

## Distribution Contracts under Turkish Law

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### Introduction

Suppliers or manufacturers use many ways to expand their businesses into new markets. Appointing a [commercial agent](#) is a common method used by companies. However, depending on their needs, companies may prefer different methods to enhance their business such as concluding a distribution agreement with a distributor.

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Breaking into a new market for a supplier is challenging as the product will have no track record. Therefore, it is very important for the supplier to choose the right entrepreneur. Financial power as well as the market knowledge are the two significant criteria over deciding the distributor.

Distribution contracts are not defined in Turkish law. Under Turkish Code of Obligations (TCO), parties are free to conclude any contract under any term and subject unless they are contrary to imperative provisions, morality, public order and individual rights. Distribution contracts, like any other contract that is not defined under Turkish law are regarded as “*sui generis*” contracts.

This article will briefly analyse the distribution contracts with special reference to Turkish law.

## Main Elements of a Distribution Contract

A distributor, under a distribution contract, purchases the product from the supplier, marks up the price and sells it to its customers. Unlike a commercial agent, a distributor does not act as an intermediary or act on behalf of the supplier. In other words, a distributor purchases and sells the product in its own name and account. Therefore, the distributor has a contractual liability to the customer.

There are two parties to a distribution contract: the distributor and the supplier. Distinctive features of the contract are as follows:

- There is a continuous relationship between the supplier and the distributor.
- Distributor acts in its own name and account, not on behalf of the supplier. Hence, distributor is not a commercial agent or employee or legal representative of the supplier.
- Frequently, distributor has an exclusive right to sell the products in an agreed territory such as a country or a region or a city.
- Distributor is under an obligation not only to sell the products but also to promote and market them.

## Types of Distribution Contracts

There are two types of distribution contracts: exclusive and non-exclusive.

Under an exclusive distribution contract, which is common in practice, supplier grants distributor the sole right to sell the products within a particular region. Hence, the supplier must not appoint other distributors and must not sell the products itself directly to customers within the defined territory. Penalty provisions for the distributor will also come into effect if the product is sold outside of the territory.

On the other hand, under a non-exclusive distribution contract, distributor has to compete with other distributors as well as the supplier since there is no exclusivity arrangement.

It is important to mention the imperative provisions that are found in the Law on Protection of Competition (Law No. 4054) and the Block Exemption Communiqué on Vertical Agreements (Communiqué numbered 2002/2) while dealing with exclusive distribution contracts. One of the aims of the Law No. 4054 is to prevent the agreements that are restricting the competition in Turkish markets. Considering these legislation, exclusive distribution contracts must not include any provisions that might create adverse effects on fair and equal competition in economic activities.

### Form of Contract

There is no requirement as to the form of the distribution contract since the contract itself is a “*sui generis*” contract. However, it is always advantageous for the parties to have a written contract in case of a dispute.

### Essential Terms

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Distribution contract sets out the terms and conditions of the trading between the supplier and the distributor. As mentioned above, parties to a distribution contract are free to decide the terms of the contract.

In a plain language, distributor purchases the products from the supplier and then sells them. However, it cannot be regarded as a simple sales contract since the supplier has a continuous contractual relation with the distributor. Distributor continues to order the specified products from the supplier on a daily, weekly or monthly basis depending on the needs of the market and terms under the contract. Timely acceptance of the orders and fulfilling them within the agreed business days are significant for both parties.

The distributor and the supplier agree on the scope of the products that are subject to the sale. Characteristics and technical information about the products must be stated clearly in the contract. If the distributor is importing the product, then fulfilling the criteria found in local regulations regarding the customs and other legislation will become significant.

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The territory of the distributor's trading activities is important and the geographical area in which the distributor may sell the product must be stated in the contract. Penalty provisions are also accompanied for the distributor if it sells the products outside of the agreed territory.

Duration of the contract may be determined by the parties. A distribution contract can be made for a definite time period or for indefinite time period. They are usually done for definite a period of time and the duration of the contract is usually one year.

### **Rights and Obligations of the Distributor**

One of the main obligations of distributor is exerting its best efforts to promote and market the products as well as the sale and the distribution of them in the agreed territory. Therefore, the distributor should conduct advertising and marketing facilities about the product. Within this scope, an annual target may be set for the distributor and if the distributor fails to purchase and sell the number of products specified in the annual target, supplier may have a right to terminate the agreement.

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While conducting marketing facilities, distributor will announce that it is an authorized distributor (exclusive or non-exclusive) of the products under the trademark of the supplier. However, distributor cannot represent itself as a supplier or cannot make commitments on behalf of the supplier. Vice versa supplier is not responsible for the acts of the distributor. The scope with regards to the usage of the supplier's trademark is often provided in the contract.

### **Rights and Obligations of the Supplier**

Supplier is under the obligation to supply the products and provide information and technical support about the product.

Upon the request of the distributor, a training regarding the features of the products may be given to the distributor as well as to its employees and agents.

## Indemnity

There is only one provision found in Turkish legislation regarding distribution contracts; i.e. Article 122 of the Turkish Commercial Code (TCC). It regulates the goodwill indemnity for commercial agency contracts and its fifth paragraph states that this provision is applicable to exclusive distribution contracts unless it is contrary to equity.

Under Article 122 of the Turkish Commercial Code which is adopted from the European Directive (art. 17 of 86/653/EEC), commercial agent is entitled to have goodwill indemnity if the conditions mentioned in the provision is met. Accordingly, a distributor shall be entitled to a goodwill indemnity if:

- the supplier is receiving significant benefits after termination of the distribution contract because of the new customers brought in by the distributor, or
- the distributor, due to the termination of the distribution contract, loses its clientele and suffers financial loss, or
- the payment of the indemnity is equitable having regard to all the circumstances of the case.

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