



International Distribution Institute

Choosing effective dispute resolution clauses in distribution

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International Distribution and Franchise Agreements

The supplier/franchisor's perspective. How to combine the following opposite needs:

- Preferable to avoid the franchisee/distributor's Courts;
- Need to get easily and immediately interim reliefs
- Need to seek payments from the distributor/franchisee (for purchased goods, royalties, etc.)

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Arbitration

- Pros and cons
- Effectiveness of the arbitration clause
- Recognition and enforcement of the award

- Interim reliefs measures:
 - Granted by arbitrators
 - Granted by local Courts

- Getting payments from the distributor/franchisee

Clause on interim measures / arbitration

“Article ____ here above shall not prevent either Party from having recourse to a court of competent jurisdiction for the purpose of seeking urgent conservatory or interim measures, being specified that the arbitral panel shall also have the power to order such measures.”

Jurisdiction

- Pros and cons (jurisdiction vs arbitration)
- Defensive vs. offensive strategy
- Enforcement of the Court decision

Negotiation of the clause:

- «Neutral» solution (third country's forum)

Mixed solutions: Arbitration/Jurisdiction clauses

All disputes related to the franchise agreement are subject to AAA Arbitration, but the franchisor has the right to start court proceedings against the franchisee, for recovering amounts due by the franchisee in connection with the franchise agreement.

- Risk of invalidity or ineffectiveness
- How to manage the relevant disputes (e.g. possible counterclaims based on the franchise agreement)?

Alternatives clauses?

Notwithstanding Article ____, each Party may bring an action against the other Party before any court of competent jurisdiction in the domicile of the defending Party, the applicable law being that of the Country of domicile. Should any such action be brought before any Court in any Country pursuant to this clause then neither Party may refer any matter that is the subject of such action to the Arbitral Tribunal, either during the proceedings or after judgement.



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Thanks for your kind attention!

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