;**
- **Institutional arbitration in agency and distribution contracts.**

More details about these events can be found in the following pages as well as in the IDI website (www.idiproject.com)

FRIDAY, 15 JUNE 2007

Termination of agency and distributorship agreements: the critical topics

Morning session: Termination with notice

CHAIRMAN	Klaus Meyer Swantee , Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council
09:15-09:30	Welcome
09:30-09:50	Organizing contract termination in agency and distribution contracts: the appropriate contractual solutions. The choice between contract for a fixed term and contract for an indefinite duration. Automatic renewal clauses. What can be deemed a reasonable notice period, especially for contracts (like distributorship) where this is not provided by law. Possible overlap between new and old agent where goods are sold by season and possible contractual solutions. Clauses which cancel the exclusivity during the termination period. Klaus Meyer Swantee , Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council
09:50-10:10	Communication of the termination notice and connected issues. Communication of termination: means of communication, proof that it has been received, time when the termination notice becomes effective. Requiring special formalities (e.g. letter with return receipt) and connected risks. Problems arising when telefax and e-mail is used. Gustav Breiter , Viehböck Breiter Schenk & Nau, Vienna
10:10-10:30	Clauses which entitle a party to cancel the termination period by paying an indemnity. Are clauses of this type lawful? How to calculate the indemnity: commission earned in the previous year (agents); other criteria (distributors)? Ignacio Alonso , Advocacia Abogados, Madrid
10:30-11:00	Coffee break
11:00-11:20	Obligations of the parties during the termination period. The period between the termination notice and the actual end of the contract is a very critical one: parties must continue performing the contract while knowing that it will end soon and that they should look for another partner. Deciding which actions are lawful and which not is one of the basic issues for which the answers are mainly found in the general principles of contract law and jurisprudence. Oswaldo Marzorati , Allende & Brea, Buenos Aires
11:20-12:15	PANEL on obligations of the parties during the termination period. Which actions are lawful and which are not in this critical period? <ul style="list-style-type: none">- Right of the parties to look for a new counterpart and negotiate the respective agreement. Which information can be disclosed to a prospective counterpart in this period? Can the parties sign an agreement which will enter in force after the end of the termination period?- Are parties entitled to Inform customers that the contract will be terminated and prepare the market for the successor?- Can the agent/distributor refuse performance of onerous obligations and can the principal limit the supply of new products (or new collection of samples) and modify payment conditions? CHAIRMAN: Erwin Gärtner , Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council Gustav Breiter , Viehböck Breiter Schenk & Nau, Vienna Inga Karulaityte-Kvainauskiene , Proventus Law Firm, Vilnius Ingrid Meussen , Lafili, Van Crombrughe & Partners, Brussels Petr Mrázek , Vitek & Mrázek Law Office, Prague
12:15-13:00	Discussion
13:00-14:00	Lunch

Afternoon session: Termination for cause (with immediate effect)

- 14:00-14:20 **The legal framework for earlier termination (without notice).**
The principles that a contract can be terminated without notice in case of material breach or exceptional circumstances. Which circumstances justify earlier termination under the various domestic laws (and jurisprudence)? To what extent can the parties agree in the contract which circumstances allow immediate termination for breach?
Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Chair IDI; Chair, ICC Commission on Commercial Law and Practice (CLP)
- 14:20-14:40 **Drafting earlier termination clauses.**
Different types of earlier termination clauses. The clause of the IDI model contract. Clauses which give the other party the option to remedy the breach. The reference to "listed" breaches.
Silvia Bortolotti, Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary General of IDI
- 14:40-15:00 **Termination for cause and the agent's right to termination indemnity.**
In many countries (and especially in the EU) the agent loses his right to indemnity in case of termination for breach by the principal. However, not always circumstances which justify earlier termination are so important as to exclude the indemnity. In particular which circumstances listed in the contract as entitling to earlier termination will exclude the agent's right to indemnity? And, on the other side, which circumstances may justify earlier termination by the agent without losing his right to indemnity?
Edward Miller, Reedsmitth, London
- 15:00-16:00 **PANEL on earlier termination for non attainment of agreed turnover. Can the non-attainment justify earlier termination? Is it possible to exclude the agent's right to indemnity?**
It is common practice to include in agency and distribution contracts minimum turnover clauses which provide that in case of non attainment the principal/supplier may terminate the contract without notice and without indemnity (in case of agency). However, it is not certain whether such clauses are effective since the non-attainment of the target may not imply a breach of contract which would justify the earlier termination and the loss of the indemnity. The panel will discuss the effectiveness of these clauses in different jurisdictions.
CHAIRMAN: Didier Ferrier, Professor of Law, University of Montpellier; Vice.Chair IDI
Piret Luiga, Law Office Tark & Co, Tallin
Olga Szejnert, Drzewiecki, Tomaszek & Partners, Warsaw
Jaap van Till, Van Till Advocaten, Amsterdam
Spyridoula Tsirou, Tsirou Law Office, Athens
- 16:00-16:30 **Discussion**

AFTER THE AFTERNOON SESSION THE IDI COUNTRY EXPERTS WILL BE AVAILABLE FOR INDIVIDUAL CONTACTS WITH THE PARTICIPANTS.

The updated list of the country experts who will be present at the conference for individual contacts can be found at <http://www.idiproject.com/conference-contacts.html>.

A form for requesting a meeting with the expert(s) will be included in the papers handed out at the conference.

General meeting of the members of the International Distribution Institute (17:00-18:30)

In this general meeting, to which also non members are invited, the officers of IDI will inform the members about the current situation of IDI: the results achieved in 2006 and the projects for the following year.

The participants will be asked to give their opinion about the activity of IDI and make suggestions for the future.

SATURDAY, 16 JUNE 2007

FIRST WORKSHOP

Update of distribution law in Central Europe

- CHAIRMAN:** Erwin Gärtner, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council
- 09:30-09:50 **Developments of agency and distribution in Poland.**
Olga Szejnert, Drzewiecki, Tomaszek & Partners, Warsaw
- 09:50-10:10 **The new laws on agency in Bulgaria and Romania.**
Erwin Gärtner, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council
- 10:10-10:30 **Recent developments in the Czech Republic.**
Petr Mrazek, Vitek & Mrázek Law Office, Prague
- 10:30-11:00 **Coffee break**
- 11:00-11:20 **Distribution laws in the Baltic countries.**
Piret Luiga, Law Office Tark & Co, Tallin
- 11:20-11:40 **Agency and distribution contracts in Russia and Ukraine.**
Tatyana Slipachuk, Vasil Kisil and Partners, Kiev
- 11:40-12:00 **Developments of agency and distribution in Hungary.**
Agnès Szent-Ivany, Sándor Szegedi Szent-Ivány Komáromi Eversheds Attorneys at Law, Budapest
- 12:00-12:30 **Discussion**

SECOND WORKSHOP

Distribution contracts and arbitration. How to deal with small agency and distribution disputes

- CHAIRMAN:** Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Chair IDI; Chair, ICC Commission on Commercial Law and Practice (CLP)
- 09:30-10:00 **Is it possible to set up a really effective fast and simplified arbitration procedure for small disputes? The example of the Piedmont Arbitral Chamber.**
Arbitration is certainly the best system for resolving distribution disputes. It offers the possibility to select arbitrators having real experience in the field, to manage the procedure in a neutral and relatively informal way, etc. However, if the dispute is small (and this happens often, particularly within agency or franchising agreements) arbitration may be too burdensome. In order to be able to use arbitration also in these small disputes fast (and simplified) procedures may be an interesting alternative.
Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Chair IDI; Chair, ICC Commission on Commercial Law and Practice (CLP)
Daniela Cena, Piedmont Arbitral Chamber, Torino
- 10:00-10:30 **The recourse to arbitration in disputes with commercial agents and distributors. A practical experience.**
Klaus Meyer Swantee, Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council
- 10:30-11:00 **Coffee break**

- 11:00-11:45 **PANEL on the experience and arbitral case law.**
 The members of the panel will exchange views on the experience made within different arbitral institutions when dealing with distribution contracts.
Emmanuel Jolivet, General Counsel, ICC International Court of Arbitration
Werner Melis, President, International Arbitral Centre of the Austrian Federal Economic Chamber
Benedetta Coppo, Chamber of National and International Arbitration of Milan
Marie Öhrström, Assistant Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce
- 11:45-12:30 **Discussion**

THIRD WORKSHOP

Franchising and antitrust rules, with special reference to the rules applicable in the European Union

CHAIRMAN: **Didier Ferrier**, Professor of Law, University of Montpellier; Vice.Chair IDI

09:30-09:50 **The European rules on competition applicable to franchising contracts. The main issues.**

The principles stated by the Court of Justice in the *Pronuptia* case. The block exemption (Regulation 2790/1999). The rules on selective distribution applicable to franchising contracts. Non competition obligations during the contract and after its expiry. Territorial limitations. Recommended resale prices.

Didier Ferrier, Professor of Law, University of Montpellier; Vice.Chair IDI

09:50-10:10 **Non-competition obligations of the franchisee.**

The obligation not to deal with competing franchising networks (in the contractual territory and elsewhere). The obligation not to sell any products (whether competing or not) not authorized by the franchisor. Non-competition obligations for the period after the termination of the franchise.

John Pratt, Hamilton Pratt, London

10:10-10:30 **Clauses limiting the franchisee's freedom to sell the contractual products.**

Prohibition to sell outside the network and consequent application of the rules on selective distribution. Sales to other members of the network: how to avoid abuses without breaching the EU rules on competition. Sales to final users through Internet: what limitations can be imposed upon the franchisee?

Marco Hero, Tigges Rechtsanwälte, Düsseldorf

10:30-11:00 **Coffee break**

11:00-11:45 **PANEL on recommended prices and price fixing.**

When can the franchisor fix resale prices (goods of the franchisor sold by franchisee under a commission contract?). In which cases recommended prices are close to fixed prices (e.g. situations where the franchisee is induced not to use the right to grant discounts).

Stefano Artuso, General counsel Benetton Group, Treviso

Daria Sauer, Fidal Paris

Claudia Kolb, Legal and corporate department, Gucci Spa

11:45-12:30 **Discussion**

PRACTICAL INFORMATION
2007 IDI CONFERENCE: TERMINATION OF AGENCY AND DISTRIBUTION AGREEMENTS
(FRIDAY 15 JUNE 2007 - SATURDAY 16 JUNE 2007)

Venue (Friday 15): Bank Austria Creditanstalt
Festsaal
Am Hof 2
1010 Vienna

Venue (Saturday 16): Siemens Forum Vienna
Dietrichgasse 25
1030 Vienna
Underground: Kardinal-Nagl-Platz (U 3)

Language: English

Documentation: A CD-Rom containing all documents discussed at the conference.

Fee:

- 500 € first participant;
- 200 € for additional participants within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code);
- 150 € for IDI members having a valid subscription on the day of the conference.

The fee includes the coffee break, lunch and documentation.

Continuing Legal Education / Continuing Professional Development Credits

CLE/CPD Credits are granted for this event by the following countries:

United Kingdom (General Counsel of the BAR)

France (EFB-Paris)

Belgium (Ordre des barreaux francophones et germanophone): 9 credits

Indiana Bar: 8.8 credits

Missouri Bar: 9.6 credits

Nevada Bar: 13.0 credits based on full attendance at program.

Vermont Bar: 8 general credits

Netherlands Bar: Credits available upon individual attorney application.

Registration and cancellation

Registration on-line: Registration can be made through the IDI website, at the page:

<http://www.idiproject.com/conference-registration.ucw>

In that case, you can pay with credit card or by bank transfer. After complete payment, you will receive a confirmation of your registration by e-mail or fax.

Registration by fax: Alternatively, you can fill in the registration form, and send it by fax to:

IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
fax: + 39 011 574 11 41

In case of registration by fax, payment shall be made by bank transfer and confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.

Payment: Credit card (only for on-line registration) or bank transfer.

NO CHEQUE PAYMENTS WILL BE ACCEPTED.

Cancellation: Cancellation request received in writing by IDI Project on or before 5 June 2007 will be subject to a 20% administration charge of the total fees paid. After that date no refunds are possible.

Hotel Accommodation

Accommodation is not included in the registration fee.

For your information, the following hotels are close to the venue of Friday 15:

<http://marriott.com/hotels/travel/vieat-vienna-marriott-hotel/>

www.hotel-amadeus.at

www.hotel-wandl.com

www.hotel-marcaurel.com

REGISTRATION FORM

First Name Last name
Company Address
ZIP/ Postal code City
Country Value Added Tax (VAT) Code
E-mail Phone Fax.....

WORKSHOPS (Saturday, 16 June 2007):

Please specify to which workshop you would like to attend (only one per person):

- I will attend the FIRST WORKSHOP: Update of distribution law in Central Europe.
- I will attend the SECOND WORKSHOP: Distribution contracts and arbitration. How to deal with small agency and distribution disputes.
- I will attend the THIRD WORKSHOP: Franchising and antitrust rules, with special reference to the rules applicable in the European Union.

FEES (in case of more participants, please fill in a separate form for each participant)

- IDI Conference (15-16 June 2007):
- € 500: First participant
 - € 200: Second participant
 - € 200: Third participant
 - € 150 IDI member (subscriber), having a valid subscription on the day of the conference.

Please add 20% (Italian VAT) to your payment, if you are in Italy.

TOTAL AMOUNT: €:

PAYMENT (NO CHEQUES PAYMENTS ACCEPTED)

Please make a bank transfer marked «15-16 June 2007 Conference», including a clear reference to the name of the participant. The bank transfer details are the following:

Bank: Banca Sella, Piazza Castello, Torino (Italy)
Account Name: IDI Project s.r.l.
Account Number: 052879649600
ABI: 03268 CAB: 01000
IBAN: IT86X0326801000052879649600
SWIFT: SELB IT 2B

Please complete this form and return it, with your payment made out to:

IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
Fax: + 39 011 574 11 41

Date

Signature

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of the Italian Legislative Decree 196 of 2003, by sending an informal request to privacy@idiproject.com