

# Termination of an international distribution agreement

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Governing law to an international distribution agreement According to French private international law rules, the applicable law to contract is the domestic law chosen by the parties within the agreement. In the absence of choice of law, the applicable law is the law of the country with which it is closely connected and it is presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporated, its central administration. If French Courts estimate that there is no binding agreement regarding the governing law, they will have to apply the law of the country with which it is closely connected. Regarding distribution agreements, in the absence of choice of law by the parties within the agreement, the French Supreme Court considers that the most closely connected law is the law where the manufacturer is domiciled and not the law of the distributor.

However, the Court of Appeal in Paris seems to have a different approach with selective distribution agreements (being in the case in point a perfume distribution agreement) and recently held that the applicable law to the termination of such a contract is the law of the distributor. However, French distribution law provides specific regulation about competitive unfair practices and notably the termination of distribution agreements. Article L.442-6 of the French Commercial Code states that: "The following acts committed by any producer, trader, manufacturer or person listed in the trade register render the perpetrator liable and entail the obligation to redress the prejudice caused: (5) Suddenly breaking off an established business relationship, even partially, without prior written notice commensurate with the duration of the business relationship and consistent with the minimum notice period determined by the multi-sector agreements in line with standard commercial practices. When the business relationship involves the supply of products bearing the distributor's brand, the minimum notice period is double that which would apply if the products were not supplied under the distributor's brand. In the absence of such agreements, the decrees issued by the Minister for the Economy may determine a minimum notice period for each product category, taking due account of commercial practices, and may lay down conditions for the severing of business relations, paying due regard to their duration. The foregoing provisions do not affect the right to cancel without notice in the event of the other party failing to discharge its obligations or in the event of force majeure". It might be argued that such a regulation, which relates to competitive practices having effect in France, is a mandatory rule and should be applied by a French Court notwithstanding the law chosen by the parties. Financial consequences of termination of the contract by the manufacturer under French law French law does not provide specific provisions providing a right of compensation for termination of a distribution agreement. The termination of the distribution agreement per se does not entitle the distributor to claim damages. As the distributor is regarded as being an independent seller, he cannot claim an indemnity for loss of the clients (called the "clientele").

Reasonable notice period French law only requires that a reasonable notice period has been given to the distributor. The assessment of what is a reasonable notice period depends on circumstances (length of the relationship, weight of the relationship within the business of the distributor etc...) and is a matter of facts subject to Courts final evaluation. However six months could be regarded as a reasonable notice period. If the French Courts consider that a reasonable notice period has not been given the distributor could claim for damages. On that basis, for the French Supreme Court, the amount that could be awarded should only be, in principle, the effective loss, which does not mean the loss of turnover but the loss of gross margin that the distributor would have expected during the length of the notice period which was to be fulfilled. Nevertheless, Commercial Courts and also Court of Appeal do not necessarily follow such a rigorous method to calculate damages and sometimes consider that the loss is not only the loss of gross margin during the notice period which should have been fulfilled but also costs of disorganization of the business of the distributor, costs of specific investments definitely lost, costs of stocks that were made and more generally loss of turnover. Moreover, French Court could also take into account the level of economical dependence of the distributor vis-à-vis the manufacturer to assess the duration of the notice period and the amount awarded.