

## **OUTLINE OF SOME ISSUES AND TYPICAL TERMS IN INTERNATIONAL AGENCY OR DISTRIBUTION AGREEMENTS**

Copyright © 2011 by Constance R. Barnhart

### **I. Preliminary Issues**

#### **A. Agency or Distributorship Relationship Appropriate?**

1. Consider other possible forms of doing business abroad: Deal by Deal Direct Sales to End Customers, Joint Venture, Licensing, Acquisition of a Foreign Company, Establish a Foreign Branch or Subsidiary.
2. Define Nature of Relationship:
  - a. Agency (Agent does not take title to the goods, but sells them for the manufacturer (or other seller) and is compensated by a commission on his sales):
    - Does not buy or sell for own account;  
Does Not Take Title to the Goods
    - Solicits Orders for Manufacturer/ Supplier
    - May be Independent Contractor, Agent or Employee of Manufacturer/ Supplier
    - Manufacturer/ Supplier Sells Directly to End Customer
    - Compensated by Commissions or Salary
    - Usually Bears No Credit Risk with respect to Customers
    - Maintains no Warehouse or Inventory
    - May be Exclusive or Non-exclusive in given Territory
  - b. Distribution (Distributor purchases the goods, takes title and then re-sells them, being compensated by the spread between his sales price to customers and the purchase price he pays for them):
    - Buys Goods From Supplier,  
Takes Title in Own Name, and  
Re-sells the Goods For Its Own Account
    - Compensated by Markup Received on Resale of the Goods (the spread between his sales price to customers and the purchase price he pays for them)
    - Independent Entity;  
Does Business in its Own Name;

- No Authority to Obligate Supplier;
- Bears All Commercial and Credit Risk on Sales to End Customers
- Usually Maintains Inventory and Physically Distributes the Goods to its Customers
- Usually Sells in Original Packaging with Manufacturer's Labeling
- May have Exclusive or Non-exclusive Right to Sell Supplier's Goods in given Territory

c. Some hybrid.

3. Consider Pros and Cons of Commission Agent/ Sales Representative vs. Distributor:

a. Commission Agent/ Sales Representative:

(1) Pro:

- Greater Control/ Supervision By Supplier
- Greater Profit on Sales to Supplier
- Avoid Anti-Trust Concerns; Clauses Restrictive of Agent are Permitted

(2) Con:

- More Commercial & Credit Risk On Supplier
- Local Laws Protective of Commercial Agents:
- Regulate Compensation
- Restrict Termination: Require Notice & Indemnity or Compensation
- Require Registration or Grant other Rights to Agent which Cannot Be Contracted Out Of
- May Be Deemed an Employee, Protected Under Local Labor Laws (Especially if Power to Bind Supplier to Contracts)
- May Cause Supplier to Have a "Permanent Establishment" -- Deemed Doing Business in the Foreign Country -- for Tax Purposes (Especially if Agent has authority to bind Supplier to Contracts and/ or is economically dependent on Supplier)

b. Distributor:

(1) Pro:

- Less Commercial Risk on Supplier
- May Be Subject to Fewer Local Protective Laws; Greater Freedom of Contract (Tho: Beware. Check Law of Country Involved. E.g. Belgium regulates Distributors but not Commission Agents. E.g. Some Latin American Countries treat Agents and Distributors Alike.)
- Generally Avoid Risk of Deemed Employee (Tho: Beware. Supplier May be Jointly and Severally Liable for Distributor's Obligations to its Employees under Local Labor Law)
- Generally Avoid Risk of "Permanent Establishment" for Tax Purposes (Tho: Beware. Substance Over Form or Title)

(2) Con:

- Less Control/ Supervision by Supplier
- Lower Profit On Sales to Supplier
- Potential Anti-Trust Concerns arise from restrictions on Distributor (E.g. Resale Restrictions; Minimum Purchases)
- Depending on Country: May Still be Subject to Local Protective Laws

**B. Consider Applicable laws in the Agent's or Distributor's Country**

1. Need for experienced international counsel who has working relationship with local counsel in Agent or Distributor's country and can obtain and interpret for you advice of local counsel

2. Types of Foreign Protective Laws common with respect to Agents and Distributors:

a. Nationality: Required Use of Local Representative

E.g. Middle Eastern Countries -- Saudi Arabia, Bahrain, Egypt, Iraq, Jordan

b. Registration, and Approval

E.g. Middle East; Some Latin American Countries (Bolivia; Colombia) -- Though Changing

c. Restrictions On Termination (more than 30 countries have such protective laws), typically including:

1. Minimum Notice Requirements
2. Termination Indemnity or Compensation

E.g. European Community Council Directive 86/653 Protective of Self-Employed "Commercial Agents" ("self-employed intermediary who has continuing authority to negotiate the purchase or sale of goods on behalf of another person (the principal), or to negotiate and conclude such transactions on behalf of and in the name of that principal.")

All Member States Required to adopt conforming laws by January 1, 1994:

-For "indefinite term" agreements: Minimum Termination Notice of 1 month per year of agreement up to 3 (Member Countries may lengthen to 6)

-Termination Indemnity - 1 year's average commission (5 year average) and/or

-Damages: Lost Commission and un-recouped investment

-Limited "Just Causes" for Termination

d. Regulation of terms of agreement

(E.g. All European Union Countries, per EC Directive 86/653 on "Commission Agents", regulate commission payments: amount, when due and payable, commissions required on direct sales by supplier into Agent's exclusive territory)

### 3. Other Foreign Laws to be considered

#### a. Labor Laws

Risk that an Individual Agent may be deemed an "Employee" if:

- Agent has authority to bind Principal to contracts
- Extensive control by Principal
- Agent represents no other suppliers
- Receives financing or economic support from Principal; Economically dependent on Principal
- No economic risk on Agent
- Agent operates under Principal's name
- Compensation resembles salary, in whole or in part

E.g. Europe & Latin America -- Extremely protective of Employees

E.g. Mexico:

- No dismissal of an Employee without "cause"
- Burden on "Employer" to prove cause; If not proved, Employee can get:
- Reinstatement or
- Indemnification (3 months salary, premiums, bonuses, commissions & fringe benefits), plus
- Back pay
- Employees entitled to:
  - premium of 25% of salary per vacation period
  - Christmas bonus of no less than 15 days salary
  - 5% payroll paid by Employer for Housing Fund
  - 10% mandatory profit sharing
  - withholding tax; social security contribution; disability compensation

#### b. Tax Laws

(1) "Permanent Establishment" abroad will subject the Supplier to foreign taxation  
-- Risk in case of Agents abroad:

(a) U.S. Tax Treaties:

- Fixed place of business or
- Agent with Authority to sign contracts in name of Principal and
- Dependent Agent
  - Control by Principal
  - Economic Dependence on Principal
  - No independent business; Represents no other Suppliers

(b) If no U.S. Tax Treaty, generally risk if:

- Agent has authority to sign contracts in name of Principal, or accept orders for products on behalf of Principal
- Agent is economically dependent on Principal
- Agent represents no other Suppliers

(c) Where title to goods passes may determine whether Exporter has U.S. or foreign source income under U.S. tax law

c. Competition Laws (Anti-Trust Laws)

E.g. European Union, Canada, France, Germany, U.K., Japan, Australia

E.g. European Union:

Article 85(1) and (2) of Treaty of Rome prohibits and voids agreements or practices that restrict or distort competition within EU or between EU Countries

Applies to Exclusive Distributorship Agreements, unless exempted

- De Minimis Rule exempts agreements where:

- < 5% of market &

- < 200 million ECU aggregate sales by both parties

- Article 85 not applicable to Agency agreements

- Block Exemption, Commission Reg. 1983/83, for Exclusive Distribution Agreements that do not E.g.:

- Bind competing manufacturers not to carry other competing goods

- prohibit distributor from selling to unsolicited customers outside its Territory

- obligate the distributor to purchase minimum quantities

- obligate the distributor to carry an entire line of contract products

- obligate the distributor to participate in particular advertising campaigns

- contain other forbidden clauses

- Individual exemption may be applied for under Article 85(3) -- "rule of reason"

d. Intellectual Property Protection Laws

- U.S. protection is not enough. It does not protect you abroad. You must protect your patent, trademark, copyright or other intellectual property under the laws of the foreign country

E.g. In most countries, Trademarks are not protected unless registered. Patents are not protected in a country unless issued there.

E.g. Berne Convention goes only part way for international Copyright protection -- Actual registration abroad is required to get the additional protections of registration

- Register and Secure Foreign Protection Before Selling into a Country & Before negotiating agreement with an Agent or Distributor

- After selling, you may not be allowed a patent
- The proposed Agent/ Distributor may register before you, and will then be the foreign owner of your intellectual property
- Most Foreign jurisdictions deem the first to file, not the first to invent, express or use, to be the owner of a patent, copyright, or trademark
- Do not let the Agent or Distributor register your Trademark or Copyright in his or its name. He will have a lever that, in practical terms, can prevent or delay your termination and replacement of him.
- Maintain your ownership and rights: license and restrict use by the Agent/ Distributor. No Use Without License.

### C. Some U.S. Legal Considerations

1. Foreign Corrupt Practices Act (Prevalence of bribery in Agent/ Distributor's country? Due diligence on proposed Agent/ Distributor important.
2. Tax issues (Permanent establishment issues; U.S. and foreign withholding tax issues)
3. Antitrust issues (Both U.S. and foreign law)
4. Export Control and Anti-boycott issues (on initial export to Distributor and reexports by Distributor; furnishing of information by Agent)

### D. Contract law issues

1. Validity (formalities of execution; capacity; authorization) -- Need to assure under the governing law of the contract
2. Choice of governing law and/or forum for resolution of disputes (effective?)
  - a. Choice of law and forum clause. U.S. counsel often seek to provide that the agreement shall be governed by and construed in accordance with the Uniform Commercial Code ("UCC"), as in effect in a specified State [usually the Supplier's state] of the United States. (But Beware: The parties' stated choice of law other than local law is not recognized under the laws of some countries -- E.g. Calvo Doctrine previously in effect in much of Latin America. Also, if action must be brought in foreign courts, it may be unwise and cause confusion to ask them to apply U.S. law.)

Often it is best to select the governing law and forum (courts) of the party most likely to be the defendant in any legal action between the parties -- i.e. select the courts and law of the party who has the payment obligations under the agreement and is therefore most likely to be sued for non-payment (E.g. select the law and courts of the distributor's country, in the case of a distributorship; select the law and courts of the supplier's country, in the case of a commission agent to whom the supplier is to remit commissions). This (1) dissuades frivolous law suits and (2) removes the problem of having to procure foreign enforcement of a judgment rendered.

- b. United Nations Convention on Contracts For the International Sale of Goods ("UN Convention") -- will govern distributorship agreements (which are contracts for the

purchase and sale of goods) if one of the contracting parties is in one of the many countries that have ratified or acceded to the UN Convention, including the U.S. (See Separate Document containing Text of UN Convention and List of Countries that are Parties Thereto as of December 31, 2003), unless the parties specifically provide in their contract that the UN Convention shall not apply. Note: It is not enough to provide what law will govern; to disclaim the UN Convention effectively, you must specifically state that it shall not apply.

- c. Be aware of provisions of governing law -- Need for review by counsel licensed to advise under governing law -- E.g. UCC vs. UN Convention: Under UCC, oral agreement for sale of goods for over \$500.00 not enforceable (must be in writing). Under UN Convention such oral agreement enforceable and oral evidence admissible to prove terms.
3. Unconscionability, impossibility, frustration, public policy matters of local law which cannot be contracted out of by the parties
4. Warranty issues -- implied warranties under local law? Effectiveness of disclaimers.

## II. Checklist of Some Terms Typically Included in Agreement

### A. Identification of parties

### B. Appointment, Products and Territory

1. Appointment of Agent or Distributor (specify clearly the relationship)
2. Products covered
3. Definition of Territory covered
4. Exclusivity vs. Non-exclusivity of Agent or Distributor
  - a. Other Agents or Distributors to be appointed in the Territory?
  - b. Direct sales by Manufacturer or Supplier permitted in territory? To Whom? (Any end-user consumer? Only certain named customers? Other?)
5. Types of sales permitted by Distributor
  - a. Right of Distributor to sell competitive products?
  - b. Can Agent or Distributor sell only directly to end users or can he appoint subagents or sub-distributors?
  - b. Can Distributor sell to customers outside its exclusive territory who contact the Distributor? (Note: In the European Union, this must be allowed. To prohibit such sales by an exclusive distributor could be an Anti-trust violation, potentially invalidating the agreement under Article 85 of the Treaty of Rome and EC Regulations.)

- ### C. Performance Standards for Agent or Distributor: (Subjective: Best Efforts to promote and sell the Products in the Territory; Objective: Sales Quotas for Agent or Distributor; Monetary Targets. (Note: Minimum purchase requirements for exclusive EC Distributors may raise Anti-trust concerns under Article 85 of the Treaty of Rome and EC Regulations))

#### D. Prices and Terms of Sale

1. Agent: carefully define scope of authority
  - a. To quote prices/ other terms of sale?
  - b. To extend representations or warranties regarding the products?
  - c. To sign contracts on behalf of Principal? (Beware. Depending on facts and local laws of Agent's country, granting this authority to the Agent may cause Principal to be deemed to have a "Permanent Establishment" and thereby be subject to local taxes in the Agent's country, or may cause the Agent to be deemed an "employee" of the Principal, subjecting the Principal to the requirements of local Labor Laws.)
  - d. Otherwise to bind Principal? What limitations?
  
2. Distributor:
  - a. Pricing of products purchased by Distributor from Manufacturer
    - (1) Discount policy -- based on volume? Conditioned on performance?
    - (2) Manufacturer's right to change prices; prior notification
    - (3) Responsibility for taxes (E.g. VAT, Sales, Use) and customs duties
    - (4) Special Orders pricing; government tender pricing (if applicable)
  - b. Resales by Distributor
    - (1) Right of Distributor to determine resale prices (Note: Anti-trust laws may require unqualified right, or may permit Manufacturer to set minimum or maximum resale prices)
    - (2) Right of Distributor to determine other terms and conditions of resale? (Note: Manufacturer may wish to impose limitations with respect to product warranties, use of trademarks and other intellectual property issues, Etc.)
  
3. Method of Ordering
  - a. Requirements for placement of order (in writing, terms to be included in order, by fax?, Etc.)
  - b. Right of Principal to accept or reject Order (No contract or obligation until order accepted by Manufacturer or Principal; Requirements for acceptance or rejection of order)
  - c. In the event of variation between terms in Purchase Order and in Agreement, the Agreement controls
  
4. Invoicing
  
5. Payment terms (by Distributor)
  - a. Due date -- time period for payment
  - b. Currency
  - c. Method of payment:
    - (1) Cash in advance -- or partial cash in advance, balance on delivery.
    - (2) Letter of Credit -- Typically in substantial international sales transactions, payment is by locally confirmed, irrevocable documentary letter of credit (i.e. payment on letter of credit by confirming bank against presentation of documents -- such as bill of lading-- proving delivery of goods) or on open account (see below), secured by irrevocable standby letter of credit (in the nature of a bank guarantee of payment) or other security. Letter of Credit may provide for partial draws upon partial shipments of order.
    - (3) Documentary Collection or Draft (also called Bill of Exchange)
    - (4) Open Account



- d. Security and Guarantees of Payment (E.g. Irrevocable Standby Letter of Credit; Personal Guarantees of Payment; Security Interest in Goods or other Assets of Buyer; Escrow of Funds for payment or security; Use of export finance facilities)
  - e. Tax provisions --- Who pays?
6. Delivery Terms
- a. E.g. C.I.F. named port of destination; F.O.B. named port of embarkation --- See Incoterms, published by the International Chamber of Commerce. Specify duties of Seller/ Manufacturer (delivery at factory, to port of embarkation, port of destination or where? Etc.), whether price quoted includes -- E.g. freight? insurance?), passage of title and risk of loss (when passes to buyer, i.e. the Distributor or Customer of Agent),
  - b. Timing requirements: specific time of shipment vs. best efforts vs. even looser
  - c. Liability for delayed delivery or failure to deliver
  - d. Allocation of rights -- E.g. among all Agents/ Distributors/ customers of Manufacturer -- in the event of shortage

#### **E. Responsibilities of Agent/ Distributor with respect to the Products and Sales**

1. Performance Standards (See C Above -- E.g. Best Efforts to promote and sell products and develop markets; or specific minimum purchases or sales quotas);
2. Premises & Warehousing requirements (Distributors)
  - a. Standards
  - b. Maintain inventory and spare parts
3. Personnel -- qualifications; number
4. Technical assistance and support (Distributors)
  - a. installation
  - b. service
  - c. maintenance, repairs and warranty compliance
5. Marketing and promotional requirements (Advertising, trade shows, prospect visits)
6. Proper use of intellectual property rights licensed by Principal to Agent/ Distributor -- Duty to monitor and notify of infringement
7. Record keeping and Periodic reports to Principal/ Manufacturer
  - a. Access of Principal to facilities and records for inspections (especially where Agent/ Distributor has minimum sales requirements or either party receives a commission on sales or other amounts measured by actual sales or operations of Agent/ Distributor)
  - b. Audits
8. Other
  - a. Customs clearance
  - b. Compliance with Local laws and regulations
  - c. No representation of competing products?
  - d. Collection responsibility; Credit risk rests on Distributor; or sharing of credit risk (Agents)?
  - e. Notify Principal of market information and business opportunities within or outside of Territory

#### **F. Responsibilities of Principal/ Manufacturer**

1. Supply products and comply with delivery terms
2. Supply sales aids, promotional material and technical literature
3. Advertising? Translations?

4. Training and technical assistance
5. Warranty compliance
6. Other support (E.g. Assist Agent/ Distributor in promotional efforts, attend trade shows, Etc.)
7. Protect intellectual property rights (Register and protect trademarks, copyrights, patents in Agent/ Distributor's country as well as in the U.S.; Bring timely actions against infringers of trademarks or copyrights licensed to Agent/ Distributor)
8. Forward inquiries/ sales leads received from the Territory to the Agent/ Distributor?

**G. Compensation**

1. Agents: Commission rates, or fees
  - a. Amount
  - b. When earned (upon concluded sales of the Products in the Territory: within the term of the Agreement? following termination for a specified period?) (Note: Local law may mandate certain payment provisions. E.g. All Western European countries, pursuant to EC Directive 86/653 on Commission Agents.)
  - c. Payment (terms, currency, place, method)
  - d. Statements, accountings
  - e. Books and Records
2. Distributors: Resale profits sole compensation (Except may also contract to receive commissions or other compensation on direct sales by Manufacturer within the Distributor's Exclusive Territory, and/ or fees for servicing or maintenance with respect to direct sales by the Manufacturer)

**H. Product Labeling, Testing, Packaging, Inspection** -- Provide who has responsibility and state or attach specifications

**I. Returns/ Cancellations**

1. Agent: Effect on commissions paid? on commissions accrued but unpaid?
2. Distributor: Right to cancel orders? Cancellation penalties?

**J. Insurance Provisions** --- Duty of Agent/ Distributor to carry? Naming of Principal/ Manufacturer as additional insured? Sharing of risk of loss--

**K. Force Majeure** -- Excuse of performance for Acts of God or events beyond the control of the breaching party. Duty to resume performance promptly. Duty to report to other party. Duty to mitigate damages.

**L. Product Warranties, Disclaimers and Limitations on Liability**

1. Express Warranties -- craft language clearly
2. Implied warranties of merchantability or fitness for stated purpose: Disclaim, limit or give by implication. Check local law of Agent's/ Distributor's country
3. Limitation of Liability and Damages for Breach of Warranty -- E.g. Liability limited to repair or replace; no incidental or consequential damages; check enforceability of limitations or disclaimers under local law of Agent's/ Distributor's country

**M. Licenses, permits, approvals**

1. Identify those necessary for execution and performance -- both in Manufacturer's country and in Agent's/ Distributor's country
2. Provide who has responsibility to obtain

**N. Compliance with laws**

1. Foreign Corrupt Practices Act: Representations and warranties of compliance by foreign Agent/ Distributor -- not a government official, no improper payments, gifts, Etc. in connection with this Agreement; Obligations to report any subsequent official positions of Agent/ Distributor or its Customers
2. U.S. Export Control laws/ Anti-boycott provisions:
  - a. Duties to comply with Export licensing and permit requirements
  - b. Re-export compliance covenants by Agent/ Distributor
  - c. Specific limitation of Agent's authority to supply boycott-related information or act in violation of Anti-Boycott regulations
3. Local Laws

**O. Representations and Warranties**

1. Due organization, existence and good standing of corporate entities; due authority of Agent/ Distributor and Principal/ Manufacturer to enter into Agreement; due authority of signatories to execute
2. Agreement enforceable in accordance with its terms against both parties; no conflict with other agreements
3. If a non-compete clause is included: no representation of competing products

**P. Intellectual Property Provisions and Confidentiality Provisions**

1. Warranties or Disclaimers of registration or no infringement by Manufacturer
2. Use of Manufacturer's trademarks or trade names - - licensing of any rights to use; no transfer of ownership; registration obligations in foreign countries
3. Approval by Principal/ Manufacturer of use
4. Covenants to notify of infringement
5. Defense of Product infringement claims; responsibility for costs and expenses; cooperation
6. Confidentiality Provisions - - protection of trade secrets
7. Injunctive relief to enforce

**Q. Legal Status of Parties: Independent Contractor Provisions (Especially for Distributor)**

1. Disclaimer of agency or joint venture
2. No authority to bind principal or contract in Principal's name
3. Indemnity by Distributor

**R. Term of Agreement; Effectiveness and Renewal**

1. Effectiveness: on execution (unless government approval needed)
2. Term: term of years, unless sooner terminated under termination provisions

3. Renewal: Avoid indefinite term or automatic renewal ("evergreen") clauses -- Can render termination of foreign Distributor very difficult and costly (subject to specific and lengthy notice provisions and termination compensation) under some foreign laws

## S. Termination

1. Possible grounds for early termination:
  - a. Mutual agreement
  - b. Failure by Agent/ Distributor to meet minimum sales quotas or purchase levels; Alternative: Agreement continues but becomes non-exclusive
  - c. Non-payment by Distributor, or other "material" breach by either party (with, or without cure period, depending on type of breach)
  - d. Violation of laws or Misrepresentation
  - e. Bankruptcy, insolvency or change of control of Agent/ Distributor (or of either party) (Check local law; may not allow this automatically to terminate agreement)
  - f. force majeure, frustration or impossibility of performance
  - g. Other, depending on deal (list specifically)

Note: If unilateral termination by either party is to be allowed for "just cause", specifically so provide. Failure to so provide may mean the contract cannot be terminated without a court order in some countries -- E.g. Brazil. Be very specific in defining the events that constitute "just cause" for termination, and check local law, which may recognize only certain events as "just cause".

2. Rights and obligations on termination
  - a. What happens to unfilled orders? Option of terminating party to cancel? Goods shipped on credit?
  - b. Cease use of any licensed trademarks or trade names
  - c. Return all materials, confidential information, and retain no copies
  - d. Cooperation in transfer to new Agent/ Distributor
  - e. No payments for goodwill, investments, consequential losses, Etc. (But check local law. Termination indemnity or compensation may be required -- even upon termination for death or disability of Agent. E.g. All European Union countries, pursuant to EC Directive 86/653 relating to "Commission Agents".)
  - f. Inventory repurchase obligations upon Manufacturer? (Check local law. May be required.)
  - g. Certain provisions of Agreement survive termination (E.g. confidentiality provisions, any extended non-compete, provisions on rights and duties after termination)

## T. General and miscellaneous provisions

1. Governing Law -- (Note points re choice of law provisions and their enforceability, stated in Section I(D)(2) of this outline)
2. Dispute resolution provisions: Typically arbitration under International Chamber of Commerce Rules; American Arbitration Association, International Rules; or similar internationally recognized arbitration rules. (Though, Beware. Arbitration clauses are not enforceable in some countries. E.g. Brazil and much of South America, though this is changing.)
3. Governing Language
4. Assignability of Agreement

5. Entire Agreement; no amendments except in writing signed by both parties (or by party to be bound)
6. Notices by the parties to each other -- how to be given (in writing, by fax or personal delivery, Etc.); when effective
7. Waivers
8. Severability of clauses (in the event any are declared invalid, others survive)
9. Confidentiality
10. Agreement may be signed in Counterparts

### III. **Practical Considerations Outside of Agreement**

- A. Personal relationship of the parties** must be continually nurtured and strengthened -- Equally as important as what is in written agreement
1. Frequent travel and visits, service, responsiveness important
  2. Cross-cultural understanding key
  3. Personally inspect operations abroad
- B. Plan ahead** --- Success may lead to reason to change or expand the relationship (E.g. Exporters often grow from distributorships to licensing and foreign sourcing to joint ventures for foreign manufacturing to foreign acquisitions or establishment of a foreign branch or subsidiary)
1. Negotiated terminations are preferable to litigation abroad or lengthy arbitration
  2. Provide for right to acquire foreign Agent/ Distributor upon stated conditions
  3. Give Agent/ Distributor role in future expansion abroad, E.g. by licensing or joint venture
- C. Give foreign Agent/ Distributor incentives for success**



**Constance R. Barnhart**, Attorney at Law, is the Managing Member of Barnhart Law PLC. After 12½ years as a Partner in the law firm of Holland & Knight LLP and more than 30 years of practicing law with large law firms, she founded Barnhart Law PLC ([www.BarnhartLawPLC.com](http://www.BarnhartLawPLC.com)) in March, 2009. At Barnhart Law PLC, Ms. Barnhart represents Scandinavian, European, and U.S. clients in U.S. and international business matters, including agency and distribution agreements and other commercial transactions, technology and intellectual property licensing, and corporate, financial, and contracts matters. In over 30 years of practice, she has handled as lead attorney many substantial mergers & acquisitions, and corporate, commercial, securities, and financial transactions, as well as technology and intellectual property-related matters for U.S. and international clients.

She is fluent in English, Spanish, and Norwegian, and conversant in Swedish and Danish. She is admitted and licensed to practice law in four U.S. States – New York, Florida, Texas, and Minnesota. **Ms. Barnhart may be reached at [CBarnhart@BarnhartLawPLC.com](mailto:CBarnhart@BarnhartLawPLC.com) or by telephone at +1-954-232-5378.**