

# Termination of distributorship agreements

Ecem Yıldırım of Apak Uras outlines how distributorship agreements are dealt with under Turkish law

## a) GENERAL EXPLANATIONS

We are living in a world where, day by day, customers' demands for more products that are not manufactured in their own countries increase. Furthermore, the continuing growth in the financial world has also led businesses to expand into new geographical locations. As a result of this, in order to fulfil the demands of their customers and businesses' expansion targets, more and more companies prefer distributorship agreements as a way to enter into new markets. Distributorship agreements can be defined as agreements in which the supplier and the distributor agree on the supply of certain products to the distributor who will be selling, promoting and marketing such products within a specific region. In these type of agreements, the distributor acts on his own behalf and account, and aims to increase the sale of the products in the specified region in order to gain more revenue over the purchase prices.

Distributorship agreements are considered *sui generis* agreements under Turkish Law and as in most countries, they are not directly regulated and defined by the provisions of law in Turkey. Such gap is filled by court precedents, the doctrine in accordance with article 1 of the Turkish Civil Code and the equity principle. Even though Turkish legislation does not include any specific provisions related to the distributorship agreements, in accordance with Turkish doctrine and court precedents, certain provisions set forth for agency agreements shall be applicable to the distributorship relations.

## b) TERMINATION OF DISTRIBUTORSHIP AGREEMENT

The termination of a distributorship agreement can be made by either ordinary termination or extraordinary termination (based on justified reason). In general, ordinary termination is made by notifying the other party in advance whereas the extraordinary termination can be made without complying with any time period.

### Extraordinary termination

Pursuant to Turkish law, the distributor's breach of a primary obligation is evaluated as a justified reason (eg, payment default, the refusal of notifying its business activities, fraudulent conduct). In addition to these, reasons such as non-increase in the sales, marketing and promotion of the product, decrease in the purchasing price of the product and change in the payment method may be signified as examples of justified reasons.

### Ordinary termination

Under Turkish doctrine, in line with the freedom-of-contract principle, parties can include a clause that gives rights to the parties to terminate the agreements with or without any cause. In practice, Turkish law considers a 90-day notification period in advance of the effective date of the termination as a reasonable period to terminate the agreement without cause. Under Turkish doctrine, the courts can at their discretion determine the appropriate time to notify the other party as being six months in respect of agreements executed for more than a five-year period.

## c) DISTRIBUTORS' CLAIMS ARISING FROM TERMINATION

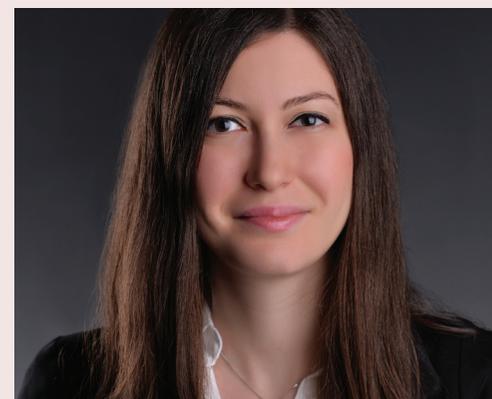
Another typical characteristic of a distributorship agreement is that it can be executed as exclusive and non-exclusive. Depending on the type of agreement, distributors' claims arising from the termination of the distributorship agreements differ accordingly. There are two main different compensation claims that arise pursuant to Turkish law:

### Portfolio compensation

In accordance with article 122/5 of the Turkish Commercial Code, unless deemed inequitable, this provision (claiming portfolio compensation) shall be applicable to the termination of the exclusive distributorship agreements and other similar permanent agreements providing monopoly rights. In order to claim portfolio compensation, the termination of the distributorship agreement by the distributor should be based on a justified reason, or if the distributorship agreement is terminated by the supplier without justified reasons, the payment of this compensation should be equitable, the supplier should continue to receive notable benefit from the clients even after the termination and the distributor should lose its right to receive remuneration.

### Compensation for damages

The distributor can request compensation for his damages, which may include his actual losses and deprived profit. In this context, if the distributor has leased a place or made expenses for promoting activities, etc, considering that the distributorship relation among them will continue, then the distributor can claim compensation for the damages that they have incurred in making these investments.



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## d) CONCLUSION

In summary, both the legislation and the practice of Turkish doctrine draw the path for the termination process of the distributorship agreement. However, as every distributorship agreement constitutes a unique and *sui generis* relationship between the distributor and the supplier, it is vital to consider the period of the distributorship relation, the amount of investment made by the distributor, preparation activities for the relevant markets and products, and the obligations of the parties set forth in the distribution agreement during the termination process.

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