



International Distribution Institute

Pro's and con's of a negotiated termination

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The normal termination procedure

- Sending a termination letter indicating date on which termination will be effective.
- Indicating reasons for termination
 - Termination with period of notice
 - Termination for cause

Advantages of “normal” termination

- Terminating party takes a clear position
- After the termination has been notified, there is less space for objections by the terminated party.
- In case of termination without notice (for cause) termination will be effective before discussing with the other party.

Risks arising in “normal” termination

- The letter may contain statements which are not advisable.
 - Indication of reasons that do not justify termination or cause.
 - No indication of reasons that could justify termination
 - Wrong calculation of the period of notice (contracts with automatic renewal)

Advantages of negotiated termination (1)

- The terminating party may wish to leave space for a possible continuation of the contract, at different conditions.
- The terminating party wishes to negotiate a number of critical issues (period of notice, indemnity, post term non-competition clause) before involving a litigation lawyer.

Advantages of negotiated termination (2)

- Negotiating a shorter period of notice, or a fixed date on which the termination will be effective
- Agreeing on an indemnification linked to obligations of the terminated party:
 - Assistance in transferring customers
 - Facilitating a smooth transfer of business to the successor

Advantages of negotiated termination (3)

- Is it possible to agree on the agent's indemnity before actual termination of the agreement?
- Post-term non competition clause
 - Contractual indemnity (in addition to indemnity possibly due by law)
 - Payment of remuneration after end of the contract?

Advantages of negotiated termination (4)

- A specific case: immediate termination of a German distributor without sufficient reasons for termination.
- Under German law the distributor may claim that the contract continues until the end of the period of notice.
- If this is not acceptable, the only way is to discuss the issue before.

Conclusions

- No general indications to follow.
- Decisions to be taken case by case.
- Need to consider the option of negotiation before deciding the termination.



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Thank you for your kind attention

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