

# Distribution & Agency

*Contributing editor*  
**Andre R Jaglom**



**2018**

GETTING THE  
DEAL THROUGH

GETTING THE  
DEAL THROUGH 

# Distribution & Agency 2018

*Contributing editor*

**Andre R Jaglom**

**Tannenbaum Helpert Syracuse & Hirschtritt LLP**

Reproduced with permission from Law Business Research Ltd

This article was first published in April 2018

For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

Publisher  
Tom Barnes  
[tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

Subscriptions  
James Spearing  
[subscriptions@gettingthedealthrough.com](mailto:subscriptions@gettingthedealthrough.com)

Senior business development managers  
Adam Sargent  
[adam.sargent@gettingthedealthrough.com](mailto:adam.sargent@gettingthedealthrough.com)

Dan White  
[dan.white@gettingthedealthrough.com](mailto:dan.white@gettingthedealthrough.com)



Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3780 4147  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018  
No photocopying without a CLA licence.  
First published 2014  
Fourth edition  
ISBN 978-1-78915-014-8

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between February and March 2018. Be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>Global Overview</b>	<b>5</b>	<b>Japan</b>	<b>70</b>
Andre R Jaglom Tannenbaum Helpern Syracuse & Hirschtritt LLP		Takemi Hiramatsu and Norihiro Ubukata Nishimura & Asahi	
<b>Belgium</b>	<b>7</b>	<b>Korea</b>	<b>77</b>
Olivier Vanden Berghe and Sebastian Tytgat Liedekerke Wolters Waelbroeck Kirkpatrick		Yong Hoon Cho and Byung In (Jared) Lee Kim & Chang	
<b>Brazil</b>	<b>14</b>	<b>Poland</b>	<b>82</b>
Raquel Stein, Erika Donin Dutra, Leticia Diehl Tomkowski, Conrado Steinbruck Frazão and Stephanie Vieira Goulart Souto, Correa, Cesa, Lummertz & Amaral Advogados		Olga Szejnert-Roszak and Magdalena Kowalczyk-Szymańska SWKS Szejnert, Winnicka, Kowalczyk, Sosnowska	
<b>Canada</b>	<b>22</b>	<b>Puerto Rico</b>	<b>88</b>
Bruno Floriani, Marissa Carnevale and Tanya Nakhoul Lapointe Rosenstein Marchand Melançon LLP		Edgardo Cartagena and Gladys Fontánez Morell Cartagena & Dapena LLC	
<b>China</b>	<b>29</b>	<b>Switzerland</b>	<b>94</b>
George Ribeiro and Dominic Hui Ribeiro Hui		Sébastien Gobat and Fritz Rothenbühler Wenger Plattner	
<b>Finland</b>	<b>34</b>	<b>Turkey</b>	<b>100</b>
Patrick Lindgren and Mika Joachim Pöpken ADVOCARE Law Office		Ercüment Erdem and Tuna Çolgar Erdem & Erdem Law Office	
<b>France</b>	<b>42</b>	<b>United Arab Emirates</b>	<b>107</b>
Gilles Menguy GM Avocats		Michael Kortbawi and Michel Abi Saab BSA Ahmad Bin Hezeem & Associates LLP	
<b>Germany</b>	<b>48</b>	<b>United Kingdom</b>	<b>113</b>
Martin Rothermel and Benedikt Rohrßen Taylor Wessing		Michael Dean and Melanie Martin Dentons UK and Middle East LLP	
<b>Greece</b>	<b>56</b>	<b>United States</b>	<b>129</b>
Nancy Gerakini and Nikos Prentoulis Prentoulis Gerakini Law Partnership		Andre R Jaglom, L Donald Prutzman, Michelle Itri and Stacey Usiak Tannenbaum Helpern Syracuse & Hirschtritt LLP	
<b>India</b>	<b>63</b>		
Rahul Chadha, Neeraj Prakash, Ishani Ghosal, Ritesh Anand and Rupali Srivastava Chadha & Co			

# Preface

## Distribution & Agency 2018

Fourth edition

**Getting the Deal Through** is delighted to publish the fourth edition of *Distribution & Agency*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, France, Greece, India, Poland, Turkey and UAE.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Andre R Jaglom of Tannenbaum Helpert Syracuse & Hirschtritt LLP, for his continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
March 2018

# Greece

Nancy Gerakini and Nikos Prentoulis  
Prentoulis Gerakini Law Partnership

---

## Direct distribution

### 1 May a foreign supplier establish its own entity to import and distribute its products in your jurisdiction?

Yes, under the same terms and conditions as Greek natural or legal persons. See also questions 3 and 4.

### 2 May a foreign supplier be a partial owner with a local company of the importer of its products?

Yes.

### 3 What types of business entities are best suited for an importer owned by a foreign supplier? How are they formed? What laws govern them?

Importers owned by foreign suppliers may carry out business in Greece in a variety of legal forms. Most importantly:

- sociétés anonymes (SAs) are regulated by Law No. 2190/1920 and are liable for debts and obligations with their own assets. Shareholders are liable only to the extent of their capital contribution. The minimum capital required is €24,000 (in certain cases, a larger amount may be required). All actions necessary for the establishment of an SA are carried out by a notary public. The establishment of the company is completed upon registration with the General Commercial Register;
- limited liability companies are regulated by Law No. 3190/55 and are liable for debts and obligations with their own assets. Their partners are liable only up to the extent of their capital contribution. They resemble partnerships in the way decisions are made since both the majority of the partners and the majority of the capital is required. The capital is determined by the partners (with no restrictions to the amount). All actions necessary for the establishment of an SA are carried out by a notary public. The establishment of the company is completed upon registration with the General Commercial Register. Foreign partners must acquire a tax registration number in Greece;
- private capital companies are regulated by Law No. 4072/2012. Private capital companies are liable for debts and obligations with their own assets. Partners are liable only up to the amount specifically agreed in the articles of association (partners who participate with a guarantee contribution may assume liability for all the company's debts towards third parties up to the amount of their contribution). The capital is determined by the partners and there are no restrictions to the amount. In principle, the articles of association need not take the form of a notarial deed; a private document suffices. The establishment of the company is completed upon registration with the General Commercial Register;
- general partnerships are regulated by Law No. 4072/2012 and the Greek Civil Code. Partners are personally liable for the debts of the partnership without any limitation. There are no minimum capital requirements. The articles of association must be signed before a notary public and are filed with the General Commercial Registry;
- limited partnerships are regulated by Law No. 4072/2012 and the Greek Civil Code. Partners are liable for the debts of the partnership without any limitation except for the limited partner (at least one) whose liability is limited to his or her capital contribution. There are no minimum capital requirements. The articles of

association must be signed before a notary public and are filed with the General Commercial Registry;

- joint ventures (JVs) are not specifically regulated by Greek law. JVs can be subject to corporate law if the parties decide to carry out commercial activities and form a corporate entity which must be registered with the General Commercial Registry (in this case the provisions regulating general partnerships apply); and
- a branch may be registered under Law No. 2190/1920 (as a branch of a foreign SA) or under Law No. 3190/1955, (as a branch of a foreign limited liability company). A branch of a foreign company may be established in Greece through registration with the Ministry of Development. The branch is administered by an individual (representative) appointed by the foreign company.

### 4 Does your jurisdiction restrict foreign businesses from operating in the jurisdiction, or limit foreign investment in or ownership of domestic business entities?

There are no restrictions on foreign suppliers entering the domestic market. The general principles of free movement of goods, persons, services and capital apply in Greece, as a Member State of the European Union. See also question 1.

Currently, Greece is under a capital controls regime.

### 5 May the foreign supplier own an equity interest in the local entity that distributes its products?

Yes.

### 6 What are the tax considerations for foreign suppliers and for the formation of an importer owned by a foreign supplier? What taxes are applicable to foreign businesses and individuals that operate in your jurisdiction or own interests in local businesses?

Foreign companies usually choose to operate in Greece by establishing subsidiaries or branches. The corporate income tax rate in Greece is 29 per cent. Dividends to non-residents are subject to a withholding tax of 15 per cent. No withholding tax applies to dividends paid by a Greek subsidiary to its EU affiliate (under certain conditions, eg, a 10 per cent shareholding is held for an uninterrupted period of 24 months). The same applies to profits that are credited or remitted by a branch in Greece to its head office abroad.

The withholding tax on interest paid to non-residents is 15 per cent, subject to bilateral tax treaty relief.

The tax withheld in Greece royalties paid to non-residents is 20 per cent, subject to bilateral tax treaty relief.

Payments for services are subject to a 20 per cent withholding tax in Greece (eg, management fees, consultancy fees), unless paid to non-residents with no Greek permanent establishment.

Bilateral tax treaties for the avoidance of double taxation between the country of the supplier and Greece usually regulate all issues regarding the payment of royalties, interest, dividends, capital gains, among others.

A foreign company may be subject to corporate tax in Greece if it obtains 'permanent establishment' in Greece. The provisions of the ITC and the relevant bilateral tax treaties define the term 'permanent establishment'.

Value Added Tax (VAT) in Greece is 24 per cent and applies on the majority of sales of goods and services.

Intra-group transactions must be carried out based on the arm's-length principle (transfer pricing).

A withholding tax is imposed on salaries paid to employees. Moreover, employers must contribute to the social security funds of the employees.

### Local distributors and commercial agents

#### 7 What distribution structures are available to a supplier?

##### Commercial agents

A commercial agent acts in the name and on behalf of the principal (supplier) in exchange for an appropriate commission. Agency agreements are regulated by Greek Presidential Decree 219/1991 (PD 219/1991). As per paragraph 2 article 1 of PD 219/1991, the main characteristics of a commercial agency agreement are: (i) its bilateral character; (ii) the permanency of the relationship between the parties; (iii) the duration of the services rendered by the commercial agent; (iv) the independence and autonomy of the commercial agent's provision of services; and (v) the sale of goods and the rendering of services by the agent on behalf of and in the name of the principal.

##### Distributors and authorised dealers

A distributor is an intermediary between the producer or supplier of a product and third parties in the distribution or supply chain who purchases the products from the producers or suppliers and undertakes to resell them to third parties acting in his or her own name, on his or her behalf and bearing the associated business risks.

##### Franchising

Under franchise agreements, the franchisor licenses to franchisees the 'franchise package' which includes, among others, the franchisor's brand name, its know-how, its technical and business methods and so on and supports the franchisee throughout the duration of the franchise agreement. The franchisee undertakes to operate its business following the instructions and assignments of the franchisor.

##### Commissionaires

Commissionaires are independent merchants whose business consists of buying or selling goods or services (article 90 of the Greek Civil Code) in their own name on behalf of the principal in exchange for an appropriate commission.

Other distribution structures are available to suppliers such as sales representatives (who work in the name and on behalf of their employer), sale under private label, trademark licensing, among others.

#### 8 What laws and government agencies regulate the relationship between a supplier and its distributor, agent or other representative? Are there industry self-regulatory constraints or other restrictions that may govern the distribution relationship?

Agency agreements are regulated by Greek Presidential Decree 219/1991 as amended, which implemented the provisions of Council Directive 86/653.

Distribution agreements and franchise agreements are not regulated in Greece by a specific law (see exemption below with regard to exclusive distribution agreements). The parties have a wide discretion in structuring their contractual relationship.

The following laws may also be relevant to distribution or franchise agreements:

- 3959/2011 Greek Competition Act;
- 4072/2012 On Trade Marks;
- 146/1914 On Unfair Competition;
- 2251/1994 On Consumer Protection;
- 2121/1993 On Copyright; and
- Greek Civil Code.

The provisions of PD 219/1991 may apply, by analogy, to distribution agreements. In particular, article 14 paragraph 4 of Law No. 3557/2007 provides that PD 219/1991 applies to exclusive distribution agreements, in case the distributor acts as part of the sale's organisation of

the supplier. However, the above-mentioned law does not refer to other forms of distribution (eg, selective distribution agreements, franchise agreements).

Greek courts have ruled that PD 219/1991 may apply to distribution agreements under the following circumstances (indictively): (i) the distributor acts as part of the sale's organisation of the supplier, having the same weak position and intense dependency on the supplier as the commercial agent, as well as the same degree of integration in the supplier's network; (ii) the distributor contributes to the extension of the supplier's clientele, undertaking responsibilities similar to those of a commercial agent; (iii) the distributor undertakes a non-compete obligation; (iv) the distributor enjoys a specific protected territory; and (v) the supplier has knowledge of the distributor's clientele and after the termination of the distribution agreement, the distributor delivers to the supplier a list of its clientele.

The answer to the question of whether PD 219/1991 applies to other forms of distribution agreements (including franchise agreements) needs to be considered on a case-by-case analysis of the 'integration' criteria stipulated above.

There are no government agencies specifically tasked to regulate distribution agreements. However, since competition laws, trademark and unfair competition laws and consumer laws are applicable to distribution agreements, the Hellenic Competition Commission ensures compliance with competition law, the General Secretariat of Commerce/Ministry of Development may address trademark matters, and the General Secretariat of Consumer Protection/Ministry of Development monitors compliance with consumer law in Greece.

There are no industry self-regulatory constraints which could govern distribution agreements. The only exception is the Code of Ethics regarding franchise agreements, a self-regulatory instrument of the Greek Franchise Association. The provisions of the Code of Ethics are compulsory for the members of the Greek Franchise Association, but are not legally enforceable.

Several suppliers and distributors have drafted and implemented their own code of ethics and business morals regarding the distribution of their products.

#### 9 Are there any restrictions on a supplier's right to terminate a distribution relationship without cause if permitted by contract? Is any specific cause required to terminate a distribution relationship? Do the answers differ for a decision not to renew the distribution relationship when the contract term expires?

The general principles of Greek Civil law apply to the termination of distribution agreements. For fixed-term agreements, termination takes place when the agreed term expires or when there is due cause for termination. Agreements for an indefinite term can be terminated at any time; however, goodwill and other criteria such as the duration of the agreement may impact the validity of termination.

If PD 219/1991 is applicable, article 8 paragraphs 3 and 4 provides that:

*where a contract is concluded for an indefinite period either party may terminate it by notice. The period of notice shall be one month for the first year of the contract, two months for the second year commenced, three months for the third year commenced, four months for the fourth year commenced, five months for the fifth year commenced and six months for the sixth year commenced and subsequent years. The parties may not agree on shorter periods of notice.*

Moreover, according to article 8 paragraphs 5 and 6 of PD 219/1991:

*If the parties agree on longer periods than those laid down in paragraphs 3 & 4 of PD 219/91, the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent. Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.*

The above provisions apply in agency agreements.

Agency agreements and distribution agreements that fall within the provisions of PD 219/1991 may be terminated immediately without the application of the above-mentioned periods of notice, in case one

party fails to fulfil all or part of his or her obligations or in exceptional circumstances.

**10 Is any mandatory compensation or indemnity required to be paid in the event of a termination without cause or otherwise?**

According to article 9 of PD 219/1991:

*the agent, after termination of the agency contract, shall be entitled to an indemnity if and to the extent that he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers and the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission (profits) lost by the distributor on the business transacted with such customers.*

The agent must notify the principal to this effect within one year of the termination of the agreement.

Where the agency agreement is terminated for due cause by the supplier, the latter is not liable for such indemnity.

Moreover, the agent shall be entitled to compensation for the damage suffered as a result of the termination, particularly when the termination takes place in circumstances depriving the commercial agent of the commission which proper performance of the agency contract would have procured him or her while providing the principal with substantial benefits linked to the commercial agent's activities, and which have not enabled the agent to amortise the costs and expenses that he or she had incurred for the performance of the agency contract on the principal's advice.

No mandatory compensation or indemnity is required to be paid following termination without cause or otherwise in case the provisions of PD 219/1991 do not apply. However, the distributor shall be entitled to compensation for the damage he or she suffers as a result of the termination of his or her relations with the supplier.

**11 Will your jurisdiction enforce a distribution contract provision prohibiting the transfer of the distribution rights to the supplier's products, all or part of the ownership of the distributor or agent, or the distributor or agent's business to a third party?**

Yes, if such prohibitions are stipulated in the distribution or agency agreement.

**Regulation of the distribution relationship**

**12 Are there limitations on the extent to which your jurisdiction will enforce confidentiality provisions in distribution agreements?**

Confidentiality obligations are, generally, enforceable in Greece.

**13 Are restrictions on the distribution of competing products in distribution agreements enforceable, either during the term of the relationship or afterwards?**

**Agency**

A non-compete obligation is common in agency agreements, throughout their duration and, under article 10 of PD 219/1991, for a reasonable period after the termination of the agreement (one year) and as long as the territory covered by the post-term non-compete obligation is the same as the territory of the expired or terminated agreement.

**Distribution**

Distribution agreements are subject to Greek and EU competition laws and the rules on restrictive agreements [Law 3959/2011, articles 101 and 102 of the TFEU, Commission Regulation (EU) No. 330/2010 (Block Exemption Regulation - BER) and the related Guidelines].

Non-compete obligations are obligations that require the buyer to purchase from the supplier more than 80 per cent of his or her total purchases during the previous year of the contract goods and services and their substitutes. If one party's market share exceeds 15 per cent, but not 30 per cent, non-compete obligations are permitted when their duration is limited to five years or less. Post-term non-compete obligations normally are not covered by the BER (unless such obligation is indispensable to protect know-how, the territory covered by

the post-term non-compete obligation is the same as the territory of the expired or terminated agreement, and is limited to a maximum one-year period). If the supplier prevents his or her distributors from buying products for resale from specific competing suppliers, such an obligation cannot enjoy the benefit of the BER. If one party's market share exceeds 30 per cent, non-compete obligations can only benefit from the individual exemption under the strict criteria of article 101(3) TFEU ('efficiency defence'). [Guidelines on Vertical Restraints of 10 May 2010, Section III, paragraph 5(66).]

Moreover, a non-compete clause in a distribution agreement maybe an indication that PD 219/1991 applies and, therefore, the restrictions stipulated above (agency agreement) will prevail.

**14 May a supplier control the prices at which its distribution partner resells its products? If not, how are these restrictions enforced?**

**Distribution**

Resale price maintenance (RPM), namely agreements or concerted practices having as their direct or indirect object the establishment of a fixed or minimum resale price, is a hardcore restriction (article 4(a) BER). In the case of contractual provisions directly setting resale price, the restriction is clear cut. By way of exception, the supplier can plead the efficiency defence. The provision of a list of recommended prices or maximum prices by the supplier to the buyer is not considered in itself as leading to RPM. [Guidelines on Vertical Restraints of 10 May 2010, Section III, paragraph 3(48)]

As regards enforcement, see question 20.

**Agency**

In agency agreements, the principal normally establishes the sales price. However, if an agency agreement falls within article 101(1) TFEU, namely in case the agent bears the risks in relation to the contracts concluded or negotiated on behalf of the principal and in relation to market-specific investments for that field of activity (non-genuine agency agreement), an obligation restricting the agent from sharing his or her commission with the customer would be a hardcore restriction under article 4(a) BER.

**15 May a supplier influence resale prices in other ways, such as suggesting resale prices, establishing a minimum advertised price policy, announcing it will not deal with customers who do not follow its pricing policy, or otherwise?**

**Distribution**

If the supplier provides the distributor with a list of recommended or maximum prices, this (in general) would not lead to RPM. However, indirect means, that is, fixing a maximum discount for a given price 'level', subjecting rebates to the observance of a given price level, and establishing 'supportive' measures, such as an implementation monitoring system, can be used to make maximum or recommended prices work as RPM and, therefore, fall within article 4(a) BER. [Guidelines on Vertical Restraints of 10 May 2010, Section III, paragraph 3(48).]

**Agency**

The principal normally establishes the sales price, as the agent does not become the owner of the goods (see exemption in question 14).

**16 May a distribution contract specify that the supplier's price to the distributor will be no higher than its lowest price to other customers?**

**Distribution**

Price relationship agreements include clauses whereby a seller's price is related to another price (that is, the price offered by other sellers for the same product or the prices offered by the same seller for the same product to other buyers). Across-customers agreements are agreements whereby the seller agrees to tie the price it charges to the buyer or distributor to the prices it offers to other clients. Across-customers policies may raise competition law issues depending on the nature of the seller who offers it, the characteristics of the market affected and the specificities of the relevant agreement.

**Agency**

See question 14.

**17 Are there restrictions on a seller's ability to charge different prices to different customers, based on location, type of customer, quantities purchased, or otherwise?**

Generally, sellers may charge different prices to different customers. However, this differentiation cannot be discriminatory, especially in the case of a selective distribution system or when the supplier enjoys dominance in the relevant market.

**18 May a supplier restrict the geographic areas or categories of customers to which its distribution partner resells? Are exclusive territories permitted? May a supplier reserve certain customers to itself? If not, how are the limitations on such conduct enforced? Is there a distinction between active sales efforts and passive sales that are not actively solicited, and how are those terms defined?**

Agreements having as their direct or indirect object territorial restriction of sales by the buyer are listed in the hardcore restrictions of article 4(b) BER. There are four exceptions, as stipulated at the Guidelines on Vertical Restraints of 10 May 2010, Section III, paragraph 3(50):

- a supplier may restrict active sales by his or her direct buyers to a territory or a customer group that has been allocated exclusively to another buyer or which the supplier has reserved to itself;
- a wholesaler may be restricted from selling to end users;
- an appointed distributor in a selective distribution system may be restricted from selling, at any level of trade, to unauthorised distributors in markets where such a system is operated; and
- a buyer of components supplied for incorporation may be restricted from reselling them to competitors of the supplier.

'Active' sales mean actively approaching individual customers or a specific customer group or customers inside another distributor's exclusive territory or exclusive customer group. 'Passive' sales mean responding to unsolicited requests from individual customers, including delivery of goods or services to such customers.

**19 May a supplier restrict or prohibit e-commerce sales by its distribution partners?**

Internet sales are not considered 'active sales' into other distributor's exclusive territories or customer groups and may not be restricted or prohibited. If a customer visits a distributor's site and purchases a product, this would qualify as a 'passive sale'. On the other hand, unsolicited emails sent to individual customers qualify as 'active sales'. In any case, the supplier may impose quality standards for e-shops, just as for physical shops. An outright ban on internet selling is only possible if there is an objective justification.

An agreement whereby the distributor shall pay a higher price for products intended to be resold online than for products intended to be resold offline is considered a hardcore restriction (passive selling) since it can limit the distributor's access to customers. However, the supplier may agree with the distributor a fixed fee to support the distributor's offline or online sales.

**20 Under what circumstances may a supplier refuse to deal with particular customers? May a supplier restrict its distributor's ability to deal with particular customers?**

A supplier may refuse to deal with particular customers. However, competition law issues may arise if such refusal has no valid justification and leads to discriminatory behaviour towards customers. Refusal to supply may also be prohibited when the supplier has a dominant position (article 2 of Greek Law 3959/2011).

See question 19 regarding restriction of a distributor's ability to deal with particular customers.

**21 Under which circumstances might a distribution or agency agreement be deemed a reportable transaction under merger control rules and require clearance by the competition authority? What standards would be used to evaluate such a transaction?**

A distribution or agency agreement is a vertical agreement. Merger control rules may apply if such relation confers control over another company (control of production, distribution, etc). The competent authority must undertake a thorough analysis to assess whether the

transaction is compatible with effective competition in the relevant market.

**22 Do your jurisdiction's antitrust or competition laws constrain the relationship between suppliers and their distribution partners in any other ways? How are any such laws enforced and by which agencies? Can private parties bring actions under antitrust or competition laws? What remedies are available?**

Competition in the Greek market is primarily protected under Law No. 3959/2011 of the Greek Competition Act, which aims at ensuring effective competition. Article 1 paragraph 1 of Law No. 3959/2011 lists the agreements that have as their object or effect the prevention, restriction or distortion of competition in the Greek territory and are prohibited (price fixing, limitation of production/markets, market sharing, discriminatory behaviour, etc). The prohibition captures both horizontal and vertical agreements. Article 1 paragraph 3 provides for the efficiency defence.

As regards vertical agreements, Commission Regulation (EU) No. 330/2010 (the Block Exemption Regulation) and the related Guidelines apply in Greece, with exclusivity, resale price maintenance, product ties and restriction of passive sales constituting the main points of concern. As for the vertical restraints on the purchase, sale and resale of goods and services within a distribution agreement, the BER applies up to the 30 per cent market share threshold.

Competition law is mainly enforced by the Hellenic Competition Commission (HCC) (and the European Competition Commission). The sectors that attract the HCC's attention are defined in line with its applicable priority system. The law provides for fines upon the violating undertakings and criminal sanctions. Persons damaged due to breach of competition rules may initiate civil proceedings for damages. Despite the lapse of the implementation date, at present Greece has not transposed the EU Damages Directive.

**23 Are there ways in which a distributor or agent can prevent parallel or 'grey market' imports into its territory of the supplier's products?**

In line with EU law, the Greek legal order recognises the EU-wide doctrine of IP exhaustion. IP owners in Greece may rely on such rights to prevent imports of genuine goods from outside the EEA. Intra-EEA parallel imports cannot be prohibited.

**24 What restrictions exist on the ability of a supplier or distributor to advertise and market the products it sells? May a supplier pass all or part of its cost of advertising on to its distribution partners or share in its cost of advertising?**

See question 18.

Advertising and marketing of products are addressed by the Unfair Competition Act (146/1914) that regulates all matters regarding misleading advertising, defamation, exploitation of other parties' goodwill and infringement of third parties' distinctive marks, among others, the Consumer Protection Law (2251/94 as amended) (see question 26) and the relevant Market Regulation Code that regulates all matters relating to prices, advertising, labelling and so on.

The parties are free to agree on the cost of advertising.

**25 How may a supplier safeguard its intellectual property from infringement by its distribution partners and by third parties? Are technology-transfer agreements common?**

Suppliers may safeguard their intellectual property primarily via registration thereof, where applicable, in Greece, the European Union or internationally designating Greece or the EU. Inclusion of appropriate contractual clauses with local distributors is also a sound strategy, particularly as regards non-registrable IP, for example, copyright or trade secrets.

Technology transfer agreements are not uncommon in Greece.

**26 What consumer protection laws are relevant to a supplier or distributor?**

The basic consumer protection legislation in Greece is Law No. 2251/1994. It regulates various consumer issues, such as general terms and conditions in consumer contracts, distance selling,



### Update and trends

There are currently no proposals for new legislation or revision of existing legislation.

Improvement of timing of judicial enforcement of contracts has led to reforms in civil procedure in recent years, including establishment of compulsory mediation for certain types of civil disputes. The actual effect of these wide-ranging measures is yet to be determined.

product safe use information obligations, mandatory guarantees and after-sales service, misleading and comparative advertising, product liability, unfair commercial practices and so on.

E-commerce is regulated under Presidential Decree 131/2003, transposing Directive 2000/31/EC. As this piece of legislation regulates only partially the commercial relationship between the seller or supplier of goods or services and the purchaser or user, all other aspects of this same commercial relationship are regulated by the provisions of the Greek Civil Code, as well as by the legislation for protection of consumers, manufacturer's product liability and unfair competition.

Finally the Code of Consumer Ethics regarding e-commerce sets out the principles and defines the minimum rules of business ethics that suppliers and distributors should preserve towards consumers.

### 27 Briefly describe any legal requirements regarding recalls of distributed products. May the distribution agreement delineate which party is responsible for carrying out and absorbing the cost of a recall?

Article 540 paragraph 1(i) of the Greek Civil Code provides that, in case of liability of the seller for a product defect or if the product is not fit for purpose and, in general, when the product does not comply with the pre-agreed terms of the sale agreement, the buyer can request from the seller the recall of the product and either the repair of its defect or replacement with a new one.

Moreover, article 7 paragraph 6 of Law No. 2251/1994 provides that products that may entail serious and direct risk to consumers' safety and health (even if they are used in normal circumstances) should be recalled by the producer or may be confiscated by the authorities.

The distribution agreement can delineate which party is responsible for a recall and its costs.

### 28 To what extent may a supplier limit the warranties it provides to its distribution partners and to what extent can both limit the warranties provided to their downstream customers?

Articles 534 to 561 of the Greek Civil Code provide that the seller (supplier or distributor) is liable for product defects and lack of the agreed product attributes. The buyer (distributor or downstream customer) may claim such liability within two years for movables and five years for immovables of the day of delivery.

Law No. 2251/1994 offers end-consumers a right to a minimum guarantee of two years on goods. The seller is obliged to provide the consumer in writing with all the information about the safe use and preservation of the product. The provisions of Law No. 2251/1994 relating to guarantees are mandatory law.

Any additional rights offered by a guarantee from a seller are supplementary to the rights as provided by legislation.

### 29 Are there restrictions on the exchange of information between a supplier and its distribution partners about the customers and end-users of their products? Who owns such information and what data protection or privacy regulations are applicable?

Greece transposed the EU Data Protection Directive 95/46/EC via Law No. 2472/1997 on the Protection of Individuals with regard to the Processing of Personal Data, as amended.

The Hellenic Data Protection Authority (HDPa) is responsible for overseeing the Data Protection Law. The data controller must notify the HDPa in writing about the establishment and operation of a data archive or the commencement of data processing.

Collection and processing of personal data is permitted only when the data subject has given his or her consent; and there are limited

exceptions to this rule. The collection and processing of sensitive data is prohibited. However, exceptionally, the collection and processing of sensitive data, as well as the establishment and operation of the relevant data archive, is permitted by the HDPa, again in special strict circumstances.

In distribution agreements, the distributor is generally the owner of the information.

The transfer of personal data is permitted for EU Member States and for non-members of the European Union following authorisation by the HDPa if it deems that the country in question guarantees an adequate level of protection. An authorisation is not required if the European Commission has decided, on the basis of the process of article 31, paragraph 2 of Directive 95/46/EC, that the country in question guarantees an adequate level of protection, in the sense of article 25 of the aforementioned directive. The transfer of personal data to a non-member state of the EU that does not ensure an adequate level of protection is allowed, following authorisation by the HDPa, under exceptional conditions, including where the data subject has consented to the transfer and the transfer is necessary to protect the vital interests of the data subject.

The above will apply until 25 May 2018, when the new EU Data Protection Regulation (GDPR) will take effect. The GDPR refers to data controllers and processors within the European Union and outside the European Union if their processing or monitoring activities relate to the offering of goods and services to EU citizens or data subjects. In certain circumstances, data controllers and processors must designate a data protection officer as part of their accountability obligations to demonstrate compliance.

Data processors must maintain a written record of processing activities on behalf of each controller, appoint a representative in certain circumstances and notify the controller if they become aware of a personal data breach.

A data subject's consent must be free, specific, informed, unambiguous and easy to withdraw and to give. Data controllers must continue to provide transparent information to data subjects and notify data breaches to the HDPa. Moreover, a significant change for data controllers is the removal of the general requirement to notify the HDPa of a controller's data processing activities and seek approval in specific circumstances. As regards international data transfer, the GDPR contains essentially the same provisions as set forth in the Directive.

### 30 May a supplier approve or reject the individuals who manage the distribution partner's business, or terminate the relationship if not satisfied with the management?

Yes, such provisions are common in distribution agreements.

### 31 Are there circumstances under which a distributor or agent would be treated as an employee of the supplier, and what are the consequences of such treatment? How can a supplier protect against responsibility for potential violations of labour and employment laws by its distribution partners?

Suppliers and distributors are regarded as separate, independent business partners. If the distributor is in control of its business, sells the products in its own name and for its own account, and controls its sale prices and working hours, the chances that it may be considered as an employee are limited.

However, under certain circumstances, the distributor or agent may be deemed to be the supplier's employee and the Greek employment law could apply, for example, if the distributor or agent is financially dependent on the supplier or has no employees and the supplier is its only supplier, or the degree of supervision of the distributor or agent and its employees by the supplier goes beyond what is necessary.

Qualifying as an employee has consequences regarding protection in case of termination of the agreement, payroll, working time limits, payment of social security contributions, participation in the collective labour agreements and so on.

A distributor cannot be held liable for potential violations of labour and employment laws by its distribution partner.

**32 Is the payment of commission to a commercial agent regulated?**

Yes. According to articles 5 and 6 of PD 219/1991:

*a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carries on his activities. If there is no such customary practice a commercial agent shall be entitled to reasonable remuneration taking into account all the aspects of the transaction.*

A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract where the transaction has been concluded as a result of his or her action; or where the transaction is concluded with a third party whom he or she has previously acquired as a customer for transactions of the same kind. Under article 7(1) of the PD 219/1991, the commission is due as soon as and to the extent that one of the following occurs: (i) the principal has executed the transaction; (ii) the principal should, according to his or her agreement with the third party, have executed the transaction; and (iii) the third party has executed the transaction.

**33 What good faith and fair dealing requirements apply to distribution relationships?****Distribution**

Under article 288 of the Greek Civil Code, parties must fulfil their contractual obligations 'in good faith' and in 'established fair trade practices'. Good faith is a binding criterion in assessing the conduct of the contracting parties in a distribution agreement.

**Agency**

In performing his or her activities, a commercial agent must consider the principal's interests and act dutifully and in good faith, namely make appropriate efforts to negotiate and conclude the relevant transactions, communicate to the principal all necessary information available to him or her and comply with reasonable instructions given by his or her principal. The principal must also act dutifully and in good faith vis-à-vis the commercial agent.

**Franchise**

Under the Code of Ethics, both the franchisor and the franchisee must act fairly, reasonably and in good faith not only during the term of the franchise agreement but also during the pre-contractual phase and post-termination.

In cases of culpable breach of this obligation, the aggrieved party may be entitled to damages.

**34 Are there laws requiring that distribution agreements or intellectual property licence agreements be registered with or approved by any government agency?**

To the extent that a distribution agreement includes licensing or transfer of IP rights, the agreement (or a short-form agreement) will need to be registered with the competent IP authority – the Greek Trademark Office for trademark licences or the Greek Industrial Property Organisation for designs or patent licensing and transfer of know-how. There is a specific Technology Transfer Register maintained by the Greek Industrial Property Organisation, according to Law No. 1733/1987.

**35 To what extent are anti-bribery or anti-corruption laws applicable to relationships between suppliers and their distribution partners?**

There is no specific, distribution-related legislation on prevention of fraud, anti-corruption and money laundering in Greece.

The main regulatory instrument on fraud (and other fraud-related offences) is the Greek Criminal Code (GCC). Moreover, article 237B of the GCC punishes bribery in business or commercial activities.

The basic legal instrument against money laundering and terrorist financing is Law No. 3691/2008, which is in line with relevant international conventions.

**36 Are there any other restrictions on provisions in distribution contracts or limitations on their enforceability? Are there any mandatory provisions? Are there any provisions that local law will deem included even if absent?**

Mandatory provisions relating to distribution or agency agreements are analysed above under questions 12 to 35.

**Governing law and choice of forum****37 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?**

As regards the applicable law, Greek courts recognise the choice of foreign law on distribution agreements regarding a business operating in Greece. However, certain Greek law provisions may apply, despite the choice of the foreign law. Such provisions relate to the protection of Greek public policy, but also competition law, labour law, tax law, data protection law, among others.

**38 Are there restrictions on the parties' contractual choice of courts or arbitration tribunals, whether within or outside your jurisdiction, to resolve contractual disputes?**

There are no restrictions on the parties' contractual choice of courts or arbitration tribunals.

# Prentoulis Gerakini Law Partnership

Nancy Gerakini  
Nikos Prentoulis

gerakini@prentoulis.gr  
prentoulis@prentoulis.gr

Skoufa 11  
Kolonaki  
Athens  
Greece

Tel: +30 210 361 7609  
Fax: +30 210 361 7600  
www.prentoulis.gr

**39** What courts, procedures and remedies are available to suppliers and distribution partners to resolve disputes? Are foreign businesses restricted in their ability to make use of these courts and procedures? Can they expect fair treatment? To what extent can a litigant require disclosure of documents or testimony from an adverse party? What are the advantages and disadvantages to a foreign business of resolving disputes in your country's courts?

The vast majority of cases in Greece are resolved in court. A smaller fraction of disputes are resolved through arbitration, while the recently introduced method of mediation in commercial disputes is still not common.

The remedies provided by Greek law in case of violation of the terms of a distribution agreement by either party are:

- preliminary and definitive injunctions;
- seizure of assets;
- disclosure of financial records;
- pecuniary or non-pecuniary damages; and
- threat of pecuniary penalties in case of future violation of the court's order.

Criminal action may also be initiated in certain circumstances.

**40** Will an agreement to mediate or arbitrate disputes be enforced in your jurisdiction? Are there any limitations on the terms of an agreement to arbitrate? What are the advantages and disadvantages for a foreign business of resolving disputes by arbitration in a dispute with a business partner in your country?

Greek law provides for two different categories of rules, to apply to domestic and international arbitration respectively.

International commercial arbitration proceedings are governed by Law No. 2735/1999 on International Commercial Arbitration, which incorporates the UNCITRAL Model Law in the Greek legal system.

Articles 867 to 903 of the Greek Civil Procedure Code regulate domestic arbitration.

The Greek legal framework is supplemented by numerous international conventions, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

In general, parties are free to decide on the procedural rules of the arbitration subject to mandatory rules of the law. An arbitral award is not subject to appeal.

A foreign arbitral award is recognised automatically in Greece, provided that the recognition requirements set out in article IV paragraph 1 of the New York Convention are met and none of the grounds for refusal referred to in article V of the Convention exists. Awards in domestic arbitration are recognised and enforced in the same way as the decisions of the national courts.

The recently adopted Law No. 4512/2018 provides for compulsory mediation procedure for certain types of disputes, including trademarks and patents disputes. Compulsory mediation shall be effective as from 17 October 2018.

## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
Commercial Contracts  
Competition Compliance  
Complex Commercial Litigation  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
Government Investigations  
Government Relations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Joint Ventures  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mergers & Acquisitions  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

*Also available digitally*

# Online

[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)