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DISTRIBUTION & AGENCY 2026

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Distribution & Agency 2026

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Quick reference guide enabling side-by-side comparison of local insights, including into ownership structure and tax considerations for foreign suppliers in a direct distribution model; models involving local distributors, commercial agents and other representatives, including the general framework, rights of contract termination, and the transfer of rights of ownership; regulation of distribution relationships, including issues such as confidentiality, distribution of competing products, pricing, online sales and parallel imports; governing law and dispute resolution mechanisms; and recent trends.

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Contents

Taiwan

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United Kingdom

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Fieldfisher

USA

Colleen Garcia, **Michele Itri**, **James Rieger**, **Stacey Usiak**, **Gillian Wei**

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Global overview

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Supply chains are the circulatory system of global trade. The relationships between manufacturers and suppliers, on the one hand, and their importers, distributors and commercial agents around the world, on the other, and then with their downstream retailers, form the critical links of these supply chains. The world learned of their importance when they failed during covid-19 and suddenly everyday necessities could no longer easily be obtained. These supply chain relationships are crucial to moving goods and services around the world, and they are governed not only by the contracts negotiated between suppliers and their distribution partners, but also by a diverse range of laws and regulations governing those contracts and relationships. These laws vary widely from country to country, and even within countries.

Rapidly moving developments in areas such as privacy and data protection, and increasing concerns over cybersecurity, affect distribution relationships as well because of the importance of customer information and other data that is routinely shared between distribution partners.

The imposition of unpredictable and ever-changing high levels of tariffs by the US, with responsive tariffs from other countries also frequently changing, have disrupted international commerce and reduced trade. The sudden changes in costs have created practical pitfalls for parties operating with fixed-price contracts, as well as the need to identify changes in sourcing, manufacturing, assembly and application of intellectual property that might ameliorate the impact of tariffs.

The scope and use of e-commerce by consumers have been building for more than a decade, but suddenly leapt forward in recent years, due in part to pandemic-influenced supply chain issues. At the same time, consolidation by mergers and acquisitions at all levels of the supply chain has created larger suppliers, distributors and retailers in industry after industry. These changes bring with them new forms of relationships among suppliers, distributors and retailers created to meet developing needs of businesses and consumers, and raise a host of legal questions with varying answers in each jurisdiction.

The options for a business seeking to bring its products or services to another market cover a spectrum of possibilities, from direct distribution by the supplier itself or through a wholly owned subsidiary; to engagement of a local commercial agent that does not take title to the goods, arranges sales on behalf of the supplier and receives a commission; to independent distributors, which buy from the supplier and resell in the market country at a profit; to franchising, which amounts to the use of independent distributors that are licensed to use the supplier's trademarks, required to follow a prescribed marketing plan or method of operation, and pay a fee to the supplier. All these options may be implemented through a joint venture by having the local distribution entity owned in part by the supplier, or by sharing the revenues and expenses in another manner. Yet another option is for the supplier to license a manufacturer in the market country to use its intellectual property – patent, copyright, trademark or trade secrets – to make its products locally and sell them. And

private label arrangements amount to a reverse licensing arrangement, where a distributor or retailer in the market country distributes the supplier's products under its own trademark.

These options carry different costs (including differing tariffs), levels of control and sharing of revenues and expenses. They carry different legal and business risks, tax consequences and potential liability. The threat of high tariffs on imported goods, and retaliatory tariffs by countries they are imposed upon, changes the costs of the various distribution options and may require modification of manufacturing and distribution systems, whether temporarily or for the long term. Guiding clients through these options requires the effective distribution lawyer to understand each client's objectives, culture and ways of doing business, as well as industry customs and practices, and then to apply the legal and regulatory environment of each relevant jurisdiction to help the client find the most effective and least risky method, among the many alternatives, of bringing its goods or services to market.

The growing role of e-commerce, the borderless nature of which inherently disrespects distribution territories, complicates the achievement of the objectives of distribution partners, especially if goods are distributed by the behemoth e-commerce intermediaries. Such e-commerce distribution makes the protection of distributor territories more difficult and thereby weakens distributor incentives to incur the expense of providing promotional, educational, warranty, quality control and merchandising services for products whose sales revenue may go elsewhere. Indeed, it may become entirely unfeasible for distributors to provide these services without some economic adjustments. Counsel must help their clients find ways to compensate for lost sales and restore appropriate incentives without running afoul of competition laws and other regulatory obstacles.

The practice of distribution law is necessarily interdisciplinary, because assisting clients in structuring and managing distribution relationships requires an understanding of each relevant jurisdiction's contract law; antitrust and competition law; dealer protection and business franchise law; privacy and data protection law; consumer protection laws; advertising and unfair competition regulation; intellectual property law; international trade law; mergers and acquisitions law; and litigation, arbitration and dispute resolution.

By way of example, some nations provide for an indemnity payment to commercial agents upon termination without good cause, but not to distributors, while other countries cover distributors. The United States generally has no such provision – except for some states' business franchise laws and laws governing certain industries – yet Puerto Rico, a US territory, has one of the most stringent laws in the world protecting distributors against termination.

The collection and transfer of consumer data is tightly regulated in Europe, Canada and many other countries. For example, firms around the world must comply with the EU General Data Protection Regulation if they collect or process the personal information of individuals in Europe. Except for certain industries and types of data (eg, financial firms, children's data and medical information), the United States, at least on a national level, adopts a much more laissez-faire approach, which has led more and more individual states to adopt differing and sometimes inconsistent laws governing personal data collection, transfer and use, making compliance challenging.

Increased cybersecurity concerns have led to increased regulation at both national and state levels, imposing security standards and breach notification requirements on businesses. Where applicable, businesses must ensure that those with whom they share

protected data comply with these requirements as well. This means that distribution and agency agreements need to address these issues.

Supplier control of resale prices is generally illegal in Europe, as are prohibitions on sales by distributors over the internet or outside defined territories, but in the United States all are typically permitted, with some exceptions. In most jurisdictions the licensing of intellectual property such as trademarks between suppliers and their distribution partners is a matter of private contract. However, some jurisdictions, such as Mexico, require trademark licences to be publicly filed. Even within a jurisdiction, different industries have different customs and practices that have a practical effect on how distribution relationships are structured. In the United States, for example, beer distributors share detailed data on their sales to customers with their suppliers on a monthly – and often daily – basis, but soft-drink bottlers and distributors zealously guard such customer sales data and generally will not share them. But as the beverage industry categories break down, with soft-drink producers offering alcoholic versions of their brands, and non-alcoholic beer, wine and spirits growing in popularity, these industry norms begin to change as well. These legal and practical differences can have a major impact on how suppliers and their distribution partners do business, and counsel cannot possibly give sound advice without an understanding of these major differences in the regulatory framework and industry practices around the world, and how they are changing.

Although Panoramic:*Distribution & Agency* will not make you an expert in all the relevant laws of every jurisdiction, it should provide a useful reference for the key issues in many important jurisdictions. It will still be important to engage qualified local counsel with expertise in the many facets of law affecting distribution before embarking on distribution in a new market or changing the manner of distribution in an existing one. However, this reference should enable you to better understand the issues and the questions to ask.

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Yes, a foreign supplier may establish an affiliated Brazilian company to distribute its products in the territory. There are no predetermined conditions provided by local law for a foreign distributor to perform distribution activity directly, including restrictions on setting up an entity specifically to conduct distribution transactions, among others. Foreign companies may suffer restrictions, however, when participating directly in specific fields of activity.

Law stated - 6 February 2026

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

Yes, a foreign supplier may be a partial owner with a local company that imports the supplier's products. It may be a sole owner of a local company (affiliated company) too. To create a local company with a foreign shareholder, the company must comply with the following requirements: (1) have its headquarters in the territory; (2) hold a legal representative in Brazil (which may be a partner with a small quantity of shares) duly empowered to receive any summons and act on the company's behalf before the Brazilian authorities; (3) register the foreign capital operations at the Brazilian Central Bank; (4) hold by-laws with clauses determined by local laws, including the Brazil Civil Code; and (5) register its activities at the federal, state and municipal fiscal authorities.

Law stated - 6 February 2026

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?

Among different types of corporate entities in Brazil, there are two outstanding forms for a foreign supplier to participate as a shareholder in a local importer. The first is the limited liability entity (*limitada*) and the second is the joint-stock company (*sociedade anônima*). These forms are relevant as they limit the shareholder's liability to the equity investment in case of bankruptcy or insolvency. A *limitada* is looked upon as similar to a limited-liability partnership or a "closely held company" under American law and to a limited partnership under English law. The *limitada* is governed by Federal Law 10,426 of 10 January 2002 (the Civil Code). The *limitada* shall be created by means of one natural person or by more than two partners (physical or entity) that are bound by means of an article of association followed by registration at one of the existing Boards of Trade in each of the 26 states of the federation. The acceptance of a *limitada* with a sole partner has been allowed since September 2019 by means of Law 13,874, which adopted several rulings to reduce bureaucracy in creating companies and to promote the economic freedom to trade in Brazil. The by-laws must include, among other information, the name of the company, the amount

of initial funds contributed by the partners and the distribution of representing quotas, the location of the headquarters, the company's purpose, the apportionment of capital to each quota holder, the appointment of the administrator and personal details of each quota holder and the name of the company manager.

The business format of a *sociedade anônima* resembles that of an American joint-stock company. The corporate entity is governed essentially by Federal Law 6,404, of 15 December 1976 (known as the Corporate Law). The requirements for setting up a stock company are similar to those for a *limitada*, although it is used for bigger investments and therefore involves the creation of a more complex operational structure, such as a board of directors and an audit committee to examine the management actions, and requires more detailed company books with information about the shareholders and capital increases. Furthermore, only a joint-stock company may place its shares on the stock market by transactions.

To set up a Brazilian subsidiary, a foreign supplier should take into consideration that the *limitada* requires simpler creation rules and involves fewer disclosure and governance duties.

Clauses stipulated in the by-laws that are contrary to public order and good customs in trade or that conflict with the Federal Constitution of 1988 are not accepted and therefore refused by the authorities of the Board of Trade during the registration procedure of the company. Registration of the by-laws and the company is important to produce effects between third parties, including the liability limitations of debts and responsibilities assumed by the company.

Brazilian law and local jurisdictions should prevail and be stipulated in the by-laws.

Law stated - 6 February 2026

Restrictions

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 certain areas influenced by the public interest and national security philosophy that restrict foreign participation to specific businesses. Such restrictions may be levelled by specific sectors, as follows:

- complete prohibition on foreign participation;
- restriction on foreign ownership; and
- participation with prior approval.

Businesses completely closed to foreign participation are those of a strategic nature to the nation, following up the Federal Constitution of 1988 and Complementing Legislation, such as water supply and broadcast services, among others. The establishment of a local company in this regard and observance of specific conditions to exploit these business sectors is indispensable for a foreign participation. Restrictions on foreign ownership encompass, for example, businesses related to aviation, healthcare, electricity

and classified government contracts. As to direct foreign participation with prior approval, banking and financial entities are adequate examples.

Law stated - 6 February 2026

Equity interests

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

Yes. There are no legal restrictions imposed on equity participation of foreign suppliers that distribute their products in Brazil. However, importers of foreign medicines and the local distributors to drugstores are required to obtain a licence from the Brazilian Health Regulatory Agency (ANVISA) to operate in the Brazilian market. The requirements are set out by ANVISA's regulations, such as Resolution 497 of 26 May 2021. By complying with ANVISA's rules on distribution, a distributor will obtain a Certificate of Good Distribution Practices before ANVISA so that it is allowed to exercise its regular activities of importation and distribution of medicines. ANVISA's requirement for the qualification of a distributor, for example, should be viewed as an exception to distribution, as the Civil Code clearly prevents any bureaucracy on product distribution activities.

Law stated - 6 February 2026

Tax considerations

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?

The power to establish and collect taxes is shared by the federal, state and municipal authorities based on the existing rules in the Federal Constitution of 1988. The federal authorities may collect tax on imports and exports, income and earnings, financial transactions, foreign exchange and transactions with loans and securities, among others. Tax authorities from the states of the Brazilian Federation may tax on transmission of property *causa mortis* or donations and operations related to the circulation of goods from interstate and inter-municipal transportation and communication, operations and on ownership of motor vehicles, among others. Lastly, municipalities may collect taxes in relation to, among other things, urban buildings and lands, and services of any nature not taxed by the federal authorities.

Different tax liabilities may be applicable to foreign businesses and individuals that operate in Brazil or own interests in local business, depending on the activities concerned. The main tax liabilities are as follows:

- income tax, which is payable by any residents, local companies, associations and corporations domiciled in Brazil;
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financial transaction tax (IOF), such as credit, exchange and insurance, and securities transactions;

- sales value added tax, which is payable on an added value basis on all physical movement of merchandise;
- service tax, which is payable on gross billings for certain listed services and varies from city to city and according to the type of service rendered; and
- social contribution on profits.

Further to this, foreign suppliers should take into consideration remittance of remuneration overseas from distributors to a foreign supplier. According to the sparse regulations on foreign capital law, the Brazilian Central Bank (BACEN) is entitled to establish an exchange-control policy, including in respect of the sale and purchase of gold and of any transactions involving foreign currency. BACEN holds the right to restrict exchange transactions when there is a serious risk to foreign reserves. According to the applicable foreign exchange control regulations, remuneration remittances overseas are permitted insofar as they correspond to existing remittance categories set out by BACEN. Royalties derived from patent and trademark licensing no longer require recordation of the corresponding licensing agreement at the National Institute of Industrial Property. Therefore, remittances (including royalties) may take place through any authorised commercial bank in Brazil to pay out third parties overseas without any prior government authorisation. Remittances overseas are levied at between 6 and 25% as withholding tax depending on the nature of remittance. For example, royalties, interest commission fees and service values may be levied usually at 25% as withholding tax and up to 3.5% as the IOF. Since July 2025, the IOF on international business transactions varies from 0.38% to 3.5% on the remitted amount depends on the transfer type.

Law stated - 6 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 | What alternative distribution relationships are available to a supplier?

A supplier, especially a foreign one, may trade directly and have its products distributed throughout Brazil by means of different structures expressed in commercial agreements. Seeking partnerships with locals is regarded as the most effective manner to dispose and promote products due to the peculiarities of the market. First, Brazil has a continental territory of 8,515,767 square kilometres with a diverse population of approximately 213 million inhabitants spread out across 26 states. This means that distribution is unusual, as the territory encompasses, for example, the Amazon Forest where goods can only be sent by boat to some regions. Second, each state of the Federation is different and influenced by diverse types of climate, vegetation, social behaviour, political structure and human and economic development.

Among the alternatives available to suppliers, we point out the following:

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A distribution agreement is the most commonly used tool to promote goods and trademarks in the Brazilian market. Such agreement is understood as a contract between a supplier and a distributor in which the distributor promises to promote the business and goods on the supplier's behalf and interest. The deal occurs under its own name and with their personal promise to sell and deliver the goods (on behalf of the supplier). Therefore, the distributor holds the goods in its hands that will be disposed to the market. Also, the distributor is the party that directly concludes the transaction with the client and the commercial risks lie entirely with the distributor.

- Agency agreement essentially involves the intermediation of business and promotion of goods and services, in which the agent normally does not close the deal. Further to that, the supplier is the party who provides the goods directly to the client intermediated by the agent. This means that the agent does not have the goods at his or her disposal and neither does the agent buy or sell goods, but conducts and promotes business opportunities on behalf of the supplier. Agency agreements are governed by articles 710 to 721 of the Civil Code. Under article 710 of the Civil Code, the supplier may grant extensive power to the agent to conclude the deal and provide the required technical assistance, although the conclusion of the deal on behalf of supplier is not the essence of the agency agreement.
- Under the concept of business intermediation, a sales representative agreement is also relevant and understood as a third separate business format that involves the disposal of goods into the local market. This is governed specifically by Federal Law 4,886 of 9 December 1965. This law protects the sales representative and gives little room for the contracting parties to negotiate its terms and conditions , especially financial clauses and termination. While an agent under an agency agreement encompasses any kind of deal (representation of a third party) involving the rendering of services or goods delivery, sales representatives relate solely to a commercial goods transaction. Also, the sales representative concludes the deal, which has been led by it on behalf of the supplier. Nevertheless, the sales representative does not deliver the goods, as they are not in the representative's hands. Finally, a sales representative must be duly registered as such on the Commercial Representative Council so that the agreement is adequately framed as a sales representative, as agents and distributors are not required to be registered and their activities can be carried out by any person or entity.
- Business format franchising is regarded as a tool to expand goods distribution in the market and at the same time enables a franchisor to maintain the control required for the quality of products and services. From a legal viewpoint, franchising is a system by which a franchisor grants to a franchisee the right to use a trademark and other intellectual property rights associated with the right to produce or distribute products and to use technology and know-how regarding business implementation and administration or operation systems, either developed by or granted to a franchisor, for direct or indirect remuneration.
- Trademark licensing is an arrangement used by a local licensee that wishes to manufacture or distribute goods locally identified by a third-party brand. The exploitation of licensed trademarks is specifically remunerated by means of royalties. Licensing agreements require the basic requirement on the filing and registration of the licensed trademark at the Brazilian Institute of Industrial Property

(INPI) and recordation of the agreement at the same agency to be enforceable against third parties.

- Private labels are practised by big supermarket stores that obtain a large quantity of goods from specific manufacturers with production facilities. The manufacturers are in charge of producing the goods and attaching labels comprising the supermarket brands. The main characteristic of a private labels arrangement is that the supplier's production is entirely bought by a specific distributor, who retails, packages and sells the goods directly under its own brand. The commercial advantage is the guarantee that the supplier will receive profits from the acquisition of the goods and the distributor profits by selling the repacked goods to consumers.
- There is also the contractual joint venture. One important characteristic of distribution is the general flexibility granted by the laws of the land to the contracting parties to set the contractual covenants, including the possibility to combine different arrangements in one specific contract. The different types of arrangement for distribution into the Brazilian market are also classified as contractual joint ventures, which involve the joint efforts and partnership of two or more persons or entities to supply and dispatch products into the market. Although each partnership or contractual joint venture may contain specific elements and a structure that leads to an existing specific kind of agreement, legal scholars justify such commercial ventures under the "consortium" concept provided by articles 278 and 279 of the Corporate Law (Federal law 6,404 of 15 December 1976). By accepting the consortium concept, the law recognises the independence of the contracting parties involved in the supply and distribution of goods and the possibility of maintaining an undeclared joint venture that prevents compliance with strict formality. Under the concept of articles 278 and 279 of the Corporate Law, there is also the possibility to set up a specific structure that leads to the organisation of a specific entity, especially a limited liability company, to foster the distribution of products.

Law stated - 6 February 2026

Legislation and regulators

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?

A distribution agreement is governed by articles 710 to 721 of the Civil Code. Accordingly, it provides the definition of the business transaction, its characteristics and its requirements. Therefore, a distribution agreement is looked upon as a named contract under the laws of the land, which means that contracting parties will be guided by the rules of the Civil Code.

There is a kind of distribution that lies outside the scope of the Civil Code, which is the distribution of terrestrial motor vehicles and that addresses specifically the relationship between the vehicle manufacturers and the car dealer. This type of relationship is expressed in a dealership agreement. It is ruled by Federal Law 6,729 of 28 November 1979 (the Ferrari Law). It aims to set adequate rules for dealership businesses by establishing

rules to licensed territory, minimum purchase quotas and pricing, among other protective measures for car dealers.

Agency arrangements are also governed by articles 710 to 721 of the Civil Code. Since distribution and agency agreements are addressed by the same set of rules, the elements and requirements for an agency agreement are influenced greatly by legal scholars who work on establishing different concepts between distribution and agency arrangements.

A commercial or sales representative agreement is governed by Federal Law 4,886 of 9 December 1965. It has specific characteristics and requirements as it is a third separate business format for distribution. The activities of a sales representative are specifically related to sales of goods, not service rendering. Registration of the sales representative at the Commercial Representative Council to exercise the intermediation is a legal requirement.

There are no predetermined conditions or self-regulatory agencies and government approvals provided by the laws of the land for a distributor or agent to perform distribution and agency activities. Nevertheless, there are certain areas where the public interest prevails, and registration and certain requirements are demanded of a distributor. One is the distribution of medicines in Brazil. Importers of foreign medicines or pharmaceuticals and local distributors to drugstores are required to obtain a licence before the Brazilian Health Regulatory Agency (ANVISA) to operate in the Brazilian market. The requirements are set out by ANVISA's regulations, such as Resolution 497 of 26 May 2021. By complying with ANVISA's rules on distribution, a distributor will obtain a Certificate of Good Distribution Practices from ANVISA so that it is allowed to exercise its regular activities on importation and distribution of medicines.

Law stated - 6 February 2026

Contract termination

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 rules for terminating a distribution relationship may be freely stipulated by the parties, including the events that may cause it. There is a prevailing understanding that the contract is "the law between the parties" following the *pacta sunt servanda* principle. This means that the relationship between the parties will be essentially governed by the covenants of the agreement. Unless laws of public order and cogent laws impose specific and mandatory conditions on the contracts, the contracting parties are required to set out the events under which an agreement may be unilaterally terminated. If the events for termination of a distribution relationship are not stipulated in the agreement (as a contractual clause), termination will occur only through court procedure.

Nevertheless, there is a specific termination rule dealing with distribution agreements for an undetermined period. Under this kind of agreement, any party may unilaterally terminate the agreement at any time and without cause by means of a prior written notice of at least 90 days before termination, following article 720 of the Civil Code. The prior written termination

notice may be longer, depending on the investment incurred by the distributor for the promotion and distribution of the supplier's products in the market. Larger investments require longer termination notice.

Termination due to the lapse of the contractual term and non-renewal does not have specific legal rules. Therefore, the parties may freely stipulate the non-renewal conditions.

Termination without cause of a sales representative agreement (not an agency agreement) for an undetermined period that has been in force for more than six months requires prior communication of 30 days or the payment of an amount equal to one-third of the commission obtained by the representative in the last three months prior to termination.

Law stated - 6 February 2026

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

There is no specific legal rule for compensation or indemnity derived from a termination without cause in a distribution agreements or agency with a fixed term. If compensation or indemnity are not specifically set by the parties, compensation may be requested solely in court, where factors such as the investments made by the distributor, the duration of the contract or behaviour of the parties and the effective loss will be taken into consideration by the judge to determine the compensation.

Compensation is set out by Law 4,886/65 under a sales representative agreement when termination takes place by the supplier for reasons outside the scope of the events set out by article 35, as follows:

- of the aforementioned law, such as the representative's negligence in fulfilling the obligations arising from the agreement;
- representative practice acts that result in commercial discredit of the supplier;
- the representative's failure to comply with any contractual obligation;
- the representative is convicted of a crime regarded as infamous; and
- force majeure.

The compensation in this regard should be not less than one-twelfth of the total commission or remuneration received by the sales representative during the period that it executed the representation under the sales representative agreement.

Furthermore, an indemnity would apply when a sales representative agreement with a fixed term is terminated without cause and outside the scope of article 35. In this matter, the indemnity would be equal to the monthly average of the remuneration earned until the termination date multiplied by half of the number of months resulting from the contractual period.

Law stated - 6 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

Rules restricting the transfer of the distribution rights to the supplier's products are valid, as the laws of the land secure to the contracting parties the right to stipulate the terms and conditions of the agreement. Nevertheless, it is important to point out that the restriction may be qualified as an anticompetitive practice when it is likely to limit competition unjustifiably or concentrate economic power to dominate markets or lead to abusive prices. In the light of the above, the antitrust agency – the Council for Economic Defence (CADE) – which is in charge of the administrative proceedings to ensure free competition, shall consider specific aspects, including the peculiarities of the business, the product or service involved, the size of the market, the commercial sector and the nature of the transaction to verify if the prohibition interferes unjustifiably competition in the local market. Furthermore, restricting a covenant on the transfer of the distribution rights to the supplier's products should be accepted, especially when a restriction is established in a reasonable proportion to organise and make distribution more competitive.

Law stated - 6 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

There is no limitation on the enforcement of confidentiality provisions in distribution agreements. Confidentiality provisions are fully accepted and enforceable under the laws of the land, as they aim to prevent the disclosure of competitive and secret information about the distributor's or supplier's business or technical information. The period under which confidentiality is valid and enforceable does not suffer further any limitations. Items XI and XII of article 195 of the Industrial property Law (Law 9,279/1996) prohibit any exposure of confidential information to third parties thereby accepting ad eternum confidentiality clauses.

Law stated - 6 February 2026

Competing products

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

Yes, restrictions on the distribution of competing products in distribution agreements are fully enforceable. Competition restrictions may apply to both supplier and distributor. Accordingly, article 711 of the Civil Code sets out that when exclusivity is not expressly

provided by the parties in the distribution agreement, there is a general presumption that an obligation will be implied. This presumption applies to distributors and agents by setting out that supplier cannot empower any agent or distributor for the granted territory and the distributor or agent cannot engage in other business that competes with that of the supplier. However, exclusivity and the prohibition to compete during the contractual period must be interpreted restrictively in the sense that it applies to a specific territory and goods and for the contractual period of distribution only.

The parties may provide broader non-compete clauses to extend it to a post-termination period. Clauses restricting activities may be valid and enforceable, especially after termination, insofar as they comply with the following requirements:

- be limited in time, especially if the non-compete clause extends to a period after termination of distribution;
- be limited to a specific territory where the distributor is used to represent the supplier;
- be limited to a specific market segment;
- be reasonable; and
- be technically justified.

Law stated - 6 February 2026

Prices

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

Suppliers, distributors and resellers are free to establish the prices of the products, including arrangements that impose price restrictions on distributors based on the structure of the market and demand. Under the Antitrust Laws, control of prices and commercial restrictions on a distributor is allowed in as much as it is commercially justifiable and does not impact negatively on consumers and competitors and does not overburden the distributor financially. Further to that, the validity of such clauses are highlighted when economically or technically justified thereby considering the market structure, the launching of a new products and expand overall demand for the product, market campaigns that demand the practice of a common price, among others.

Law stated - 6 February 2026

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?

Price fixing, fixing of maximum prices, recommended prices, resale prices and minimum advertised price policy, among others, are regarded as practices commonly adopted by local companies and included in commercial agreements. Such clauses are regarded,

in principle, as valid and enforceable especially if there is evidence that they do not limit competition unjustifiably or concentrate economic power to dominate markets or set abusive prices for the distributor or affect consumers unreasonably. If they affect competition, such rules will be under the remit of the Antitrust Laws. The prevailing rule under the local Antitrust Laws is the rule of reason, where the pro-competitive effect of the arrangement will be examined together with the negative impact on competition and consumers' rights.

Law stated - 6 February 2026

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?

Yes. A specific covenant of a distribution agreement may determine rules that set the price of the products that the supplier will provide to the distributor and the price offered by the distributor to its customers, especially if such rules aim to make the distributed products more competitive in the market and lead to an increase in profits without overburdening competitors and consumers.

Law stated - 6 February 2026

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?

There are no restrictions that prohibit or limit charging different prices to diverse customers, located in different areas, quantities, etc. if competition is not affected. Charging different prices based on the peculiarities of customers and special conditions in the market is in fact recommendable, as these are considered market variants.

Law stated - 6 February 2026

Geographic and customer restrictions

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

The parties may set out the contractual territory secured to the distributor based on geographic areas, field of use, relevant markets or categories of customers to which the distributor can resell.

Exclusivity is permitted within Brazilian territory and should be expressly provided in the distribution agreement, since exclusivity means the exclusion of a natural person or company from distributing the goods on the Brazilian market or in any region of the territory. If exclusivity is granted to a distributor or agent, other distributors or agents will be prevented from competing with the distributors for the specific exclusive granted market.

Nevertheless, article 711 of the Civil Law determines that exclusivity would prevail in the case of the absence of a clause.

Under the law of the land, there is no distinction between "active sales efforts" and "passive sales", although it is recognised that "passive sales" are those practises related to advertising activities, online sales, use of search engine optimisation tools among others derived from unsolicited requests from individual customers. Both practices (active and passive) are regarded trade acts with objective to promote and sell supplier's products in a market. Therefore, they should be better ruled in the distribution agreement

Law stated - 6 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

This is not applicable, as geographic and customer restrictions are allowed under the freedom to contract principle.

Law stated - 6 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

A supplier may restrict or prohibit e-commerce sales by its distribution partners and grant e-commerce rights to different distributors. Such a restriction is justified by the fact that digital platforms are viewed as diverse geographic locations with specific rules and different consumer behaviour. Nevertheless, such restriction or prohibition should be expressly provided in the agreement pursuant to article 711 of the Civil Code, which determines that exclusivity would prevail in the case of an absence of such a clause. This exclusivity rule under article 711 of the Civil Code applies solely to distribution agreements, as Law 4,886/65 determines that exclusivity should be expressly provided in sales representative agreements.

Local laws do not require commercial and business reports to establish different territories from physical sales and e-commerce nor the obligation to pay any "invasion fees". However, invasion fees may be stipulated in the agreement.

Law stated - 6 February 2026

21 | May a distributor or agent restrict a supplier’s sales through e-commerce intermediaries into the distribution partner’s territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

A distributor or agent may restrict a supplier’s sales through e-commerce intermediaries if such a restriction is expressly stipulated in a distribution agreement. Such a restriction is also applicable if the distributor is empowered as an exclusive party to promote

and distribute the supplier's products in the local territory. Reports on sales through e-commerce and payment of invasion fees are not legal requirements and they can be freely established by the contracting parties in a manner that limits the supplier's activities in the market. All restrictions on the parties' activities, arrangements and the like are permitted insofar as they are commercially justifiable and do not impose unreasonable hindrances with commercial harm to the parties.

Law stated - 6 February 2026

Refusal to deal

22 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?

There are no laws limiting a supplier's refusal to deal with particular customers, as the Civil Code preserves the freedom to contract. However, article 715 of the Civil Law secures indemnification to the distributor when a supplier ceases to deliver the goods without reason to the distributor or reduces the amounts in a way that overburdens the distributor's activities or makes the continuation of the agreement uneconomical. Article 715 has been interpreted extensively to encompass situations where a supplier unreasonably limits the distribution of products to specific customers.

Law stated - 6 February 2026

Competition concerns

23 Under what 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?

Distribution or agency agreements are not subject to reportable transaction and revision or approval by the Council for Economic Defence (CADE) and other agencies as they are ruled by the laws of contracts provided by the Civil Code and ancillary legislation. Therefore, such agreements are not framed in principle as a merger or acquisition that necessarily involves corporation transactions based on structural changes in companies.

Notwithstanding this, associative agreements are transactions under merger review and approval irrespective of the fact that the association arises from a contractual link or the formation of a new legal entity. There are scholars who understand that a distribution agreement should be framed as an association contract, because efforts, commitments and extensive investment are required by a supplier and by a distributor to jointly promote goods in the market. The possible framing of distribution, agency and franchising as associative agreements has led to strong complaints by local business people, as such agreements are highly used as an effective mechanism for disposing of goods in the market due to the lack of public control. Another group of scholars holds that distribution agreements are not associative agreements, as the supplier and distributor have diverse

objectives in business transactions. Furthermore, the distributor's reputation does not benefit from the distribution agreement, as the goods are identified by the brand of the supplier, not the distributor.

In an attempt to reduce the uncertainty about associative agreements, CADE issued Resolution 17 on 18 October 2016, which has provided relevant rulings on their antitrust merger review. Accordingly, an associative agreement has been defined under the antitrust concept as an association of two or more parties that set out a common entrepreneurship for the exploitation of an economic activity insofar as the following requirements are met:

- the agreement stipulates the splitting up of the risks involved and results in economic activity that will be or is exploited by the associative agreement;
- the agreement is executed for a period of more than two years; and
- the contracting parties need to be competitors in the market.

Further to this, an associative agreement will be filed for merger review and approval by CADE solely when one of the parties in the commercial transaction has had gross revenues in Brazil of approximately US$120 million in the fiscal year prior to the transaction and any other economic group involving in the transaction has had an approximate gross revenue of US$15 million in the fiscal year prior to the transaction.

The merger investigation will focus on the impact of the merger on the relevant market. Therefore, extensive information on the merger and the parties involved may be requested, such as detailed market information, identification of the existing competition, barriers to competition and other competitive dynamics of the relevant examined market.

Law stated - 6 February 2026

24 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?

Antitrust laws establish legal framework and requirements concerning the suppression of abusive practices of dominant economic positions and enlist commercial practices that damage competition. Among the listed practices – article 36, paragraph 3 of Federal Law 12,529 of 30 November 2011 – that may influence the enforceability of distribution agreements are:

- the establishment of common prices and sales conditions;
- the adoption of uniform commercial behaviour;
- limitation or restraint on trade or market access by new companies;
- obstacles to the establishment, operation and development of a competing enterprise, supplier, purchase or financer of a certain product or service; and
- the sale of a product to the acquisition of another or to the utilisation of a service.

Therefore, no specific constraints under the competition laws are applicable to suppliers and distributors, as Law 12,529/2011 sets broadly the listed practices that are framed as abusive.

Private injured parties may bring actions before the state courts grounded on antitrust violation following the requirements of article 47 of Federal Law 12,529/2011 and seek compensation for damages.

Law stated - 6 February 2026

Parallel imports

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

Brazil adopts a national exhaustion of rights in the sense that importation of genuine goods into Brazil necessarily involves prior approval of the brand owner or registrant of the brand at the Brazilian National Institute of Industrial Property (INPI). Therefore, parallel import practices involve the importation into Brazil of products identified by registered trademarks without the prior consent of the owner. The distributor can prevent this practice of a supplier's genuine products only if the distributor has obtained exclusive distribution rights, as it is an unauthorised parallel import practice (unfair competition).

Law stated - 6 February 2026

Advertising

26 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 require them to share in its cost of advertising?

There are no legal restrictions on distributors or suppliers to advertise, promote and market the products that sell in the market. Therefore, distributors may agree to assume the costs of advertising the products and stipulate conditions for such a promotion or may pass them to the supplier.

Notwithstanding the aforesaid, suppliers and distributors should consider existing laws on consumer rights, health matters and other laws of public order nature, such as specific label compliance and TV advertising. The Consumer Law (Law 8,078 of 11 September 1990) makes no distinction between supplier and distribution concerning repair and indemnification derived from false advertising. This means that a consumer may demand the repair and indemnification caused by a product's advertisement from any party involved in the chain of the advertisement, including the supplier, distributor, licensee, trademark owner and others.

Law stated - 6 February 2026

Intellectual property

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

The most important supplier's procedure to safeguard its intellectual property rights against third-party infringement is the filing and registration of the IP right before the local agencies, including and most importantly the Brazilian Trademark and Patent Office (or the INPI).

Technology transfer agreements are extensively used in Brazil to acquire technology and permit local parties to use the IP rights when they were of the essence. Under the local laws, technology transfer agreements comprise trademark licensing agreements, patent licensing, know-how licence agreements and technical assistance services.

Law stated - 6 February 2026

Consumer protection

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

The Consumer Law is regarded as a law of public order, meaning that the contracting parties of a distributor agreement and other commercial contracts cannot refuse to comply with the requirements and obligations of the law. Therefore, the Law applies to any kind of business or agreement that directly affects consumers. One of the most stringent rules is the prohibition on setting any kind of liability limitation for product defects.

Law stated - 6 February 2026

Product recalls

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

Recall is a mechanism recognised by the laws of the land that allows suppliers or distributors to go public to inform their customers and general consumers that their products contain defects and pose risks. As article 10 of the Consumer Law sets out that the supplier or distributor cannot place products and services on the market that present high levels of risk to consumer safety, recalls should be followed by the replacement of the risky product without any cost to consumers or proceed with reimbursement for the defective or risky products.

The responsibility for the publication of information about harmful products lies with the distributor who provides the product to the public. However, it is a common practice for the supplier and producer of the harmful or defective products to assume responsibility for

the publication and replacement of the goods, since the defects are usually hidden and unnoticed at the time of acquisition by the distributor and the consumer.

Law stated - 6 February 2026

Warranties

30 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?

Limitation of warranties and liabilities between suppliers and distributors is not subject to regulation and therefore the contracting parties may determine the rules related to them. However, warranties and liabilities linked to consumer rights, antitrust, environmental issues and other rights protected by public order laws cannot be affected by negotiations between a supplier or distributor. Therefore, the limitation of warranties in these matters are not enforceable.

Hence, the parties must observe the following cumulative procedure to make the limitation of liabilities valid and effective:

- expressly stipulate in the agreement the extent of liability limitation, as limitation cannot be implied;
- comply with the Consumer Rights Law to secure the rights of consumers and other laws of public order; and
- observe the principles of good faith and the social function of contracts.

Law stated - 6 February 2026

Data transfers

31 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?

There are restrictions on the exchange of information between a supplier and its distributors on end-user of their products in view of the General Data Protection Law or the LGPD (Federal Law 13,709 of 14 August 2018) that governs the processing and transfer of personal data. The processing of personal data and the exchange of information should comply with specific principles, such as the transparency of collected and stored information, the lawful basis for processing, purpose limitation, data minimisation and proportionality, among others.

The owner of private information is solely the data subject who is the natural person to whom the personal data refer. To use and process personal data, a third party called a controller may obtain authorisation from the data subject. The processing of personal data

may be led directly by the controller or by a processor who processes personal data in the name of the controller.

International sharing of private data is classified as the transfer of data to a company or entity located in a foreign country or international organisation. Accordingly, such a transfer is allowed when:

- the countries or international organisations receiving transferred information hold a level of protection of personal data adequate to the provision of the LGPD;
- the controller offers and evidences the guarantee of compliance with the principles of the LGPD; and
- the rights of the data subject are in the form of specific contractual clauses for a given transfer, standard contractual clauses and codes of conduct.

Furthermore, international transfer may take place when the data subject has given specific consent with prior information about the international nature of the operation. Law 13,709 of 14 August 2018 is regarded as a law of public order.

Law stated - 6 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Suppliers and their distributors in Brazil must adopt security, technical and administrative measures able to protect personal data from unauthorised accesses and accidental or unlawful situations of destruction, loss, alteration or any type of improper or unlawful processing. The applicable requirements are set out by the LGPD, and include the need for prior approval by the individual person for the transfer of private information from the one company to the other, including private information from supplier to distributor and vice versa.

Law stated - 6 February 2026

Employment issues

33 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?

A supplier may approve or reject the individuals who manage the distribution partner's business insofar as it is expressly provided in the distribution agreement, which will express the distributor's consent. Although there is no law addressing this matter, the good faith principle sets out that limitations and restrictions on the other contracting party should always be justified and, therefore, rejection would not be unreasonably withheld, especially when excessive costs are placed on the distributor. Nevertheless, the termination of an a labour relationship between distributor's management and distributor by the determination

of supplier may be viewed as interference in the labour relationship, thereby making supplier eligible for losses and damages under the labour law.

Law stated - 6 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

An employment relationship between a distributor's employees and the supplier will take place solely in case the following requirements are met, as set out by the Labour Law (Decree-Law 5,452 of 1 May 1943):

- employees are subordinated in the performance of their activities to the supplier;
- continuous – not occasional – activity is rendered to the supplier;
- salary payment accrues from the rendering of services to a supplier;
- there is exclusivity in the rendering; and
- employees lack risk in rendering the services to a supplier.

The consequences of this treatment would be the supplier assuming all the labour responsibilities and costs, such as wages, payment of the government's social security programmes, applicable taxes and payment of compensation in the case of employment termination.

Since distributors and suppliers are different and independent parties there is essentially no employment relationship between the distributor's employees and the supplier, unless supplier adopts an active position and interferes in the labour relationship between distributor and distributor's employees.

Law stated - 6 February 2026

Commission payments

35 Is the payment of commission to a commercial agent regulated?

The commission of an agent is not regulated by the laws of the land, as the contracting parties will have the freedom to establish the level of commission for the intermediation of business. Nevertheless, article 714 of the Civil Code guarantees that the agent and distributor should receive remuneration corresponding to the business concluded within the granted territory, even if the business is concluded without the agent's interference. Moreover, the agent shall be guaranteed the right to receive commission from the period of rendering service, notwithstanding the fact the agency agreement is terminated by any means.

Law stated - 6 February 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

Under the Brazilian legal system, all contracts are subject to the principles of good faith and fair dealing. This means that the parties should proceed with fairness and mutual trust when establishing contractual provisions and act as such when exercising their rights and obligations so that the contracting parties may achieve the interest set when executing the agreement. Such principles are governed by articles 113 and 422 of the Civil Code and, therefore, regarded as implied covenants of commercial agreements. There is a general duty of collaboration and an expectation of loyalty between the parties in the negotiation, execution and termination of the agreement.

Law stated - 6 February 2026

Registration of agreements

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

Distribution agreements are not subject to any registration before agencies and public authorities. Nevertheless, licensing of industrial property rights (patents, trademarks, utility model, industrial design, know-how among others) is subject to prior recordation at the INPI for the enforceability of the licensing agreement by the licensee. Example, licensee's court action to enforce its exclusivity under the Distribution Agreement.

Law stated - 6 February 2026

Anti-corruption rules

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

The Brazilian Anti-Corruption Law (Federal Law 12,846 1 August 2013) is a public order law. Therefore, any legal entity and physical person is obliged to comply with its requirements. Although liability for conduct against the interests of a public administration should rest with the legal entity directly responsible, the Anti-Corruption Law opens up the possibility of using the principle of "disregarding the legal entity" to extend the penalties to other companies and persons when dissimulation by another entity occurs regarding its observance of the Law. Therefore, the Law can be applied to a supplier when a distributor engages in corrupt acts that ultimately benefit the supplier.

Law stated - 6 February 2026

Prohibited and mandatory contractual provisions

39 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?

Distribution agreements are directly influenced by the Consumer Law, the Antitrust Law and the LGPD, among others related to commercial relationships. Such laws require specific mandatory behaviour that cannot be refused by the parties.

Law stated - 6 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

There are no restrictions on a party's contractual choice of a country's law to rule a distribution agreement. Nevertheless, if the parties do not establish the choice of country in the agreement, the following prevailing rule will apply:

- the place where the contractual obligation is or will be performed *lex loci executionis*; and
- the place where the distribution agreement was proposed when the parties are absent from each other.

Absent events are commonly found in international agreement negotiations through online platforms where the parties are in different jurisdiction and therefore not present.

Law stated - 6 February 2026

Choice of forum

41 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' choice to indicate the prevailing court or arbitration that will resolve conflicts that have arisen from the contractual relationship. However, if a decision is rendered by a foreign court or arbitration, the award will be subject to prior ratification and rendering of an exequatur by the Brazilian Superior Court of Justice (STJ). The ratification process does not involve analysis of the matters dealt with by the foreign court, but rather it will objectively determine if formal requirements have been observed under article 963 of the Civil Procedural Code, such as:

- being issued by a competent authority;
- being preceded by regular citation, even if verified by default;
- being effective in the country in which it was issued;

- not offending Brazilian res judicata;
- be accompanied by an official translation, unless otherwise provided for in a treaty; and
- not containing an offence to public order.

After this procedure, the foreign decision is ratified and the STJ grants the exequatur, which determines the enforceability of the foreign decision.

Law stated - 6 February 2026

Litigation

42 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?

Remedies to suppliers and distributors against infringement of the terms of a distribution agreement and dispute resolutions can be obtained through court proceedings, such as a preliminary ex parte injunction to cease the infringement and compensation from the incurred losses. There is no specific legal rule for calculating this compensation. Therefore, the courts will have to take into consideration the investments made by the distributor, for example, the duration of the contract and the actual amount of losses incurred, if possible.

Articles 303 and 402 of the Civil Code and also the Industrial Property Law establish indemnification or compensation parameters. Accordingly, compensation may be established by the most favourable to the injured party of the following criteria: the benefits that would have been gained by the injured party of the violation had it not taken place and the benefits gained by the infringer.

Urgent orders such as ex parte preliminary injunctions may be duly granted by the judges of the state courts to cease the alleged violation when there are elements that prove the probability of the alleged claim (*fumus boni iuris*) and the risk of loss or injury to the useful outcome of the lawsuit (*periculum in mora*). The objective of the injunction is to avoid irreparable damage or damages that would be difficult to recover.

There is no limitation on accessing the local courts by foreigners, nor unfair or discriminatory treatment of a foreign plaintiff, owing to the prevailing Equality Treatment Principle between plaintiff and defendant. If a court action is initiated by a foreign company in Brazil, the local courts may demand that the foreign plaintiff posts bonds (fiduciary guarantee) in court at a rate of 20% of the amount discussed in court unless the foreign company (plaintiff) evidences that it holds real estate in Brazil. The bonds are regarded as collateral to cover legal fees and the costs of the defendant or party against whom the action is initiated.

Another important principle governing Brazilian civil proceedings is the full disclosure of documents and information about the facts and circumstance by each party that will be

taken into consideration by the judge to support his or her decision. Disclosure denials are not accepted when determined by the judge when any legal party holds the obligation to disclose evidence and the documents affect both parties.

Litigation in Brazil is advantageous as the costs involved are reduced and the fact that business law courts usually deliver a final decision within 40 months of the outset. There is always the possibility to appeal to higher courts.

Law stated - 6 February 2026

Alternative dispute resolution

43 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?

Alternative dispute resolutions are fully accepted and recognised by local laws. Brazil is part of the New York Convention (Recognition and Enforcement of Foreign Arbitral Awards) and arbitration is foreseen in the Arbitration Law (Federal Law 9,307/1996). Accordingly, there is no relevant limitation on the terms of an agreement to arbitrate, as the parties may set out freely the terms and conditions for the arbitration settlement. Also, it is not mandatory for the arbitration clause to be foreseen in the distribution agreements for the parties to elect for arbitration as a form of dispute resolution, since the parties can sign an accessory term, which must be in writing, called a Commitment Term, which unequivocally binds the parties.

Foreign arbitration awards are recognised by the courts of Brazil and, therefore, enforceable. Such awards are subject to the same ratification process and exequatur as foreign decisions.

The advantage of resolving disputes by arbitration is the specialisation of the arbitrators in the legal matters involved. Notwithstanding, court specialisation can be found nowadays in the following state courts of the Brazilian federation:

- the State Court of Rio de Janeiro, which has seven chambers on business law matters;
- the State Court of São Paulo, which recently created two specialist IP first instance courts and, furthermore, two appellate chambers, composed of 14 specialist judges;
- the State Court of Minas Gerais, which has also inaugurated two specialist business law courts at first instance;
- the State Court of Paraná, which holds business law courts; and
- the State Court of Rio Grande do Sul, which has one specialist business law court.

The disadvantage of arbitration in Brazil is the cost involved and the impossibility of appealing to a higher panel.

Law stated - 6 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

There are no relevant proposals for new legislation or regulation that would revise or amend the existing laws on distribution and agency agreements.

As to new developments of the applicable laws, there is the applicability of the General Data Protection Law (LGPD) and the Internet Law (Federal Law 12,965 of 23 April 2014). The former deals with the relationship between providers and internet users, including business and consumer transactions and matters of private nature transmitted on digital platforms. Both laws are relevant to e-commerce in Brazil. While the LGPD addresses the processing of personal data of natural persons (information of an identified or identifiable natural person), the Internet Law encompasses the collection, storage, use and granting to third parties of access to data through the internet (connection logs to which this law relates and applies), including the data of companies (as consumers).

There have been discussions on the extension of the applicability of the LGPD to suppliers, especially foreign ones, when a distributor is the party who processes consumers' private data. It has not yet been determined whether the LGPD's obligations extend to suppliers due to their possible close relationship with local distributors or whether suppliers would be liable for penalties for acts committed by distributors in violation of this public order ordinance.

Another recent trend has been the unusual and increase use of "secret of justice" or "sealing of records" in court actions promoted in Brazil, most specifically in the business law and industrial property rights matters. This secret of justice is the judge's determination that the court procedure will be processed under confidentiality thereby allowing only the defendant and the plaintiff, and their representatives to access the information and documents presented in court. The secret of justice is commonly found in litigation involving family law and labour law. However, it is increasingly used in business law and industrial property. Cases under secret of justice present challenges related to transparency before third parties. It further interferes with the constitutional Principle of Publicity that prevails in the public administration and, most importantly, in court procedures.

Law stated - 6 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Generally, yes. There is no specific filing or regulatory review process applicable to foreign suppliers looking to establish a business entity or joint venture in Canada. However, if a subsidiary is established in Canada, note that the federal corporate statute and a few provincial corporate statutes set out requirements as to the residency of directors pursuant to which at least one director (or 25% of the directors if there are more than four) must be a Canadian resident.

Law stated - 21 January 2026

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

Generally, yes. If a subsidiary is established in Canada under the federal corporate statute or certain provincial corporate statutes, at least one director (or 25% of the directors if there are more than four) must be a Canadian resident. Pursuant to the Investment Canada Act, foreign business entities seeking to acquire or establish a Canadian business are required to notify Innovation, Science and Economic Development Canada no later than 30 days following such acquisition or establishment.

Law stated - 21 January 2026

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?

There are several different vehicles available to foreign suppliers who want to carry on business in Canada, each with varying tax and corporate consequences. A foreign supplier may:

- choose to contract directly with a Canadian distributor without carrying on business in Canada directly;
- opt to appoint a local agent or representative to sell its products in Canada;
- opt to carry on business in Canada using a Canadian branch or division; or
- choose to carry on business in Canada through a federally or provincially incorporated subsidiary or other affiliate.

The preferred choice of vehicle used for an importer owned by a foreign supplier to enter the Canadian market is the incorporation of a Canadian subsidiary or other affiliate. Though corporations may be incorporated under Canadian federal law, provinces have also enacted statutes regulating the formation of corporate and other non-corporate

entities, including corporations, unlimited and limited liability companies and partnerships. Business entities must usually register with the relevant corporate or business registry of each province in which they want to conduct business, pay the prescribed fees and file corporate or business registry forms containing basic information about the business and its ownership and management.

Law stated - 21 January 2026

Restrictions

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

No substantive restrictions on investment exist, except with respect to very large transactions or investments. Pursuant to the Investment Canada Act, foreign business entities seeking to acquire or establish a Canadian business are required to notify Innovation, Science and Economic Development Canada no later than 30 days following such acquisition or establishment. An onerous and thorough review process applies to non-World Trade Organization investors where the asset value of the acquired Canadian business is at least C$5 million for direct acquisitions or C$50 million for indirect acquisitions. However, the C$5 million threshold will apply to indirect acquisitions where the asset value of the acquired Canadian business represents more than 50% of the asset value of the global transaction. The review threshold for World Trade Organization investors as of 2026 was equal to an enterprise value of C$1.452 billion. This threshold is indexed annually based on growth in nominal GDP.

In addition, Canada has a federal system of parliamentary government, and the regulation and administration of certain trans-provincial industries fall within the sphere of federal legislative powers. As for those under provincial jurisdiction, various provinces have regulated certain industries that are viewed as having particular importance or significance. Thus, several federal and provincial statutes place restrictions on specific industries, such as aviation, collections, engineering, farming, fisheries, banking, trusts and loans, securities, broadcasting, telecommunications, insurance, liquor sales, cannabis and industries that involve the exploitation of Canada's natural resources. Depending on the products being distributed, these restrictions may affect international distribution arrangements where the foreign supplier has a direct or indirect presence in Canada.

Law stated - 21 January 2026

Equity interests

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

Generally, yes, subject to certain restrictions.

There are several different vehicles available to foreign suppliers who want to carry on business in Canada, each with varying tax and corporate consequences. A foreign supplier may:

- choose to contract directly with a Canadian distributor without carrying on business in Canada directly;
- opt to appoint a local agent or representative to sell its products in Canada;
- opt to carry on business in Canada using a Canadian branch or division; or
- choose to carry on business in Canada through a federally or provincially incorporated subsidiary or other affiliate.

The preferred choice of vehicle used for an importer owned by a foreign supplier to enter the Canadian market is the incorporation of a Canadian subsidiary or other affiliate. If a subsidiary is established in Canada under the federal corporate statute or certain provincial corporate statutes, at least one director (or 25% of the directors if there are more than four) must be a Canadian resident.

Though corporations may be incorporated under Canadian federal law, provinces have also enacted statutes regulating the formation of corporate and other non-corporate entities, including corporations, unlimited and limited liability companies and partnerships.

Law stated - 21 January 2026

Tax considerations

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?

Depending on the business structure selected by a foreign supplier wanting to sell goods in Canada, different taxes may apply on its income.

Canadian residents are taxed on their worldwide income, whereas non-residents may be taxed in Canada when they sell taxable property or earn employment income in Canada. If the supplier carries on business in Canada through a fixed place of business or permanent establishment, any income derived in respect thereof will generally qualify as business income that is taxable in Canada on a net income basis.

Canada has entered into taxation-recognition treaties with a large number of countries; if the foreign supplier is from a treaty country, it will generally be exempt as long as it does not carry on its activities through a permanent establishment in Canada.

The income of a non-resident supplier carrying on business through a "branch" type of operation in Canada will typically be subject to a "branch tax", which is the income tax that applies when a non-resident corporation carries on a business in Canada through a branch (ie, by itself having offices, employees, files or other aspects of a permanent establishment in Canada) as opposed to a Canadian subsidiary. The base rate for branch tax is 25% of

the Canadian taxable income earned through the branch in Canada, but it may be reduced by tax treaties, if applicable.

If a foreign supplier appoints a local agent or representative to sell its products in Canada, the income earned by the supplier through sales originating from the agent may, depending on the agent's commission or fee structure, be characterised as passive income and subject in Canada to a withholding tax. If so, the agent would be responsible for withholding the tax and remitting amounts to Canadian tax authorities. The standard withholding tax rate of 25% under Canadian income tax legislation is often reduced to 10% by tax treaties, if applicable.

Canadian withholding tax on passive income would not be payable if a subsidiary or other affiliate is established in Canada. Nonetheless, dividends paid to its parent would be subject to a withholding tax of 25%. This rate can be reduced to as low as 5% by tax treaties, if applicable.

In conclusion, a thorough review of all relevant Canadian legislation pertaining to each structure and a careful evaluation of the effect of tax treaties entered into and ratified by Canada with the foreign supplier's jurisdiction, on a case-by-case basis, is strongly advised.

Law stated - 21 January 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 | What alternative distribution relationships are available to a supplier?

There are a number of options available to suppliers for establishing a distribution structure. The most common structures and their principal features are outlined below.

- Direct distribution: the foreign supplier uses a Canadian subsidiary or its own employees to sell goods in Canada.
- Independent agents and representatives: the supplier relies on an agent or representative to originate sales of goods in Canada and pays them a commission on the goods sold to customers in Canada.
- Trademark licensing: the supplier gives a Canadian entity a licence entitling it to use its intellectual property rights to manufacture and distribute goods for the Canadian market.
- Franchises: this gives rise to special considerations given that several Canadian provinces have enacted franchise-specific legislation (the Franchise Acts) (namely, Ontario, British Columbia, Alberta, Prince Edward Island, New Brunswick, Manitoba and, most recently, Saskatchewan, which has yet to come into force), under which the term 'franchise' is broadly defined. As a result, a variety of other contractual relationships, including distribution, agency and trademark licensing agreements, may possibly be encompassed. Prior to formalising any particular distribution, agency or trademark licensing arrangement for Canada, parties should carefully examine provincial legislation and consider whether they would be subject to franchise legislation, which entails a duty of disclosure and fair dealing and may

give rise to additional requirements for a supplier that are not generally intended in the context of a distribution, agency or trademark licensing arrangement.

- Private label: a Canadian distributor sells the foreign supplier's products under its own name and trademark. This allows the foreign supplier to sell products in Canada while having the benefit of being recognised under local brand name. However, it generally provides very little control by the supplier.
- Joint ventures: the supplier relies on a local distribution partner that is owned in part by the supplier.

Each of the above can be established by a contractual arrangement, and the parties are generally free to determine their respective rights and obligations under the agreement, subject to certain restrictions.

Law stated - 21 January 2026

Legislation and regulators

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?

In general, parties to a distribution or agency agreement are free to establish the terms of their relationship by contract, subject to the expansive definition of a franchise under the Franchise Acts. In addition, certain industries are specifically regulated by federal or provincial law. As a result, care should be exercised when structuring an arrangement that may fall within the ambit of the Franchise Acts or that, by its nature, may be subject to restrictions in a regulated industry.

Additional restrictions arise as a result of competition laws.

Law stated - 21 January 2026

Contract termination

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 parties to a distribution or agency agreement can provide for termination without cause in the contract. If the contract stipulates that this termination can occur without notice and with immediate effect, the stipulation will generally be enforced as long as it is provided for in express and unequivocal terms. If the contract is silent as to the requirement to provide notice in the event of a termination without cause, the length of the notice period will vary according to certain factors.

No specific cause is required to terminate a distribution or agency contract. If the contract is silent as to the possibility of terminating without cause, it is generally possible to terminate

the arrangement upon reasonable notice. (What constitutes reasonable notice will be determined according to certain factors.)

As for termination with cause, the parties may establish, by contract, occurrences that constitute events of default giving rise to termination. Where the contract is silent, Canadian courts have generally required evidence of a fundamental breach (or, in Quebec, a serious or material breach) to find cause for termination. Short of establishing a cause, the provision of reasonable notice would be necessary to lawfully terminate the relationship. In addition, Quebec law requires that termination rights always be exercised in good faith.

If the contract is for a fixed term, it would naturally expire at the end of the term, and there would not generally be any compensation payable at that time. However, if the parties choose to continue their relationship after the end of the term, it may constitute an implicit renewal or an extension of the contract for an indeterminate term.

Law stated - 21 January 2026

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

There are no statutory provisions governing compensation upon termination for distribution or agency agreements. In general, courts have found that no compensation is due if reasonable notice has been given, and compensation equivalent to reasonable notice is typically granted where a contract is terminated without notice. The amount of the indemnity, which effectively replaces the notice period, would be estimated based on past profits, and would take into account factors such as the length of the relationship, the nature of the relationship (including whether it was exclusive), industry practice, investments made by the distributor for purposes of the agreement and the time it would take the distributor to obtain a similar source of income from an alternative supplier.

Parties can agree to pre-establish a liquidated damages clause or, pursuant to the Civil Code of Quebec, a termination penalty, and the contractual provision will be enforceable unless it is deemed unreasonable by the courts.

Law stated - 21 January 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

Generally, yes. If the contract is silent with respect to transfers or changes of control, then it is generally assumed that such an operation is permitted without the supplier's consent unless the arrangement constitutes an *intuitu personae* contract.

Law stated - 21 January 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Confidentiality agreements are normally enforceable under Canadian law, subject to certain exceptions, such as being compelled to disclose under law or in the course of legal proceedings. Under Quebec law, disclosure of confidential information is also permitted for public health or safety reasons.

Information that is publicly available or generic cannot be regarded as confidential. Trade secrets that meet the jurisprudential criteria of being known by only a few people within a given business and are treated as such within that business would be protected irrespective of contractual provisions. However, it is generally prudent to include a contractual provision regarding restrictions on the use of information acquired in the course of the distribution or agency agreement, especially where it could be used by one party to the detriment of the other.

Law stated - 21 January 2026

Competing products

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

In general, yes, subject to restrictions established by the Competition Act (Canada).

Restrictions on distributing competing products during the term of the relationship are generally enforceable. However, restrictions on competition that extend beyond the term of the agreement must be reasonable and coherent with the contract's purpose and are read restrictively by Canadian courts. Non-competition clauses must be limited with regard to the term, geographic area and activities restricted, the whole in accordance with what is necessary to protect the supplier's or principal's legitimate interests, failing which the provision risks not being enforced in any aspect. Moreover, a supplier or principal would not generally be able to rely on this restriction if the agreement is terminated without cause by them or as a result of their conduct.

Law stated - 21 January 2026

Prices

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

Price maintenance is a reviewable trade practice under the Competition Act. The threshold for enforcement authorities to apply sanctions on the basis of price maintenance requires that the supplier influence upwards or discourage the reduction of the prices charged or advertised by another business that is either a customer of the supplier or a competitor, and that the supplier's conduct be likely to adversely affect competition. As such, price maintenance would not be recognised in a commercial agency relationship whereby an agent is simply soliciting orders on behalf of its principal rather than purchasing and reselling products itself. It is common for suppliers to provide suggested retail prices on packaging and labels.

The Competition Tribunal may, upon the request of the commissioner of competition, or at the request of a private party with leave from the Competition Tribunal to that effect, make orders for a reviewable trade practice to cease or compel a business to accept a customer or order on reasonable trade terms. Fines may also be applicable if conduct is found to lessen competition.

Law stated - 21 January 2026

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?

Minimum advertised price policies are common and, while they constitute reviewable trade practices under the Competition Act, they are only viewed as problematic where there is an adverse effect on competition.

Minimum advertised price policies must be established unilaterally by the supplier and must be uniformly enforced. They should also specifically allow products to be sold at prices lower than the minimum advertised price as this provides distributors and agents with the requisite flexibility to offer on-location discounts, coupons and other rebates.

Law stated - 21 January 2026

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?

Generally, yes. The parties are free to establish their agreed terms of sale in their agreement, including pricing preferences, subject to certain restrictions such as price discrimination, which significantly lessens competition.

Law stated - 21 January 2026

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?

Price discrimination and promotional allowances (whether through discounts, rebates, allowances, price concessions or other advantages) are reviewable trade practices under

the Competition Act but would generally only be problematic if they significantly lessen competition.

Law stated - 21 January 2026

Geographic and customer restrictions

18 | May a supplier restrict the geographic areas or categories of customers to which its distribution partner resells? Are exclusive territories permitted? Is there a distinction between active sales efforts and passive sales that are not actively solicited, and how are those terms defined?

Providing for an exclusive territory or other market restrictions in a distribution or agency agreement would not be prohibited, but would be subject to oversight by competition authorities. Unless the restrictions substantially lessen competition, they would not be enjoined.

The distinction between active and passive sales efforts, as it is understood in Europe, is generally not applicable under Canadian law.

Law stated - 21 January 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

Geographic and customer restrictions would not be prohibited unless they substantially lessen competition, in which case the reviewable trade practice would be subject to the sanctions and penalties enforced by the Competition Tribunal.

Law stated - 21 January 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

As is the case with reselling generally, restricting or prohibiting e-commerce sales altogether or in respect of an exclusive territory in a distribution or agency agreement would not be prohibited, subject to restrictions implemented by the Competition Act. The anticompetitive restraints provided by the Act are applicable to both online and brick-and-mortar retailers. Therefore, territorial restrictions on e-commerce sales would not be prohibited unless they substantially lessen competition.

Accordingly, a supplier may entirely prohibit or otherwise limit e-commerce sales by its distribution partners to a given territory or otherwise, so long as these restrictions do not adversely affect competition. Subject only to the foregoing anticompetitive concerns, the parties are free to establish reporting obligations, and the consequences of any failure to comply with (or deviations from) the contractually established territorial rights, that comply with legal principles applicable in the relevant province.

Law stated - 21 January 2026

21 May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

As in the case of restrictions on e-commerce sales by distributors, parties to a distribution agreement are also free to establish territorial restrictions on e-commerce sales by the supplier party, as well as impose reporting obligations and consequences in the event of non-compliance (including the payment of "invasion fees" or other compensation), provided that the restrictions do not adversely affect competition.

Law stated - 21 January 2026

Refusal to deal

22 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?

Refusal to deal is a reviewable trade practice under the Competition Act and would give rise to enforcement only where the practice substantially lessens competition; such assessment partially hinges on whether such refusal substantially affects the whole or part of the customer's business or whether it precludes the customer from carrying on business due to their inability to obtain adequate supplies of the product anywhere in the market on usual trade terms. A supplier is otherwise free to decide who it chooses to do business with. Restrictions on a distributor's resale rights are generally permissible.

Law stated - 21 January 2026

Competition concerns

23 Under what 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?

In practice, without significant market power or concentration, it is unlikely that a typical distribution arrangement would trigger oversight of this nature.

Mergers and other transactions are generally notifiable to, and subject to review by, relevant competition authorities where the target entity operates a business in Canada other than solely through import sales (ie, a physical presence in Canada is required) and where certain "size-of-parties" and "size-of-transaction" thresholds are met. The "size-of-parties" test requires that the parties to the transaction, together with their affiliates, have a combined aggregate book value of assets in Canada, or combined annual gross revenues

from sales in, from and into Canada, exceeding C$400 million. The "size-of-transaction" test varies based on the transaction type (eg, share acquisition, asset acquisition, amalgamation, etc), but broadly requires that the target corporation and its controlled subsidiaries, or the target assets (as applicable), have a book value of assets in Canada exceeding C$93 million, or that the annual gross revenues from sales in and from Canada generated from the assets in Canada exceed C$93 million. These thresholds may be adjusted annually based on GDP growth. Furthermore, additional conditions apply for a share transaction to be notifiable to the Competition Bureau, based on the percentage of outstanding voting shares acquired by the purchaser.

The Competition Bureau may, among other things, dissolve or prevent a completed or proposed notifiable transaction where it is likely to result in a substantial lessening or prevention of competition in any relevant market in Canada, considering factors such as the level of economic concentration in the relevant industry, the market shares of the merging parties and the conditions of entry and barriers to entry into the market. Specifically, a merger or proposed merger is presumed to result or to likely result in a significant increase in concentration or market share if, in any relevant market, as a result of the merger or proposed merger, the market share of the parties to the merger or proposed merger is or is likely to be more than 30%, unless proven otherwise by the parties on a balance of probabilities.

However, there are exceptions to the notification requirements and to the competition authorities' ability to dissolve or prevent a transaction, notably with respect to certain unincorporated joint ventures.

Otherwise, certain types of joint ventures or strategic alliances may be subject to notification and review if they satisfy the above criteria. Other vertical arrangements between suppliers and their customers are assessed on the same basis.

Law stated - 21 January 2026

24 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?

In addition to the restrictions on prices, territory, customers and e-commerce sales, exclusive dealing is a reviewable trade practice under the Competition Act, but conduct of this nature would not generally be subject to sanctions unless requiring a distributor to purchase its products exclusively from a given supplier is likely to have a significant adverse impact on competition.

Law stated - 21 January 2026

Parallel imports

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

The sale of grey market products will not generally constitute trademark infringement under Canadian law. However, where a Canadian company is the registered owner of a Canadian trademark, and is distinct from its international supplier or manufacturer, it would be in a position to rely on the provisions of the Trademarks Act to contest parallel imports and the distribution of grey goods.

A distributor or agent would not have any recourse where the trademark is owned by a foreign entity from which the legitimately imported grey market goods and the goods destined to be sold by the distributor or agent originate. A passing-off action may occasionally be successful where the grey market goods do not meet Canadian safety or labelling requirements. Additionally, in some limited circumstances, courts may intervene and exceptionally grant punitive damages, in order to prevent misrepresentations and counter the sale of grey market goods.

As a practical matter, suppliers who sell goods to a wholly owned subsidiary or other affiliate for distribution in Canada should ensure that the local subsidiary or affiliate is the owner of the trademark in Canada. Ensuring that the product is specifically designed and labelled for the Canadian market will also facilitate the preservation of rights against parallel imports.

Holders of a copyright (eg, in a brand logo) are also afforded a certain level of protection against parallel imports under the Copyright Act. To qualify for this supplemental protection, it is recommended that the Canadian distributor be assigned the copyright in Canada rather than be given an exclusive licence to use it. If the distributor is not an affiliate of the supplier, it may be preferable to allow for the copyright assignment to be reversed at the end of the contract.

Law stated - 21 January 2026

Advertising

26 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 require them to share in its cost of advertising?

In Canada, the federal government generally regulates advertisement through the Competition Act, which prohibits any advertisement that is false or misleading in a material respect. The materiality of the representation is considered in light of whether it may influence a consumer to buy or use the product or service advertised based on the general impression conveyed by an advertisement, in addition to its literal meaning.

Advertising Standards Canada administers the Canadian Code of Advertising Standards, which sets out criteria for acceptable advertising and guidance on inaccurate, deceptive or otherwise misleading claims, statements or representations, as well as price claims, comparative advertising and testimonials.

Most Canadian provinces also have legislation regarding consumer protection and business practices, many of which include prohibitions on false, misleading or deceptive representations made to consumers. Certain legislation also contains specific prohibitions, such as restrictions on using representations that products confer any particular benefit or standard of quality, and restrictions on inaccurately advertising price advantages. Certain

provincial legislation provides for more serious protections with respect to the unfair practice of making unconscionable representations.

As for the responsibility for marketing and advertising in a distribution or agency relationship, the supplier and its contractual counterpart may determine their respective contributions by contract.

Law stated - 21 January 2026

Intellectual property

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

The types of protections available depend largely on the nature of the intellectual property rights in question, but most types of intellectual property benefit from the same types of safeguards as are commonly recognised internationally, and may be exercised by a supplier against both distribution partners and third parties.

Trademarks

Trademarks are protected under the Trademarks Act. Distinctiveness is central to the definition, and a trademark need not be registered to be valid, or even licensed, in Canada. Registration with the Canadian Intellectual Property Office has the advantage of providing nationwide protection of the registered trademark, as opposed to limited protection in geographical areas where a common law mark (ie, an unregistered mark) is known. Foreign trademark owners seeking Canadian trademark registrations may also apply for them by way of the Madrid International Trademark System.

In the distribution and agency context, remedies available to a supplier in respect of its distribution partner (eg, following a breach of exclusive use clauses or the use of a confusing trademark) range from injunctive remedies to passing-off actions. These remedies are also available for infringement and other recognised violations by third parties.

Patents

Innovations that are new, useful and inventive can be protected under the Patent Act-. Patented innovations must be registered with the Canadian Intellectual Property Office to be afforded protection.

Unless otherwise contractually stipulated, the Patent Act provides that a person who infringes a patent is liable to the patentee and to all persons claiming under the patentee for acts of infringement. Injunctive relief and damage claims would be available and may be instituted against distribution partners and third parties who engage in prohibited practices in respect of patented concepts.

Copyright

Copyright is protected under the Copyright Act. Protection is extended, irrespective of registration, for all original works produced in any country that is a signatory of the Berne Convention. However, registration with the Canadian Intellectual Property Office is possible.

Remedies for copyright infringement under the Copyright Act include damages, lost profits and injunctions prohibiting distribution or ordering the destruction of infringing goods. Actions can be brought by the copyright owner against distribution partners or any third parties.

Know-how and trade secrets

There is no statutory protection of know-how or trade secrets in Canada.

Common law, or in the case of Quebec, civil law, affords protection to trade secrets that are known by only a few people within a given business and are treated as such within the business. Parties must also rely on common law tort and contractual undertakings to protect know-how from unauthorised disclosure or use.

Accordingly, the nature of the confidential information that a supplier wishes to protect, as well as the legal consequences arising as a result of its dissemination, should be clearly identified by the contracting parties in their agreement. If this tort occurs, injunctive relief and damages may be sought by a supplier against a distributor or any third party before the provincial courts with competent authority.

Technology transfer agreements

Technology transfer agreements are not generally used in the distribution and agency context.

Law stated - 21 January 2026

Consumer protection

28 | What consumer protection laws are relevant to a supplier or distributor?

In addition to the advertising rules provided in the Competition Act and the requirements of the Canada Consumer Product Safety Act, most Canadian provinces have legislation regarding consumer protection or business practices, or both.

Additionally, rules relating to warranties and vendor liability may be relevant in the consumer context.

Of importance with respect to online sales, certain provinces in Canada impose specific formalities in respect of distance (or remote) contracts, where a consumer contracts without being in the physical presence of a merchant.

Law stated - 21 January 2026

Product recalls

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

The Canada Consumer Product Safety Act (CCPSA) grants Health Canada, the federal ministry charged with public health matters, sweeping powers to issue mandatory product recalls and require product safety tests. The CCPSA applies where products are usually obtained by an individual for non-commercial purposes and imposes a general threshold of "danger to human health and safety", which is evaluated on the basis of whether an existing or potential hazard is posed by a product during its normal use and can cause death or have an adverse effect on an individual's health in the short or long term.

In the case of an incident, a manufacturer or distributor can either voluntarily issue a product recall, or the recall may be ordered by Health Canada. Incidents include the following: occurrences that caused or could have caused death or injury; situations where a dangerous defect is noticed; situations where an incorrect, insufficient or non-existent label creates a risk of death or injury; and situations where another domestic or foreign public body initiates a recall. If a product is subject to a recall, the manufacturer (or, if the manufacturer is foreign, the importer) must provide Health Canada with information regarding the incident and file a mandatory incident report.

Specific risks relating to particular classes of products, including candles, glass items, mattresses, children's jewellery and sleepwear, toys, food, drugs, cosmetics, medical devices, carriages and strollers, cribs, cradles and bassinets, playpens, helmets, residential smoke detectors, firearms and ammunition, are further dealt with in detailed regulations.

A particular regime applies to defects and recalls relating to motor vehicles, tires and child car seats, which is administered by Transport Canada.

The parties to a distribution or agency arrangement may determine contractually who is responsible for the costs associated with recalls and for carrying out any applicable formalities. However, enforcement authorities also have the power to initiate a recall; therefore, the allocation of responsibility established by the parties may be overridden in practice, though contractual indemnities would still apply between the parties.

Law stated - 21 January 2026

Warranties

30 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?

The supplier and distributor may contractually allocate among themselves the risks relating to products, including with respect to warranties. Products may usually be sold by a supplier to a distributor without any warranty at all. However, the extent to which implied warranties

may be disclaimed varies by province, and certain exceptions apply. For example, in Quebec, a seller may not be able to disclaim damages if it has knowledge pertaining to deficiencies relating to the quality of its products, if it commits gross fault or negligence, or where bodily or moral harm occur. In addition, downstream customers other than a first-hand purchaser could have recourse against the manufacturer and other members of the distribution chain if a product suffers from a safety defect.

With respect to consumer warranties, most Canadian provinces have 'sales of goods' legislation that regulate them and prohibit limiting consumer warranties contractually. In Quebec, strict liability applies to product defects under consumer protection law, and neither the distributor nor the supplier may limit consumer warranties; moreover, the benefit of a consumer warranty cannot be waived by a consumer.

Law stated - 21 January 2026

Data transfers

31 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?

The federal Personal Information Protection and Electronic Documents Act (PIPEDA) contains significant protections for individuals whose personal information may be collected, used and shared by people or entities with which they have dealings. PIPEDA requires that individuals provide informed consent before their personal information is processed and shared, and the individual concerned must be informed of the projected uses of the data in advance. The law also requires disclosure where data may be processed or stored in other countries or by entities other than the one collecting the data, whether domestically or abroad, even if the processing or storage is done on behalf of the entity collecting the data. Additionally, organisations subject thereto may, in certain circumstances, be required to report and maintain records of security breaches involving personal information under their control.

One of the purposes of PIPEDA's adoption was to align Canadian legislation with the European Union's strict privacy requirements. However, in light of the Anti-terrorism Act 2015, which grants the government broad access to personal information for national security reasons, and, the invalidation of the US Privacy Shield by the EU Court of Justice in *Data Protection Commissioner v Facebook Ireland and Maximillian Schrems* (C-311/18, 2020) (*Schrems II*), it is likely unwise to assume that the current Canadian legislation satisfies the EU's highly protective privacy standards, especially in light of the enactment of the EU General Data Protection Regulation (GDPR) in 2018. While Canadian privacy legislation has not been directly challenged and, in light of the *Schrems* decision, is likely the preferred regime in North America, Canadian businesses that store or process personal information about EU citizens should be mindful of how the principles of the GDPR may affect their practices.

Inspired by the GDPR and California's privacy regime, the federal government has recently introduced yet another bill known as the Digital Charter Implementation Act, which

comprises the Consumer Privacy Protection Act which would replace certain provisions of PIPEDA in an attempt to modernise Canadian private sector privacy laws and to strengthen enforcement by addressing the challenges of new technologies (including artificial intelligence) and imposing onerous penalties for non-compliance. While the bill is still under review, the goal is to establish consistency with foreign privacy law regimes to provide a competitive advantage to Canadian businesses dealing with personal information. The provinces of Quebec, Alberta and British Columbia have enacted privacy legislation that extends similar protections to individuals and applies to private sector entities under provincial jurisdiction. The province of Quebec has a stringent private sector privacy regime, akin in many respects to the GDPR, regime, which imposes requirements such as mandatory privacy impact assessments when data is transferred outside Quebec and in the context of numerous types of IT projects.

The parties to a distribution or agency agreement may contractually stipulate, as between them, who "owns"'or "controls" the information collected from customers and end users (although Canadian privacy law does not consider that data consisting of personal information is "owned" by those who collect, transmit or use it), but the restrictions described above will apply to all of those who collect, use, share and store such information.

Law stated - 21 January 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Suppliers and their distribution partners are responsible for complying with the federal and provincial privacy legislation applicable to the customer data held. This would include collecting, processing and disclosing personal information only for the purposes for which valid consent has been obtained from the customers to whom such information relates.

Given that distributors are client-facing, it is usually the distributor's responsibility to ensure that adequate consent is obtained from customers to enable the distributor to legally disclose any personal information collected from customers to the supplier, including the transfer of any personal information to a supplier outside the province or country in which the customer is located. Suppliers must therefore ensure that their distributors contractually agree to comply with all applicable privacy laws and obtain valid consent from customers for them to be in a position to legally utilise the customer information collected for their own purposes.

Law stated - 21 January 2026

Employment issues

33 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?

In general, the parties are free to govern their relationship by contract, including granting the supplier approval rights over the individuals who manage the distribution partner's

business or termination rights as a result of reasonably objective management failures to comply with the stated objectives or obligations of the distribution relationship. However, this may not be the case with distribution arrangements subject to Franchise Acts or in industries that are subject to certain specific regulations and legislation, such as aviation, collections, engineering, farming, fisheries, banking, trusts and loans, securities, broadcasting, telecommunications, insurance, liquor sales, cannabis and industries that involve the exploitation of Canada's natural resources.

Without specific contractual provisions producing the desired effect, a supplier's dissatisfaction with the distributor's management would generally not be considered sufficient cause to terminate a distribution relationship without notice.

Law stated - 21 January 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

Each Canadian province has enacted its own health and safety, employment standards and labour relations legislation. Accordingly, provincial laws and regulations govern most matters relating to labour law.

Depending on the nature of the relationship, there is a risk that a distributor or agent may be considered an employee, in which case the supplier would be subject to mandatory rules applicable to minimum wage rates, overtime wages, vacation and leave compensation, hours of work, severance and notice periods, as well as union certification and collective bargaining laws, all of which vary greatly by province and industry.

To mitigate these risks, the parties may specify by contract that they are independent contractors and cannot be responsible for each other's actions, including in connection with labour and employment matters.

To avoid any unintended characterisations, care must be taken to ensure that each distribution partner operates as a distinct and truly independent entity from a supplier (ie, no common control or direction emanating from the supplier that is greater than that typically characterising the distribution or principal–agent relationship) to be considered a separate employer for labour union certification and collective bargaining purposes.

Law stated - 21 January 2026

Commission payments

35 Is the payment of commission to a commercial agent regulated?

The parties are generally free to establish the agent's compensation by contract. To the extent that commissions attract withholding tax, the agent will be responsible for withholding the applicable amounts and remitting them to the tax authorities in Canada on behalf of the principal.

Law stated - 21 January 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

The Supreme Court of Canada has found that there is an inherent duty for parties to honestly perform their contractual obligations, and many common law courts have held that an implicit obligation of good faith exists in contractual dealings. According to this series of court decisions, the duty of honest performance precludes a contracting party from actively deceiving or knowingly misleading its contractual counterpart, including by way of omission or even silence, depending on the particular circumstances.

The Supreme Court of Canada has also found that the duty to exercise discretion in good faith, like the duty of honest contractual performance, is not an implied term that can be contractually excluded but rather a general principle of law that applies to all contracts, including distribution relationships. This duty is breached when contractual discretion is exercised in an unreasonable manner, meaning that it is unrelated to the purposes for which discretion was granted.

A perhaps more fulsome obligation exists under articles 6, 7 and 1375 of the Civil Code of Quebec, which imposes a duty on all parties to conduct themselves in good faith in all contractual dealings, including at the pre-contractual stage.

Additionally, the Franchise Acts, which may apply to certain types of distribution agreements, include an explicit duty of good faith and fair dealing during the term of the contractual relationship.

Law stated - 21 January 2026

Registration of agreements

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

No legislation directly governs international distribution agreements or expressly requires the registration of a distribution agreement with a foreign national with any authorities in Canada, subject to certain restrictions, such as those arising from the Franchise Acts.

There is no requirement to register a trademark licence, and there is no clear adverse effect of failing to do so in a timely manner.

Under the Copyright Act, a copyright licence must be granted in writing and must be signed by the owner of the right in respect of which the licence is granted or by its duly authorised agent. The grant of a copyright licence may be registered, and the rights of any registered licensee will take priority, without notice, over any prior unregistered licensees.

Law stated - 21 January 2026

Anti-corruption rules

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

Bribery and corruption of public officials are crimes in Canada under the Criminal Code for both the corruptor and the corrupted official. In addition, the Corruption of Foreign Public Officials Act applies to acts of corruption or bribery committed by Canadian persons outside Canada. Charges may also extend to those who aid or abet offenders.

Law stated - 21 January 2026

Prohibited and mandatory contractual provisions

39 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?

Restrictions and prohibited practices in respect of distribution and agency relationships include, among others, restrictions imposed by federal or provincial law in certain regulated industries, such as aviation, collections, engineering, farming, fisheries, banking, trusts and loans, securities, broadcasting, telecommunications, insurance, liquor sales, cannabis and industries that involve the exploitation of Canada's natural resources, as well as restrictions arising from the Franchise Acts and competition laws.

There are no mandatory provisions or automatic inclusions in contracts and the parties are generally free to set out the terms of their agreement by contract; however' the Canadian judiciary is increasingly inclined to interpret the exercise of contractual rights through a lens that examines their consistency with the fundamental principles of good faith, and may accordingly imply terms in this context.

In certain cases, courts enforcing an agreement in Canada will be required to apply mandatory provisions of local law. Overriding a contract by reason of mandatory local law would generally apply only where either the contract or the parties' conduct is inconsistent with public policy, for which the threshold is no lower in Canada than in other jurisdictions with sophisticated legal systems. Rules that could be considered mandatory in Canada include limitations on restrictive covenants, competition issues, limitations of liability, privacy laws and criminal matters.

Law stated - 21 January 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

The parties are free to choose the laws that will govern their relationship. All Canadian provinces permit the selection of a foreign governing law as long as doing so is not considered to be in breach of the domestic law, subject to the application of laws or provisions of public order in Canada.

Canada is party to numerous international treaties such as the Vienna Convention on the International Sale of Goods. Where the selected or applicable law is that of Canada, the foregoing Convention applies automatically unless expressly set aside by the parties in their contract.

Law stated - 21 January 2026

Choice of forum

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

Choice of forum clauses are generally enforced by Canadian courts, thus making it possible for the parties to select a non-Canadian court to resolve disputes or claims arising from their agreement, even where they are related to occurrences in Canada. In addition, mediation and arbitration are viable and recognised mechanisms of dispute resolution across Canada.

A final monetary and conclusive judgment on the merits from a foreign court is usually enforced by Canadian courts. Certain provinces, such as British Columbia and Ontario, have enacted legislation that provides a simplified procedure for registering and enforcing foreign judgments and, in certain cases, arbitration awards. Arbitration awards are readily recognised throughout the country as Canada is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Law stated - 21 January 2026

Litigation

42 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?

In civil matters, provincial courts generally have jurisdiction except for those matters that are specifically reserved to the federal judiciary (such as intellectual property, bankruptcy, trade and commerce). Injunctive relief is available in all provinces and may be granted on an interim, interlocutory or permanent basis. The right to seek this relief is always within the discretion of the court and cannot be waived.

There is no legal discrimination or heightened level of legal requirements for foreign businesses to adjudicate disputes before courts in Canada. Nevertheless, foreign litigants may be required to post bond for mandatory costs.

The discovery process is an integral part of litigation in Canada and is subject to comprehensive rules of procedure that generally require disclosure of documents and provide for compulsory verbal testimony, each to the extent required to establish the allegations and defences put forth in a given case. There are certain exceptions, such as documents or other information that are subject to attorney–client privilege; however, judicial authorities tend to otherwise allow and encourage submissions and fulsome disclosures with a view to seeking transparency and avoiding any loss of rights to the parties involved in a dispute.

Law stated - 21 January 2026

Alternative dispute resolution

43 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?

The parties may expressly and contractually agree to arbitrate their disputes in the venue and in the language of their choosing to the exclusion of Canadian courts. Even in the presence of an unequivocal arbitration clause, certain remedies (such as injunctive relief and other extraordinary recourses) may nonetheless be sought before the courts.

The principal advantages and disadvantages of arbitration for foreign suppliers in Canada are essentially the same as for local suppliers. Arbitration has the main advantage of being confidential. Disputes between suppliers and distributors, or agents, do not become a matter of public record as would be the case with litigation in the judicial system. In addition, arbitration gives the parties a level of control that they may not otherwise have over some aspects of the dispute, such as choice of venue and forum and the selection of an arbitrator with expertise in distribution and agency issues or the relevant technical or specialised fields. Arbitration agreements are final, reliable and not open to appeal; Canadian courts have generally refrained from intervening in such decisions. Finally, arbitration tends to be faster and cheaper than litigation, at least in theory.

As for its disadvantages, arbitration, like litigation, can encounter procedural delays, diminishing the cost and time savings that often motivate its use. The lack of ability to appeal heightens the risk for parties that have no recourse against an unfavourable decision. Some also argue that arbitration clauses that preclude access to the judicial system will prevent the use of proceedings such as injunctive or other equitable relief that can be obtained quickly to effectively end a breach of contract.

Law stated - 21 January 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

On 4 November 2025, the federal government tabled Bill C-15, which proposes amendments to the federal Personal Information Protection and Electronic Documents Act (PIPEDA), including the introduction of a data mobility framework enabling individuals to transfer their personal information from one organisation to another in a usable format. The proposed provisions on data mobility on the federal level will be further specified in regulations that have not yet been tabled. In the meantime, foreign businesses should keep abreast of such developments with a view to implementing data mobility frameworks for any personal information collected via e-commerce sales or otherwise in Canada.

It should be noted that this concept already exists in the Province of Québec's equivalent personal information protection legislation, theAct respecting the protection of personal information in the private sector.

Law stated - 21 January 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Under the current regulatory framework, a foreign supplier may establish its own entity (wholly owned) to import and distribute its products in China, subject to some exceptions, such as certain audiovisual work, and certain agricultural products, where joint venture arrangements remain the requisite structure to attain approval. There are some product categories that are still not open to foreign investors as listed in the Special Administrative Measures (Negative List) for the Access of Foreign Investment (Negative List for Access of Foreign Investment), such as gene diagnosis and therapy and tobacco products, whereby local importers and distributors have to be engaged to import these products.

Law stated - 14 January 2026

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

A foreign supplier may enter into a joint ownership arrangement with a local company or importer to import its products, except for products that are still not open to local trading by foreign investors. There are two major joint ownership structures: joint ventures in China and limited liability companies invested by the parties in China. For a joint venture in China, there used to be a choice of two types: equity joint ventures and contractual joint ventures. For an equity joint venture, each party was required to make a cash or permitted contribution and share the profits in proportion to its subscribed percentage of the venture's registered capital. However, this requirement was cancelled after the implementation of the Foreign Investment Law, effective from 1 January 2020. Now, an equity joint venture can be established pursuant to the Company Law, which allows parties to share the profits in such manner as agreed by the parties.

On the other hand, parties can invest in limited liability companies with a direct shareholding structure to set up holding companies outside China (using locations such as Hong Kong owing to certain tax considerations), and the Chinese entity can then be placed under the offshore holding structure.

Law stated - 14 January 2026

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?

Unless it is required by law that a joint venture be established, from a corporate management perspective, a wholly foreign-owned enterprise (WFOE) is generally the preferred type of business vehicle for a foreign supplier to import and distribute its own products. A WFOE will be incorporated as a limited liability company in which the foreign

supplier is the only shareholder. The establishment, operation and termination of the WFOE are governed by the Company Law and the Foreign Investment Law. There are different local approval procedures for certain businesses.

Law stated - 14 January 2026

Restrictions

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

The Chinese regulatory environment is more focused on the regulation of business than on the ownership of business entities, and the scope of business of a business entity is specifically defined in the corporate formation documents. In essence, conducting any business beyond the approved scope of business is illegal. Foreign investors are required to follow the Negative List for Access of Foreign Investment to verify whether the proposed business is prohibited under national and local regulations.

Foreign investors are not allowed to conduct business, or invest, in prohibited industries. The Negative List for Access of Foreign Investment is subject to changes by the government from time to time.

Law stated - 14 January 2026

Equity interests

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

From a corporate management perspective, a WFOE is generally the preferred type of business vehicle for a foreign supplier to import and distribute its own products. A WFOE will be incorporated as a limited liability company in which the foreign supplier is the only shareholder. The establishment, operation and termination of the WFOE are governed by the Company Law and the Foreign Investment Law. There are different local approval procedures for certain businesses.

Law stated - 14 January 2026

Tax considerations

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?

The major relevant taxes are corporate income tax, value added tax and customs duties. China also follows the Organisation for Economic Co-operation and Development model

on the issue of transfer pricing. The tax authority in China has been using the industrial average profit margin generated from its database to determine whether the assessable income should be adjusted because of certain transfer pricing arrangements between related companies.

Law stated - 14 January 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

Various distribution relationships are available in China, including the typical relationships of distributors, commission agencies, franchises, trademark licences and joint ventures. Apart from the usual business considerations, such as whether the model can achieve better penetration into the market and serve the objectives of the brand owner, tax issues and actual logistic arrangements are also crucial in determining whether a certain relationship is preferred. For example, it is common to use local agencies for importing cosmetic products because of certain testing procedures of the China Food and Drug Administration, and the distributors are supplied through those local agencies.

Law stated - 14 January 2026

Legislation and regulators

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?

Generally, the laws governing rules of contracts under the Civil Code of the People's Republic of China (the Contract Law) govern the relationship. There is no specific government agency that regulates the distribution aspect, though in the context of franchising, the Ministry of Commerce is the regulatory authority that oversees compliance pursuant to the franchise laws and regulations, such as the Regulations of Administration of Commercial Franchising. In recent years, the government has released a series of national standards for different sectors stipulating the necessary standards for the management of different contractual relationships. However, the legal position of these national standards has not yet been defined.

Law stated - 14 January 2026

Contract termination

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 Contract Law does not restrict the supplier's contractual rights to terminate a distribution relationship without cause. The contractual provisions regarding termination are usually descriptive and elaborate in contracts with Chinese parties because some common concepts in other jurisdictions, such as time sensitivity, do not exist under Chinese law.

Law stated - 14 January 2026

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

The Contract Law does not require the brand owner to provide mandatory compensation or indemnity upon termination of the distribution or similar relationship. There is no requirement under the law to compensate the distributor for the goodwill established by it.

Law stated - 14 January 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

It is common to have change of control provisions in distribution or agency contracts enabling termination of the agreement in the event of transfer of ownership of the distributor or agent to a third party. To date, there has been no specific judicial precedent prohibiting the enforcement of such contractual provisions.

Law stated - 14 January 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Confidentiality provisions in distribution agreements are generally enforced contractually, and there are also statutory protections under the Anti-Unfair Competition Law. However, the usual challenges relate to the mechanism implemented to protect the confidential nature of the information involved (eg, document marking and restrictions to access), and it is necessary to devise a system to protect this information. The Anti-Unfair Competition Law

(2017 revision) abolished the previous requirement that confidential information should be of "practical value", and the coverage of confidential information has expanded since 2017.

Law stated - 14 January 2026

Competing products

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

To date, the judicial precedents have not shown a very systematic approach towards the determination of enforceability of non-compete provisions. Non-compete provisions are generally enforceable during the term of a distribution relationship. It is generally agreed that post-term non-compete provisions are enforceable if the restricted period is not excessively long (eg, a two-year restricted period for the original distribution territory is generally acceptable). To determine the reasonableness of certain restrictions, the general "fair and reasonable" test, which is relatively vague, is adopted.

Law stated - 14 January 2026

Prices

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

Generally, distributors and/or agents can be required to follow the supplier's pricing policy. However, in addition to other restrictions, price-fixing arrangements between the supplier and the distributors/agents to monopolise the market are generally prohibited, unless the parties can prove that (1) the price-fixing arrangements or price maintenance conducts, or both, do not give rise to anticompetitive effects under the Anti-Monopoly Law, or (2) the parties satisfy the safe harbour rules provided under the amended Provisions on the Prohibition of Monopoly Agreements, which was amended on 9 December 2025 and will come into effect on 1 February 2026 (2025 Amended Provisions). The 2025 Amended Provisions stated that, a vertical agreement that fixes or restricts minimum resale prices are not prohibited if each party to the agreement holds a market share of less than 5% in the relevant market for each fiscal year during the term of the agreement, and the annual turnover of the products or services covered by the agreement is less than 100 million yuan for each fiscal year during the term. The 2025 Amended Provisions also clarify where there are multiple trading counterparties, the market shares in the same relevant market and the turnover of the products or services involved in the agreements shall be calculated on an aggregated basis. In addition, where the authority has issued different provisions for the application of the safe harbour rule to specific industries, fields, or types of agreements, these provisions shall prevail. Having said the above, since the 2025 Amended Provisions have not yet entered into force, it remains to be seen how the safe harbour rules will be applied in practice.

Law stated - 14 January 2026

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?

China authorities generally view retail price maintenance as inherently anticompetitive. Unless a supplier can prove the retail price maintenance do not give rise to anticompetitive effects under the Anti-Monopoly Law, or the parties can prove that they satisfy the safe harbour rules , the supplier should avoid fixing minimum price. Furthermore, the Anti-Monopoly Law (2022 Amendment) prescribes that an entity (eg, a supplier) shall not organise other entities to reach any monopoly agreement or provide substantive aid to other entities to reach any monopoly agreement. Having said the above, a supplier may provide distributors and/or agents with non-binding recommended retail prices, provided it must avoid enforcement mechanism (ie, no penalties or consequences for deviation).

Law stated - 14 January 2026

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?

The general belief is that this type of most favoured customer provision is enforceable. However, the Anti-Monopoly Law (2022 Amendment) prohibits a distributor from abusing its dominant position in the market to secure certain trading conditions that restrict market entry by other parties.

Law stated - 14 January 2026

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?

The law generally does not intervene in the freedom of dealings between the parties on pricing issues. The exception is that under the Anti-Monopoly Law (2022 Amendment), a supplier who is in a dominant position in the market is not allowed to offer different transactional terms and conditions (eg, sale prices) to customers (which refers to the distributor in the present context) with the same conditions without proper reason. There is no statutory definition of "customers who are of the same conditions", the regulatory authority and the court have wide discretion to determine who may be in breach of this law.

Law stated - 14 January 2026

Geographic and customer restrictions

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

It is common to agree on an exclusive territory for a particular distributor, and the contractual provisions remain decisive in determining how to define the territories and markets. The law to date has not provided sufficient guidance on construing the contractual provisions on active sales and passive sales that are not actively solicited, but which are heavily litigated in other jurisdictions.

Law stated - 14 January 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

Contractual provisions can be agreed by parties on exclusive territory, and civil action can be taken for a violation of those provisions.

Law stated - 14 January 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

It is common for a supplier to restrict or prohibit e-commerce sales by its distribution partners in China as e-commerce distribution rights are sometimes separately granted. Whether restrictions as to the use of e-commerce intermediaries exist is a matter of negotiation between the parties, but the engagement of e-commerce intermediaries has been a growing phenomenon in the past few years. The provisions on territorial limitation as to distribution activities with enhanced technological requirements are seen in most distribution agreements. A supplier may require that its distribution partners, or e-commerce intermediaries, do not sell products outside their assigned territories. Under the highly computerised environment of e-commerce, it is common for suppliers to request their distribution partners to provide more reports as to sales by territory, and some distribution systems have a specific fee or ‘invasion fee’ for sales outside the authorised territory.

Law stated - 14 January 2026

21 | May a distributor or agent restrict a supplier’s sales through e-commerce intermediaries into the distribution partner’s territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

Restrictions as to a supplier’s sales through e-commerce intermediaries into the distribution partner’s territory are a matter of negotiation between the parties. It is not a widespread practice for a distributor or agent to require the supplier to obtain reports of sales by territory or payment of "invasion fees" to the distribution partner, but instances of this are emerging.

Law stated - 14 January 2026

Refusal to deal

22 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?

The Anti-Monopoly Law (2022 Amendment) prohibits businesses that are in a dominant position in the market from refusing to deal with particular customers or from restricting their distributors from dealing with certain parties, without proper reason. There is no statutory definition of "proper reason", which is subject to determination by the regulatory authority and the courts at their discretion on a case-by-case basis. However, if there is no abuse of a dominant position, this prohibition should not be relevant, and the supplier will be free to devise a policy on the selection of customers.

Law stated - 14 January 2026

Competition concerns

23 Under what 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?

Under the Anti-Monopoly Law (2022 Amendment), a merger or common control of shareholdings of different competitors entering into arrangements for the control of different competitors may lead to a concentration situation, which is subject to reporting and approval requirements. There are further rules defining what reportable situations are. For example, under Regulations of the State Council on the Standards for Declaration of Concentration of Business Operators (Revised in 2024), the concentration is reportable if:

- the annual global sales figure for it is more than 12 billion yuan, when the annual sales figures of two operators in China exceed 800 million yuan; or
- the annual Chinese sales figure for it is more than 4 billion yuan, when the annual sales figures of two operators in China exceed 800 million yuan.

There are a number of relevant standards to be examined, such as:

- the market share and the relative power of control by the operators in such an environment;
- the level of concentration of the market;
- the level of influence of the operator on the entry by others into the market and on technological development;
- the level of influence of the operator on customers and other competitors; and
- the level of influence of the operator on national economic development.

The above is not an exhaustive list.

Law stated - 14 January 2026

24 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?

The Anti-Unfair Competition Law and the Anti-Monopoly Law (2022 Amendment) are the primary relevant legislation in this respect. Under the Anti-Monopoly Law (2022 Amendment), a supplier that abuses its dominant position in the market and that requires its distributors to purchase products from the suppliers designated by it for the purpose of excluding fair competition is prohibited.

The regulatory authority under the Anti-Unfair Competition Law is the Anti-Unfair Bureau of the Administration for Market Regulation, and the regulatory authority under the Anti-Monopoly Law (2022 Amendment) is the Anti-Monopoly Bureau of the Administration for Market Regulation. Both authorities have the necessary powers to investigate and impose administrative penalties.

Affected parties are entitled to bring actions under the Anti-Unfair Competition Law or the Anti-Monopoly Law (2022 Amendment) for damages, loss of profits and reasonable investigation costs.

Law stated - 14 January 2026

Parallel imports

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

At present, Chinese law only allows parallel imports of patented products. The law does not specify whether the parallel import of products under registered trademarks is prohibited. There are cases where the parallel import of products under registered trademarks is regarded as an infringement of trademark rights, but in certain circumstances parallel import of products under registered trademarks may be allowed by local courts in China. It is common to include contractual provisions to restrict parallel imports, but instead of simply relying on the contractual arrangements, brand owners may record their registered trademarks with customs, and as a result, customs will monitor the shipments and seize any infringing products that bear the trademark. A registered patent is also recordable, but customs generally has difficulty monitoring this owing to a lack of technical capability.

Law stated - 14 January 2026

Advertising

26 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 require them to share in its cost of advertising?

A supplier may advertise and market its products pursuant to the Advertisement Law at its own cost, pass all or part of its costs to its distributors or require its distributors to share in its costs upon mutual agreement.

Law stated - 14 January 2026

Intellectual property

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

China is party to major international conventions on intellectual property protection. Following international practice, patents and trademarks should be registered in China to secure protection under local laws. Although a copyrighted work created overseas is automatically protected under local laws, in practice, a separate copyright record should be filed before the judicial and administrative authorities to recognise those rights. Trade secrets and confidential information are protected under the Anti-Unfair Competition Law. Information that is not a trade secret or confidential relies heavily on the protection stipulated in the relevant contractual documents between the parties. It is common for owners of intellectual property to enter into different kinds of agreements, such as licensing and technology transfer agreements with local parties.

It is prudent to conduct an audit to review the portfolio before entering into any negotiation with a local party, as there are usually additional issues to be resolved (eg, the Chinese transliteration of the brand should be registered).

Law stated - 14 January 2026

Consumer protection

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

Under the Consumer Interests Protection Law, a distributor is not defined as a consumer and is therefore not protected. However, under Chapter 3 of the Law, the supplier or distributor must fulfil its statutory obligations as a business. For example, when selling its products to a consumer, the supplier or distributor cannot impose unfair or unreasonable transactional conditions on the consumer (eg, a tie-in sale). In addition to the Consumer Interests Protection Law, the Civil Code and the Product Quality Law set out the general obligations and liabilities of suppliers and distributors.

Law stated - 14 January 2026

Product recalls

29

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

There are several regulations concerning the product recall of specific categories of products, including but not limited to motor vehicle products, drugs, medical equipment and food. Furthermore, China has enacted several administrative regulations related to defective product recalls, such as Measures for the Administration of the Recall of Defective Consumer Goods, Detailed Working Rules for the Recall of Defective Imported Consumer Goods, and Interim Provisions on the Administration of Recall of Consumer Goods (Recall Provisions). Generally, manufacturers are responsible for product recalls and distributors or retailers are obliged to cooperate. A detailed action plan for the product recall must be filed with the authority (ie, a local office of the State Administration for Market Regulation) within a prescribed period.

In general, manufacturers should bear the necessary costs for the recall of consumer goods. With respect to imported consumer goods, the Recall Provisions stipulate that institutions designated by an overseas manufacturer of imported consumer goods as an agent within the territory of China shall be regarded as a manufacturer; if the overseas manufacturer has not designated an agent in China, the importer shall be deemed as the manufacturer.

The Implementing Regulation on the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, which came into force on 1 July 2024, further provided that in the case of recalls of products, the manufacturer or importer of the products shall develop a recall plan, release recall information, inform the consumers about their rights and undertake all necessary fees of the consumers due to the recall of the products.

Law stated - 14 January 2026

Warranties

30 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?

With the exception of the mandatory warranties set out in the Product Quality Law, which covers the basic requirements on safety, use and the written descriptions and instructions of use, the supplier and the distributors are free to negotiate additional warranties in their contractual arrangements and to agree on the warranties to be offered to their downstream customers.

Law stated - 14 January 2026

Data transfers

31 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?

Although the law is silent on the ownership of the personal data of customers and end users, according to the Consumer Interests Protection Law, business operators that collect the personal data of their consumers (including end users) are required to keep the information strictly confidential. Consent must be obtained from consumers before the exchange of personal data between a supplier and its distributor. The provisions on protecting the personal information of telecommunications and internet users, which are a general set of rules for the internet environment, further regulate the collection and use of personal data on the internet by dividing personal data into different categories with different protection for each category.

The first Cybersecurity Law was implemented on 1 June 2017 and the revised Cybersecurity Law (2025 revision) has been implemented since 1 January 2026. Under this Law, critical infrastructure providers (ie, companies running infrastructure critical to the economy, such as banks, telecom companies, insurance companies and public services) must store all users' data on Chinese servers and undergo a security check if they want to transfer data out of the country.

Furthermore, an updated national standard on personal information, the Data Security Technology –Security Requirements for Processing of Sensitive Personal Information (GB/T 45574-2025) (the 2025 SPI Standard) has been in effect since 1 November 2025. Although the 2025 SPI Standard is not mandatory under the law, it is adopted by local authorities to evaluate an entity's compliance with the legal guidelines and regulations of China. Under the 2025 SPI Standard, the classification of sensitive personal information is dynamic and context dependent. Information which may not be inherently sensitive (eg, names, phone numbers, workplace affiliations, etc), could be identified as sensitive personal information if aggregated or processed in a way that significantly affects individuals' rights or interests.

The Data Security Law and the Personal Information Protection Law came into force in September 2021 and November 2021. The Personal Information Protection Law regulates the protection of personal information, and some of its requirements are similar to those under the European Union's General Data Protection Regulation. Under the Personal Information Protection Law, before a data handler transfers personal information to a third party within China or overseas, it needs to obtain the data subjects' consent. Furthermore, with respect to transferring data overseas, the data handler must ensure that the foreign recipient of the data follows data protection requirements that are on the same level as those imposed by the Personal Information Protection Law.

Law stated - 14 January 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

As business operators, the supplier and their distribution partners are generally required to keep the personal data of customers strictly confidential. No specific requirements apply to suppliers and distributors on the protection of customer data.

Law stated - 14 January 2026

Employment issues

33 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?

Chinese laws do not restrict these kinds of provisions, but it is advisable to have detailed provisions in this respect as the court normally adopts a relatively restrictive interpretation of these types of clauses.

Law stated - 14 January 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

In general, every business in China has to secure a business licence. From an administrative point of view, contracting with a business that has a business licence effectively designates a commercial relationship between two separate businesses. Furthermore, it is common to adopt provisions in the distribution agreement stating that the distributor is an independent contractor rather than an employee of the supplier, and the distributor shall be responsible for its own actions.

If the distributor or agent is an individual and a dispute arises as to whether there has been an employment relationship, the courts will consider the following aspects to determine whether there has been an employment relationship ("Notice on determining whether an employment relationship exists" Lao She Bu Fa [2005] No. 12):

- the content of the written agreement between the parties;
- whether the distributor is on the payroll and whether the supplier has paid any statutory social insurance for the distributor;
- whether the distributor has acquired any corporate identification or uniform from the supplier and made any authorised representation as the supplier's representative to the public; and
- whether the distributor completed any job application forms.

However, a properly set up distribution network should not give rise to such concern. The existence of a business licence is the crucial factor in the determination in practice, as once a business relationship has been established, a distributor or agent with a business licence would not be deemed an employee of the supplier.

Law stated - 14 January 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

There are no specific laws or regulations governing the payment of commission to a commercial agent. The general contractual law principles apply.

Law stated - 14 January 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

There are no good faith and fair dealing requirements applicable to distribution relationships in Chinese law. There is a "fair and reasonable" principle under the Contract Law, but it is not frequently applied. If applied, it is usually used to determine whether certain contractual provisions are oppressive rather than to examine the course of dealing between the parties.

Law stated - 14 January 2026

Registration of agreements

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

There is no specific requirement for distribution agreements to be registered with any government agencies. Instead, there are recording requirements for intellectual property licence agreements. A trademark licence agreement should be recorded with the Trademark Office. Although recording is not mandatory, without it the licensing arrangement will not bind other third parties. Although it is debatable as to whether it is mandatory to register a patent licence agreement with the National Intellectual Property Administration, it is advisable to register, otherwise the licensing arrangement will not bind other third parties. A copyright licence agreement should be recorded with the Copyright Protection Centre and is voluntary.

Law stated - 14 January 2026

Anti-corruption rules

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

The Criminal Law provides two categories of corruptive practices offences. The first is against bribes offered to civil servants, and the other is against commercial bribery. There are different thresholds under the current prosecution policy. For example, in individual

bribery situations, for bribes offered to non-public officials, the threshold for prosecution is 30,000 yuan. On the other hand, under the Anti-Unfair Competition Law (2025 revision), as long as gifts or invitations may give the subject company or employees an advantage that is unfair to other competitors, any amount (whether provided in cash or in any other form) offered to non-public officials in exchange for business opportunities or interests will be subject to the confiscation of illegal gains and a fine up to 5 million yuan, and if the circumstances are serious, the business licence of the subject company may be revoked.

Law stated - 14 January 2026

Prohibited and mandatory contractual provisions

39 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?

The Contract Law does not impose any specific restrictions or mandatory provisions on distribution contracts. The general contractual principles apply.

Law stated - 14 January 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

Chinese laws do not impose any restrictions on the governing law of distribution contracts. However, in practice, if a local party files a lawsuit at a local court and the court proceeds with the case, it is most likely that the governing law as set out in the distribution contract will be deemed as 'cannot be ascertained' by the local court. In that case, Chinese laws will be applied instead.

Law stated - 14 January 2026

Choice of forum

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

Chinese laws do not impose any restrictions as to the choice of courts or arbitration tribunals. However, as the performance of the distribution contract takes place within China, it is possible for the Chinese courts to assume jurisdiction over the case despite the choice of venue provisions.

Law stated - 14 January 2026

Litigation

42 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 procedures of the courts are relatively simple, and normally a case can be closed within approximately a year. Under the present court rules, remedies are limited and certain relief, such as injunctions and specific performance, is not generally available.

Foreign parties' participation in Chinese court proceedings are common nowadays. Quality or predictable judgments can be seen in the courts of major coastal cities, although foreign parties may elect to have the disputes resolved in alternative venues, such as arbitration in Hong Kong because of the language barrier and because Hong Kong arbitral awards are enforceable in China. Under Chinese court and arbitration rules, there are no general disclosure obligations, and the rules of evidence are less flexible (eg, electronic records and evidence should be notarised in the absence of an original available in the storage medium, evidence outside China should be notarised and apostilled, and special attention should be paid at the preparation stage).

Law stated - 14 January 2026

Alternative dispute resolution

43 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?

There is no formal mediation process, but judges and arbitrators usually suggest ad hoc mediation before the conclusion of the case.

Arbitration clauses that comply with the requirements are generally enforced. The choices of the parties, such as the language, the number of arbitrators and the venue, are generally respected. There are now several arbitration commissions within China, such as the China International Economic and Trade Arbitration Centre in Beijing, the Shanghai International Arbitration Centre and the Shenzhen Court of International Arbitration.

Arbitration is gaining popularity in cross-border commercial disputes because arbitrators are usually practitioners with substantial experience in the relevant areas, and arbitration proceedings are more flexible in terms of the procedure.

Law stated - 14 January 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

China passed a significant revision to the Anti-Unfair Competition Law, which took effect on 15 October 2025. The Anti-Unfair Competition Law (2025 revision) explicitly refines regulations against various unfair practices, including commercial confusion (eg, unauthorised use of influential names or keywords), commercial bribery, false advertising, and disparagement. Abuse of data rights, (eg, obtaining data through fraudulent means) and malicious transactions (eg, fake reviews, false transactions) are prohibited. Furthermore, the Anti-Unfair Competition Law (2025 revision) prohibits platforms from forcing merchants to sell products below cost.

The amendment to the Food Safety Law came into force on 1 December 2025. The Food Safety Law (2025 revision) strengthens the "farm-to-table" food safety chain, particularly in specialised products and logistics management. It establishes a licensing system for the road bulk transportation of key liquid foods (eg, edible oils). Such system includes setting requirements for specialised containers, personnel and processes, and imposes clear obligations on shippers, receivers and carriers, together with legal liabilities for violations such as transporting key liquid foods without a licence or falsifying transport records.

China issued AI related regulations in the past few years. An administrative regulation, the Measures for the Labelling of Artificial Intelligence-Generated and Synthetic Content (Measures), came into effect on 1 September 2025. The Measures require all AI generated and synthetic contents (eg, promotional videos created by synthetic technology) should be labelled for identification purpose. The Measures further prohibit malicious removal, tampering or forgery of these labels. The supporting mandatory national standard (ie, GB 45438-2025 Cybersecurity technology – a labelling method for content generated by artificial intelligence) was implemented simultaneously on 1 September 2025. This standard provides detailed technical methods and implementation guidelines for complying with the labelling requirements outlined in the Measures. Since the technology and regulatory regime are still evolving, close attention should be paid.

The Value Added Tax Law and its implementation rules (collectively, New VAT Rules) entered into effect on 1 January 2026. Under the New VAT Rules, for a company that has been registered as a general taxpayer, it is not allowed to convert its registration to a small-scale taxpayer (whose annual taxable value added tax sales amount does not exceed 5 million yuan).

Law stated - 14 January 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

A foreign supplier can currently establish its own entity in Egypt to import and distribute its products. While there are generally no legal restrictions on full foreign ownership of legal entities in Egypt that carry out distribution activities, full foreign ownership of an Egyptian legal entity that wishes to carry out import trade activities is currently possible on a temporary basis until the end of October 2033, with the possibility of such period being extended by a Cabinet decree in due course for another additional period not exceeding 10 years.

A distinction should be made between distribution and commercial agency as the latter requires full ownership by Egyptians.

A distinction should also be made between the activity of import for trade and import of production needs as the latter does not have any constraints on foreign ownership of the local entity.

Law stated - 20 January 2026

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

For a temporary period until the end of October 2033, a foreign supplier may fully own an import for trade company to import its own products. This period may be extended by an additional period of up to 10 years by a Cabinet decree. Upon the lapse of such period, the original requirement that a legal entity carrying out import for trade activities be owned by at least 51% Egyptians shall re-apply.

Law stated - 20 January 2026

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?

Legal entities that limit the liability of its owners are usually found to be the best suited for foreign suppliers and these include joint stock companies (JSC), limited liability companies (LLC) and sole shareholder companies (SSC). The aforementioned companies are incorporated under the Companies Law No. 159 of 1981. The founder(s) will be required to prepare a standard list of required documents for submission, which may vary depending on the type of company being incorporated and deposit the minimum paid-in capital as required. The founder(s) can issue a notarised and legalised power of attorney to enable their legal representative to carry out all the incorporation procedures on their behalf. The incorporation procedures are finalised at the General Authority for Investment and Free Zones up until completing commercial registration.

Companies wishing to carry out import for trade activities must meet the requirements of the Importers Register Law No. 121 of 1982 in order to register in the Importers Register and obtain the import licence from the General Organization for Export and Import Control. These requirements include:

- in relation to an LLC or SSC, the company must have been registered in the commercial register for at least one year;
- the company's objective must include import for trade purposes;
- a minimum paid-in capital of 5 million Egyptian pounds for a JSC and 2 million Egyptian pounds for an LLC or SSC;
- the relevant company's volume of works, as evidenced by its tax returns, must not be less than 5 million Egyptian pounds.
- the company's manager in charge of importation must be an Egyptian national and stated in the commercial registry of the company; and
- the company's managers and employees in charge of the importation activities must fulfil certain requirements and must undertake certain training courses approved by the Ministry of Foreign Trade.

Importation in certain sectors may have additional licensing/registration requirements (eg, importers of food products have to be registered with the National Food Safety Authority and importers of precious metals and stones have to be registered with the Assay and Weights Authority).

Law stated - 20 January 2026

Restrictions

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

Egypt generally allows foreign businesses to operate through registering an Egyptian subsidiary or a branch in the commercial register in Egypt. Restrictions are imposed in specific sectors, such as commercial agency, which requires full Egyptian ownership. Until recently, companies carrying out import trade activities would have required 51% Egyptian ownership, but this requirement has been suspended until October 2033 and currently full foreign ownership of the local import entity is permissible (note that the manager in charge of the importation activity within the company should be Egyptian). It is worth mentioning that there is a standard security clearance procedure that takes place during incorporation.

Law stated - 20 January 2026

Equity interests

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

Foreign suppliers can partially or fully own equity interests in the local entity that distributes its products.

Law stated - 20 January 2026

Tax considerations

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?

The main tax considerations for foreign suppliers wishing to establish an importation legal entity in Egypt are as follows.

An importation legal entity established in Egypt by a foreign supplier shall be subject to corporate income tax levied at a flat rate of 22.5% on net profits.

VAT applicable on imported goods and services is the standard VAT rate at 14%, with some goods and services subject to higher or lower rates as specified in the VAT Law.

Withholding tax, governed by the Income Tax Law, applies to both resident and non-resident entities receiving specific types of payments. This includes payments for services, royalties and interest, with standard applicable rates on payments to oversees persons typically set at 20%, though applicable double taxation treaties can reduce this rate.

Distribution of dividends is also subject to a withholding tax of 10%, reduced to 5% for listed shares.

Real estate taxes are charged at 10% of the annual rental value after allowable deductions.

Businesses that have an annual turnover of less than 20 million Egyptian pounds, as evidenced by their tax return, may apply to benefit from the tax incentives and benefits established by Law No. 6 of 2025. Businesses that apply for these tax incentives shall enjoy it for as long as their turnover does not exceed 20 million Egyptian pounds by more than 20% more than once in the five years following the date of applying to benefit from these tax incentives. The tax incentives introduced by Law 6 of 2025 include a reduced annual income tax ranging from 0.4% up to 1.5% depending on turnover, an exemption from state development, stamp duty, notarisation and registration fees on incorporation contracts, credit facility and mortgage contracts related to their operations and other guarantees they provide to obtain financing, and an exemption from the tax on dividends, and enjoy other benefits such as simplified bookkeeping requirements.

Finally, an importer will need to settle the customs duty tax on its imports as applicable.

Law stated - 20 January 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

Depending on the supplier's needs, all of the following agreements are not uncommon in the Egyptian market: distribution, commercial agency, franchise, private label, trademark licensing, technology licensing and joint venture agreements.

Law stated - 20 January 2026

Legislation and regulators

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?

The main relevant laws that regulate the relationship between a supplier and its distributor is the Egyptian Trade Law No. 17 of 1999, Commercial Agents and Intermediaries Law No. 120 of 1982 (Commercial Agency Law) and the Civil Code in relation to the general principles of contract law where the specific commercial laws are silent.

The General Organization for Export and Import Control is the government organisation holding the Importers Register, Exporters Register and Commercial Agents Register.

Trade associations and industry groups may impose self-regulatory practices that members must follow.

Law stated - 20 January 2026

Contract termination

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?

A supplier has the right to terminate a distribution agreement without cause if permitted by the contract and is not obliged to renew a distribution agreement if such renewal is not required under the contract.

According to the Trade Law and the Commercial Agency Law, a commercial agent's contract cannot be terminated except for a serious and acceptable cause. As for non-renewal, the Trade Law used to require renewal if there was no material breach by the agent, but this provision was declared unconstitutional. However, the executive regulations of the Commercial Agency Law still require that the contract be renewed upon its expiry except for material breach by the agent. Furthermore, the Executive Regulations of the Commercial Agency Law require that after the expiry or termination of an agency agreement, the registration of a new agent is halted until either documents are submitted

evidencing that the entitlements of the previous agent were fully settled or 60 days have lapsed from expiry or termination without the previous agent filing a claim for compensation.

Law stated - 20 January 2026

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

If the right to terminate without cause (for convenience) is stipulated in the distribution agreement, then no compensation shall be due. As for commercial agency agreements, termination without cause would trigger compensation.

Law stated - 20 January 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

The above restrictions in distribution contracts are generally acceptable and enforceable under Egyptian law, acting in good faith and without abuse of right.

Law stated - 20 January 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Confidentiality provisions in distribution agreements are enforceable under Egyptian law. Specific statutory frameworks further reinforce the protection of trade secrets and the prohibition of unfair competition, further strengthening the enforceability of confidentiality clauses.

Regarding restrictions on communication with government agencies without prior notice to the other party, such provisions can be included in agreements. However, limitations exist under the Anti-Money Laundering Law which permits individuals or entities to report suspicious transactions directly to authorities without notifying other parties involved.

Law stated - 20 January 2026

Competing products

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

Under Egyptian law, restrictions on the distribution of competing products in distribution agreements are enforceable under certain conditions, as governed by both contractual principles and the Competition Law. During the term of the agreement, such restrictions are generally permitted and enforceable. However, post-termination restrictions should be justifiable on grounds such as protecting legitimate business interests, such as safeguarding confidential information or preventing unfair competition, and must be limited in time and geographic area. Persons with a dominant market position are under more scrutiny under the Competition Law and their actions whether during or post the term of the agreement must not violate the Competition Law by resulting in the abuse of a dominant market position and threatening competition.

The Egyptian Trade Law prohibits a supplier from imposing on a purchaser of its goods a restriction of more than five years on purchasing similar goods from another supplier, regardless of the benefits that the said supplier would offer in return. Any agreement imposing this restriction in excess of these five years shall be reduced to five. Renewal of this period is permissible upon its lapse, provided it is renewed only once by an express agreement between the parties.

Law stated - 20 January 2026

Prices

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

In distribution agreements, a supplier controlling prices is generally deemed by the Egyptian Competition Authority (ECA) as an anticompetitive practice but may be permissible if it improves economic efficiency, benefits consumers and is based on considerations related to preserving the quality of the product, its reputation, safety and security requirements without eliminating competition.

Practices like resale price maintenance (RPM) – where a supplier imposes a minimum or fixed resale price – is generally deemed by the ECA as an anticompetitive practice.

Enforcement mechanisms include investigation and penalties by the ECA. If a violation is identified and its anticompetitive effect on the market is established, the ECA may impose fines or other corrective measures. Additionally, affected parties may pursue legal remedies to challenge restrictive pricing agreements.

As for commercial agency, there are no restrictions on the principal (the supplier) controlling sale prices. This is the case in true commercial agency contracts, as otherwise the ECA may reclassify the contract to that of distribution if the "agent" is found to actually bear the financial and commercial risk of the activities assigned by the principal, as opposed to such risk being borne by the principal in true commercial agency relationship.

Law stated - 20 January 2026

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?

Suggesting a non-binding resale price or setting a maximum resale price are both generally acceptable practices unless they are coupled with incentives or penalties or the like that turn them into fixed resale prices.

Law stated - 20 January 2026

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?

These clauses are more likely to be accepted if they are useful for improving fairness, helping the distribution system or benefiting consumers. It is also important to look at the supplier's market power and the distributor's market power as most-favoured nation clauses are less problematic if the supplier or distributor does not control a large part of the market.

Law stated - 20 January 2026

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?

Price differentiation is generally permissible but should be based on legitimate business reasons, such as variations in transportation costs, bulk purchase discounts or additional services provided to certain customers.

For businesses with significant market power, additional scrutiny applies to ensure that pricing practices are not used to exploit customers or exclude competitors. Even businesses without such market power need to ensure that price differentiation does not result in anticompetitive effects or harm to the market.

Law stated - 20 January 2026

Geographic and customer restrictions

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

Egyptian law does not prohibit a supplier from imposing restrictions on the geographic areas or categories of customers to which its distribution partner may resell products and does not prohibit exclusive territories, provided these restrictions do not negatively affect competition in the market or deprive consumers from seeking better prices. The market share of the distributor and supplier are taken into consideration, their place in the supply

chain together with other restrictions that may be imposed in parallel in the distribution agreement.

According to the ECA guidelines on assessment of vertical agreements, restrictions on active sales (defined as a distributor actively seeking consumers in a different geographic area or a consumer group outside the designated scope) should apply equally to other distributors dealing with the supplier. The restriction should also only apply to the supplier's direct distributors without the supplier requiring such distributor to impose the active sales restrictions on the distributor's customers. As for passive sales (defined as the distributor fulfilling consumers' orders from outside the designated area or consumer group without the distributor actively soliciting such orders), the ECA's position is that they must be protected and prohibited from being restricted.

The ECA assesses these agreements on a case-by-case basis to determine their impact on market dynamics.

Law stated - 20 January 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

The ECA, as the primary enforcement body, may intervene in cases where such restrictions harm market competition, such as creating artificial barriers or preventing market access. Actions by the ECA include investigations, imposition of fines or issuance of decisions invalidating unlawful clauses in agreements.

Law stated - 20 January 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Egyptian law does not expressly prohibit such restrictions on e-commerce sales by a supplier's distribution partners, but the ECA has discretion to assess whether such restrictions harm competition. Restrictions are allowed if they are necessary to protect legitimate business interests, such as ensuring product quality or maintaining exclusive agreements, but they cannot unfairly limit consumer access or market competition. Restricting passive sales is deemed an anticompetitive practice according to the ECA guidelines.

Law stated - 20 January 2026

21 | May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

Such practices fall under exclusivity arrangements between suppliers and distributors. Exclusivity is not prohibited under Egyptian law, neither are contractual agreements in relation to audits and penalties for breach of contract; however, depending on matters such as the market share of the parties and the effect of such agreements on competition, such agreements may be scrutinised by the ECA and if resulting in negative effects on competition or consumers that are not justified then the ECA may intervene within its powers to cause the removal of such distortions.

Law stated - 20 January 2026

Refusal to deal

22 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?

The general principal is that parties have freedom in contracting, but there are some limitations on persons with a dominant market position. These limitations include:

- refraining from entry into a product sale or purchase transaction with any person or totally ceasing to deal with it in a manner that results in restricting that person's freedom to access or exit the market at any time;
- discriminating between sellers or buyers having similar commercial positions in sale or purchase prices or in the terms of the transactions, in a manner that weakens their ability to compete with one another or leads to drive out some of them from the market;
- imposing an obligation on a supplier not to deal with a competitor to the extent that would drive it out of the market or prevent the potential competitors from entering the market; and
- enforcement measures for unjustified refusal to deal, including administrative fines, corrective orders, and potential criminal penalties. (Note that refusal to deal can be objectively justified if, for instance, it is shown that the refusal was based on the counterparty's failure to fulfil financial commitments or other contractual obligations. In such cases, a dominant firm may argue that its actions were necessary to protect its legitimate business interests.)

Law stated - 20 January 2026

Competition concerns

23 Under what 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?

It is unlikely that a distribution or agency agreement would in and of itself be deemed a reportable transaction under merger control rules and require clearance by the ECA.

Pre-merger approvals that were recently introduced under the Egyptian Competition Law (ECL) are triggered by transactions if they qualify as an economic concentration and meet specific thresholds. Economic concentration is defined to include transactions resulting in a change of control or material influence over one or more undertakings, such as mergers, acquisitions or the establishment of joint ventures coupled with meeting certain value thresholds related to the turnover of the involved parties.

Law stated - 20 January 2026

24 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?

The ECA is the primary body responsible for enforcing these provisions, conducting investigations into alleged violations, and taking corrective action when necessary. It assesses supplier practices on a case-by-case basis, focusing on their potential to distort competition or harm market dynamics. If a supplier's practices are deemed to have negatively impacted competition or consumers, the supplier must provide clear, objective justifications for its practices, or it risks penalties ranging from fines to structural changes to supplier policies.

Private parties, including distributors harmed by anticompetitive practices, can also bring legal actions under the ECL. Courts have historically awarded damages to distributors who have suffered financial losses due to abusive practices, such as unjustified financial conditions or restrictions on their ability to compete. These private actions complement the enforcement efforts of the ECA and provide a direct recourse for affected distributors.

Law stated - 20 January 2026

Parallel imports

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

Selective distribution systems can be utilised to limit the resale of products to authorised dealers or within approved territories. These systems must be based on clear, objective and transparent criteria, such as protecting the supplier's brand reputation or maintaining product quality. However, they should not unduly restrict competition or consumer access.

Territorial restrictions in distribution agreements may also be employed to ensure products are sold only within specified territories. These restrictions are permissible under the ECL as long as they do not create significant barriers to competition or limit market access. Contracts may also include clauses requiring distributors to prevent unauthorised resale within their territories.

Trademark protections provide another way to prevent parallel imports by enforcing intellectual property rights. This can include blocking products imported without

authorisation if they differ in quality or labelling from those intended for the local market, thus protecting the brand's reputation and consumer trust.

Law stated - 20 January 2026

Advertising

26 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 require them to share in its cost of advertising?

In Egypt, suppliers and distributors face restrictions on advertising and marketing under various laws, including the Competition Law and the Consumer Protection Law. Restrictions typically aim to ensure fair competition, transparency and compliance with advertising regulations, such as prohibiting misleading advertisements or false claims about a product's quality or origin. Suppliers may also include terms in distribution agreements to control how their products are marketed, ensuring brand consistency and adherence to legal standards. However, such restrictions must not lead to anticompetitive practices or unfairly limit the distributor's ability to compete in the market.

Suppliers can pass on all or part of the advertising costs to their distribution partners, provided these arrangements are reasonable and mutually agreed upon. For instance, cost-sharing agreements are common in distribution contracts, especially when advertising campaigns benefit both parties. However, these arrangements should not disproportionately burden distributors or create financial barriers for smaller market participants, as this could violate competition law.

Law stated - 20 January 2026

Intellectual property

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

Suppliers in Egypt can safeguard their intellectual property (IP), including patents, trademarks, copyrights, trade secrets and know-how, through robust contractual measures, conducting regular audits and utilising the legal protections provided under Egyptian IP law, such as formal registration of their IP rights in trademarks, patents and copyrights, which allows them to prevent unauthorised use reproduction or sale of their IP rights.

Suppliers can also seek damages or injunctions in cases of infringement or unauthorised exploitation, with courts empowered to order remedies such as fines, damages or the destruction of infringing products.

Technology transfer agreements are common in Egypt and are governed by special provisions in the Trade Law.

Law stated - 20 January 2026

Consumer protection

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

The Consumer Protection Law No. 181 of 2018 and its executive regulations govern the relationship between suppliers, distributors and consumers.

Additional industry-specific laws, like the Food Safety Law No. 1 of 2017, regulate industry-specific concerns, ensuring safety and transparency in commerce. The Civil Code and Trade Law also impose liability on suppliers for harm caused by defective products.

Law stated - 20 January 2026

Product recalls

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

The Consumer Protection Law and its Executive Regulations mandate the withdrawal of defective or hazardous products from the market. Suppliers and distributors must promptly inform the Consumer Protection Agency (CPA) and consumers about the risks associated with such products. The law requires suppliers to carry out the recall process without delay and bear all related costs, including notifying customers and implementing corrective actions.

For pharmaceuticals and medical devices, the Egyptian Drug Authority (EDA) oversees recalls. These recalls can be voluntary, initiated by the supplier or statutory, mandated by the EDA.

Distribution agreements can allocate responsibilities for implementing recalls and covering related expenses. Such agreements typically specify which party monitors compliance, detects defects and communicates with regulatory authorities. They may also detail how recall costs, such as retrieval, replacement or disposal of defective goods, are divided.

These agreements must align with statutory requirements, ensuring they do not compromise consumer safety or conflict with legal obligations. Failure to comply with recall obligations may lead to penalties, including fines and reputational harm.

Law stated - 20 January 2026

Warranties

30 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?

Suppliers can limit the warranties they provide to distribution partners through agreements, if these limitations comply with mandatory rules in the Civil Code and Trade Law. Suppliers and distributors are free to negotiate terms, such as the scope, length and conditions of warranties. However, suppliers cannot exclude liability for hidden defects or obligations required by law.

When it comes to downstream customers, the Consumer Protection Law sets stricter rules. Suppliers and distributors must ensure products are safe, free from defects and suitable for their intended use. They cannot fully exclude their responsibility for defective products. Warranties for customers must meet the minimum requirements under the law, and consumers are entitled to remedies like repair, replacement or a refund if a product is defective. Attempts to avoid these obligations may lead to legal penalties.

Law stated - 20 January 2026

Data transfers

31 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?

Under Egyptian law, the exchange of customer and end-user information between suppliers and their distribution partners is regulated by competition laws, contractual agreements and data protection legislation. These frameworks ensure that such exchanges do not violate anticompetitive practices or data privacy standards.

The Egyptian Competition Law prohibits the misuse of shared customer data in ways that harm competition.

Any exchange of information should align with the principles of free competition and not lead to collusion or market manipulation.

The ownership of customer and end-user information is often determined by the terms outlined in the distribution agreement. As for exchange of data, explicit consent of customers and end users may be necessary to address the requirements of the Personal Data Protection Law (Law No. 151 of 2020), which governs the handling of personal data. It requires organisations to obtain consent before processing personal data and mandates adequate security measures to protect it. Data controllers and processors are required to obtain permits and/or licences to control and/or process data, which can be obtained from the Personal Data Protection Centre (the PDPC). Cross-border data transfers are subject to restrictions unless the receiving country offers equivalent data protection or appropriate safeguards are in place. Supplementary permits and/or licences are required to be obtained for cross-border data transfers, which can also be obtained from the PDPC.

Law stated - 20 January 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

The Personal Data Protection Law mandates data controllers and processors to implement technical and organisational measures to secure personal data. These measures include encryption, access controls and regular audits to protect against unauthorised access, alteration, destruction or loss of data. Organisations must notify the relevant regulatory authority and affected individuals in the event of a data breach. For sensitive personal data, such as health or financial information, stricter safeguards are required and explicit consent must be obtained for its processing.

Under the Consumer Protection Law, businesses must handle customer data responsibly, ensuring it is not misused or disclosed without explicit consent. Suppliers and distributors must also provide clear terms to consumers regarding how their data will be processed and stored, aligning with principles of transparency and fairness.

Law stated - 20 January 2026

Employment issues

33 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?

The Civil Code supports freedom of contract, enabling suppliers and distributors to agree on terms that include managerial approval or grounds for termination of the distribution agreement if management standards are not met. Termination based on dissatisfaction with management is permissible under Egyptian law, but it must be exercised in good faith and in accordance with the terms of the agreement. Suppliers must ensure that termination clauses are not arbitrary or unfair, as this could lead to disputes or legal challenges.

It is worth noting that in transfer of technology contracts, a provision in the agreement obliging the importer of technology to allow the supplier to participate in the management of the importer's establishment or in the choice of its permanent employees may be invalidated, unless such a provision is justifiable on the grounds of consumer protection or protecting serious and legitimate interests of the supplier.

Law stated - 20 January 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

Legal independence is maintained when a distributor or agent manages their internal operations autonomously, with the supplier exerting limited control, such as setting general sales targets or approving marketing materials. However, an employee is a person working under the management or supervision of an employer for a wage. To avoid the reclassification of an agent or distributor (in the case of natural persons acting in this capacity) or the reclassification of a distributor's or agent's employees as those of a supplier, the supplier should avoid exercising extensive control over the distributor's,

agent's or their employees' day-to-day operations, such as dictating work hours or employment terms and conditions. Such reclassification could render the supplier liable for compliance with Labour Law No. 14 of 2025, including obligations related to wages, overtime, severance and social insurance.

To minimise risks of reclassification, agreements typically include clear provisions emphasising the independence of the distributor or agent.

The inclusion of indemnity provisions may be observed in agreements to protect suppliers from liabilities arising from violations of labour laws by the agent or distributor. This ensures that any potential claims related to employment matters are addressed within the framework of the agreement.

Law stated - 20 January 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

The payment of commission to commercial agents in Egypt is regulated by the Commercial Agency Law and the Trade Law. Accordingly, commercial agency agreements should clearly outline how commissions are calculated, when payments are due and the currency of payment.

Law stated - 20 January 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

Good faith and the prohibition on the abuse of right are central doctrines applicable to the performance of all obligations under Egyptian law.

Law stated - 20 January 2026

Registration of agreements

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

Distribution agreements do not require registration, but commercial agency agreements should be registered with the Commercial Agents Register pursuant to the Commercial Agency Law. IP licence agreements may be registered with the competent office in Egypt.

Law stated - 20 January 2026

Anti-corruption rules

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

Bribery under the Egyptian Penal Code mostly relates to government officials. However, it is worth noting that directors and employees of joint stock companies that accept a bribe to perform or refrain from performing their jobs shall be deemed to have committed bribery. Accordingly, in the relationship between a supplier and a distributor, if either or both of them are joint stock companies and one of their directors or employees accepts payment to perform or refrain from performing his or her job (which could be in relation to securing the distribution contract or the performance or non-performance of an obligation thereunder), then the relevant provision under the Penal Code in relation to bribery shall apply.

If a supplier or distributor engages in corrupt practices that involve Egyptian entities or have an impact in Egypt, such activities are subject to investigation under Egyptian law.

Law stated - 20 January 2026

Prohibited and mandatory contractual provisions

39 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 of Egyptian law of a public order nature must be complied with and an agreement to the contrary would be deemed null and void. An example of such mandatory provisions is the governing law and dispute resolution provision in transfer of technology contracts, which must be governed by Egyptian law, and with disputes to be either resolved before Egyptian courts or through arbitration in Egypt.

Special attention should be paid to certain provisions where the law provides for a certain treatment of a matter unless agreed otherwise by the parties. Accordingly, failure to expressly agree in the contract on these matters will mean that the treatment provided for it in the relevant law shall automatically apply.

Law stated - 20 January 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

Under Egyptian law, parties to a distribution contract generally have the autonomy to select the governing law of their agreement. This is supported by the Egyptian Civil Code, which

states that contractual obligations are governed by the law of the country where the parties share a common domicile. If the domiciles differ, the law of the country where the contract was concluded typically applies, unless the parties expressly choose another law or the circumstances suggest otherwise. This principle allows for the application of foreign laws in commercial agreements, as confirmed by the Trade Law. An exception to this would be if a distribution agreement would qualify as a transfer of technology contract, in which case the Trade Law provides that the agreement should be governed by Egyptian law and any agreement to the contrary is null and void.

However, this autonomy is not without limits. Certain mandatory provisions of Egyptian law, such as those under the Consumer Protection Law No. 181 of 2018, the Competition Law No. 3 of 2005, and the Labour Law No. 14 of 2025, take precedence over the contractual terms, even if foreign law is chosen as the governing law.

Law stated - 20 January 2026

Choice of forum

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

In Egypt, parties to a contract generally have the autonomy to select their preferred courts or arbitration tribunals, whether located domestically or internationally, to resolve contractual disputes. However, specific restrictions and considerations apply depending on the nature of the contract, particularly those involving government entities or transfer of technology agreements.

Law stated - 20 January 2026

Litigation

42 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?

Disputes between suppliers and distribution partners in Egypt can be resolved through the Egyptian civil and commercial courts. Both local and foreign businesses can access these courts without restrictions, as Egyptian law guarantees equal treatment for all parties, regardless of nationality. The litigation process is governed by the Code of Civil and Commercial Procedure, which outlines the stages of filing, evidence submission, hearings and judgment. Decisions rendered by the courts can be appealed in higher courts, ensuring a comprehensive review mechanism.

The process of evidence disclosure in Egypt is narrower compared to common law jurisdictions. Courts only require specific evidence requests that are directly relevant to

the dispute. Broad discovery processes or fishing expeditions are not permitted. Parties can request the court to compel the production of specific documents if they can prove their necessity to the case. Witness testimony is also allowed, and courts may summon individuals to provide oral evidence if it is relevant to the matter at hand.

However, litigation in Egypt can involve lengthy timelines, limited disclosure processes, and potential cultural and language barriers, which may necessitate additional legal or interpretive assistance

Law stated - 20 January 2026

Alternative dispute resolution

43 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?

In Egypt, agreements to mediate or arbitrate disputes are generally enforceable, as supported by the Arbitration Law No. 27 of 1994 and the country's ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Arbitration offers significant advantages for foreign suppliers. It provides a neutral and confidential forum for dispute resolution, is also typically faster and more flexible, enabling parties to tailor the process to their specific needs, including selecting arbitrators with expertise in relevant fields, choosing the governing law and determining the language of arbitration. However, arbitration also has disadvantages. Costs can be higher than litigation in Egyptian courts, especially when international arbitration institutions are involved. Additionally, the enforceability of awards may encounter delays due to procedural challenges in local enforcement mechanisms.

Law stated - 20 January 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

The long-awaited executive regulations of the Personal Data Protection Law No. 151 of 2020 have been issued by Minister of Communications and Information Technology Decree No. 816 of 2025. The Personal Data Protection Centre has launched its official website, which includes useful information and guidelines on permits and licences required by controllers and processors of data among other matters.

Law stated - 20 January 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Yes. Generally, foreign businesses operate under the same rules as domestic businesses. However, specific restrictions and requirements (eg, permits or licences) may apply if (foreign or domestic) investors do business in the defence, pharmaceutical or financial sectors.

Law stated - 8 February 2026

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

Yes. There is no specific investment legislation and no minimum percentage of German shareholders required.

Law stated - 8 February 2026

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?

The types of business entities that are best suited are:

- limited liability companies (GmbH and UG);
- stock corporations (AG); and
- limited partnerships (KG).

The criteria for the choice of entity used are liability, taxation, financing, personal involvement and control, and flexibility. For larger companies, a GmbH or an AG are typically best suited. Their shareholders' liability is limited to the respective share capital.

The minimum share capital varies between €50,000 (AG), €25,000 (GmbH) and €1 (for the GmbH subtype, UG). The transfer of shares in a GmbH or a UG typically has to be approved by the other shareholders and notarised, whereas shares in an AG are freely transferable. However, the GmbH is a more flexible and procedurally less demanding form of entity than the AG.

GmbH, UG and AG entities are formed by one or more founding shareholders, who adopt the articles of association and appoint the managing directors, and additionally, in the case of an AG, a supervisory board (of at least three members) in a notarial deed. These entities exist upon registration at the commercial register. Alternatively, a supplier may purchase an existing, inactive shelf company and, as an advantage, start operating immediately.

Partnerships are often preferred for tax reasons, especially the KG, which – for reasons of limiting liability – is often combined with a corporation as a general partner (GmbH & Co KG or AG & Co KG). They require at least two partners.

The governing laws are as follows:

- the Limited Liability Companies Act for the GmbH and UG;
- the Stock Corporation Act for the AG; and
- the German Civil Code and the German Commercial Code for partnerships.

Law stated - 8 February 2026

Restrictions

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

Generally, no. Foreign businesses operate under the same rules as domestic businesses. By way of exception, the Federal Ministry for Economy and Technology can restrict or prohibit acquisitions of or participation in domestic business entities by individuals or business entities seated outside the European Union, Iceland, Liechtenstein, Norway (together, the European Economic Area) or Switzerland. Preconditions to this are:

- the foreign investor acquires 10 or 20% of the voting rights in a German company where the domestic business entity pertains to critical infrastructure sectors (eg, energy, information technology, telecommunications, transport, traffic, health, water, food, finance and insurance; the relevant percentage – 10 or 20% of voting rights – depends on the critical infrastructure sector concerned); or
- the foreign investor acquires 25% or more of the voting rights of any other German company; and
- the acquisition endangers national public order or security (sections 55 to 59 of the Foreign Trade and Payments Ordinance).

Law stated - 8 February 2026

Equity interests

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

Yes.

Law stated - 8 February 2026

Tax considerations

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?

A foreign supplier especially has to consider:

- whether the importer itself shall pay income tax or the supplier as owner, or both; and
- whether the supplier might be subject to double taxation (both in Germany and its state of origin) and whether it can be avoided.

To foreign businesses and individuals that operate in Germany, two levels of taxation apply, namely:

- trade tax, which applies to all businesses and individuals in Germany and is paid on taxable earnings (as a local tax, its rate differs from municipality to municipality); and
- income tax, which depends on the business entity.

Corporations are subject to corporate income tax (15% flat rate) and their shareholders are subject to a tax on capital gains and dividends. The average overall tax burden for corporations in Germany is 30% (corporate income tax and trade tax).

A partnership itself is not subject to income tax, but its partners are subject to either corporate (if business entities) or personal (if individuals) income tax.

Individuals pay personal income tax. The tax rate increases with the income (to a maximum of 45% for an income of €250,000), but trade tax payments can be set off against it. Special tax rates apply for dividends and capital gains.

For dividends, capital gains, interest payments and licence fees, withholding tax may apply. This amounts to 25% of the capital gain distributed to the owning business (plus a further solidarity surcharge of 5.5%, which is added to the tax amount). These taxes may be refunded in the case of double taxation if a treaty with the country of origin of the owning business exists.

Law stated - 8 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

Any conceivable distribution relationship is available. The following distribution relationships are typically used. While deciding for any option, consider also EU product safety and product liability regulations (cf. Rohrßen, in Röhricht et al., HGB, 7th Ed. 2026, Vor § 84 paragraph 3 ff).

- In-house sales force, which allows for direct influence on employees and an easy margin calculation but generally entails high labour cost (including social security).
- Self-employed commercial agents, who sell the products on the supplier's behalf. The supplier keeps direct contact with and sells directly to the customers, with greater control over the activities of the agent and over the margins. Commercial agents have to provide detailed market reports. Unlike an employee's salary, an agent's commission can be exclusively profit-oriented (namely subject to successfully soliciting customers) and linked to the turnover. Within the EU, protective agency law applies, including minimum termination notice and indemnity provisions.
- Distributors, who buy and, thus, take ownership of the products and sell them on their own behalf, adding a margin to cover their own costs. They assume liability and, in return, gain profit from the margin, while the suppliers' margins are rather low. The distributor is obliged and motivated to market and distribute the products that he or she purchases from the supplier and to safeguard the latter's interests. Distributors are subject to limited control by the supplier over their activities but are also less protected than commercial agents.
- Commission agents, who are midway between commercial agents and distributors. They sell products in their own name but for the supplier's account. The supplier bears the sales risk, even if the commission agents have products in a consignment stock to which the supplier retains the title. The supplier can influence the commission agent without observing the strict antitrust law that applies to distributorship agreements.
- Franchisees, who, like distributors, buy and sell products on their own behalf. A franchisee is entitled and encouraged to use the franchisor's trade name, trademarks, know-how and brands, based on the acquired licences of intellectual property rights, to market and sell the goods or services. Franchisors are typically already established within the marketplace, often already with a solid customer base. In return, the franchisee usually pays an initial fee and ongoing royalties. The franchisor, based on the experience acquired with the established business, must disclose the key risks and issues linked to the franchise and often provides assistance and guidelines in the marketing and selling of the goods or services to maintain the brand identity.
- Private label products, namely products produced by the supplier under the trademarks of the retailer (in contrast to manufacturer brands).
- Trademark licences, which are especially used where the trademark owner has already introduced well-known brands but does not have its own manufacturing capacities or knowledge. To enter into a new product market, the licensor can grant licensees, who have the necessary technical and commercial know-how, a licence to produce and sell the products under the licensor's trademark. The agreement usually, but not necessarily, grants an exclusive licence for a certain territory, and it requires maintaining product quality and upholding the brand image.
- Joint ventures, which are joint projects between legally and economically independent companies in which the partners share management responsibility and financial risk. The setting-up of a joint venture is based on a common interest of

the partner companies that is expressed in a joint venture agreement, which also regulates the distribution of profits and joint control.

- Concession agreements, aimed at selling the supplier's products within sales areas in department stores, operated by the supplier, typically using the department store's payment system.

Law stated - 8 February 2026

Legislation and regulators

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?

Employment contracts

Employment contracts with the in-house sales force are governed by sections 611 to 630 of the German Civil Code (BGB) and several laws on employees' protection.

Commercial agency contracts

Commercial agency contracts are governed by sections 84 to 92c of the German Commercial Code (HGB). The commercial agent is, like the employee, strongly protected, for example, by mandatory rules on minimum notice periods, commission payments and goodwill indemnity.

Distributorship contracts

Most EU member states' laws do not expressly regulate distributorship contracts. However, the legal vacuum was mostly filled by case law, for example, with respect to the supplier's duty to take back unsold stock upon termination of the contract. German agency law applies by analogy to the distributor if the latter is integrated into the supplier's sales organisation and obliged (contractually or factually) to submit the customer data during or upon termination of the contract.

Antitrust law also applies to distributorship contracts. Pursuant to article 6(3a) of the Rome II Regulation, the antitrust regulation of any affected market must be complied with.

Franchise contracts

Franchise contracts are not explicitly governed by statute law. They combine elements of licensing, sales and management of another's affairs. Generally, agency law applies by analogy (see the German Federal Court of Justice (BGH), decisions of 12 November 1986, on mineral water, and 17 July 2002, *Hertz*). Moreover, being standard form contracts (pre-formulated and provided by the franchisor for multiple franchisees), franchise

contracts must comply with the quite strict German laws on standard form contracts (BGH, decision of 11 October 2018, *RE/MAX*; comment by Rohrßen, *ZVertriebsR* 2019, 325).

Industry self-regulatory constraints

Certain industry self-regulatory constraints exist, for example, in the automotive industry (where members of the European Automobile Manufacturers Association have agreed to a code of good practice, stipulating minimum notice periods and methods for the resolution of contractual disputes) or in franchising, where members must adhere to the European Franchise Federation's or the German Franchise Association's code of ethics.

Law stated - 8 February 2026

Contract termination

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 supplier's right to terminate without cause is restricted. No restriction applies to a decision not to renew the distribution relationship when the contract term expires unless good faith or antitrust law, in rare cases, demand continued delivery.

The principal's and the agent's right to terminate the agency agreement without cause can be contractually agreed upon. However, there are mandatory notice periods to observe, in accordance with section 89(1) HGB, depending on the contractual term (similarly to article 15(2) of the Commercial Agency Directive): the period is one month in the first year, two months in the second year, three months in the third, fourth and fifth years and six months after five years. The notice periods are set by law and cannot be shortened. In the event of contractual extension, the supplier's notice period cannot be shorter than the agent's (section 89(2) HGB). The agreement can be terminated without a notice period only if there is cause (section 89a HGB), and the terminating party cannot reasonably be expected to carry on the contractual relationship until its ordinary termination (taking into account all circumstances of the single case and weighing the interests of both parties).

A recent decision by the Higher Regional Court of Munich (OLG München, decision of 22 February 2024, Case No. 23 U 7165/21) highlights additional restrictions on contractual termination provisions. The court ruled that a termination clause may be invalid if it creates unreasonable termination obstacles (*Kündigungserschwernis*) for the commercial agent. In this case, the commercial agent remained contractually bound until the end of the notice period and was required to continue performing obligations, including maintaining an office, while essential payments were withdrawn. This led to a severe financial burden, amounting to an almost total loss of income. The court ruled that the discontinuation of advance payments upon termination constitutes an undue hardship and thus an inadmissible obstacle to termination, as the commercial agent was left without income while still having to fulfil contractual duties. Such a contractual clause, which effectively disrupts the contractual balance and places an excessive burden on the agent, was found to be incompatible with section 89(2) HGB.

Pursuant to section 89a(1) sentence 2 HGB, the exclusion or restriction of the freedom of termination is not permitted. An impermissible restriction of the freedom of termination may also be given indirectly by stipulating difficulties in terminating the contract in the form of financial or other disadvantages (BGH, decision of 19 January 2023, Case No. VII ZR 787/21). This was also confirmed by the Higher Regional Court of Munich in its decision of 7 December 2023, Case No. 23 U 6109/21, whereby it found that a contractual agreement stating that the commercial agent must compensate for any remaining under-earnings upon termination of the contract is invalid pursuant to section 134 BGB in conjunction with section 89a (1) sentence 2 HGB on the grounds of termination aggravation.

If a contract term was not agreed upon, a distributorship agreement can be terminated (sections 314, 573, 620(2) and 723 BGB). The length of the notice period depends on the case, considering also the distributor's investments. For example, one-year periods were deemed suitable in the automotive sector (BGH, decision of 21 February 1995, *Citroën*). In rare cases, a renewal of the relationship may be imposed by antitrust law.

Generally, agency law applies to the termination of franchise agreements (mutatis mutandis). However, longer periods may be deemed necessary in specific cases, for example, if the supplier's product forced the franchisee to make considerable investments.

Law stated - 8 February 2026

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

A commercial agent can claim indemnity if he or she has brought new customers or has significantly increased the business volume with already existing customers, resulting in benefits for the supplier, and if the payment of indemnity can be deemed equitable in the specific case (section 89b HGB). The relevant calculation is based on the commissions earned over the previous 12 months of activity, with both new customers and existing customers with whom the agent has substantially increased the business (while it is no requirement that the agent loses commission; accordingly, agents earning a one-time commission are not per se excluded from an indemnity, cf European Court of Justice (ECJ), Case No. C-574/21). The indemnity cannot exceed an amount equal to the past five years' average annual commission (section 89b(2) HGB). The indemnity claim cannot be waived before termination. In the case of multi-level distribution, each level of commercial agents can claim indemnity from its principal, whereby the goodwill indemnity that has been paid by the principal to the main agent in respect of the customer base brought by the sub-agent is capable of constituting, for the main agent, a substantial benefit, thus resulting in an indemnity claim by the sub-agent against the main agent (cf ECJ, 13 October 2022, Case No. 593/21, commented by Rohrßen, *ZVertriebsR* 2023, issue 1; details: Thume/Rohrßen, in: *Graf von Westphalen et al.*, HGB (German Commercial Code), 6th ed. 2023, §§ 84 et seq on the entire commercial agency law).

Indemnity may, however, be reduced or even excluded for reasons of equity if the sub-agent has taken over the position of the main agent after termination and thus continues its activities towards the same customers for the same products in a direct relationship with the main principal instead of the main agent. In this case, the commercial agent (here ex sub-agent) does not lose its customer base, so there is no loss to be compensated (cf

ECJ, 13 October 2022, Case No. 593/21, BB 2022, 2572, paragraph 37 f, commented by Rohrßen, *ZVertriebsR* 2023, issue 1).

According to section 89b(3) no. 2 HGB, the claim to indemnity does not arise if the principal has terminated the agency contract and there was a compelling reason for such termination owing to culpable conduct on the part of the commercial agent. In its decision of 20 November 2020 (case no. 89 O 21/20), the Regional Court of Cologne addressed whether grounds for termination that become known only after the termination notice can be considered under section 89b(3) HGB. The exclusion of the indemnity claim under section 89b(3) HGB requires that a compelling reason was the actual cause of the termination. This means that, under section 89b(3) HGB, only those circumstances may be considered that were known to the terminating party at the time of termination and actually led to the decision to terminate. Consequently, grounds for termination that only became known after the termination notice was given cannot be invoked retroactively to exclude the agent's indemnity claim.

However, the indemnity amount may be reduced by an equity deduction if justified by equity considerations. The Regional Court of Cologne (LG Cologne, decision of 3 May 2024, case no. 89 O 16/23) has provided important clarification regarding cases where commercial agents receive one-time commissions rather than ongoing commission payments. The court ruled that one-time commissions do not preclude an indemnity claim. The decisive factor is not the type of commission payment, but whether the commercial agent could have continued securing further commission-relevant contracts with the customers he or she had acquired. The court further emphasised that projected commission losses must be taken into account when assessing the indemnity. Thus, even a one-time commission payment can lead to projected commission losses that must be considered in the indemnification. Consequently, a blanket equity deduction based solely on the payment of one-time commissions is not justified. Instead, it must be examined on a case-by-case basis whether and to what extent a deduction is appropriate (cf also ECJ, 23 March 2023, Case No. 574/21).

To retain the indemnity, the commercial agent needs to notify the principal within one year of termination; otherwise, he or she loses the right to indemnity. Indemnity is not due if:

- the agent terminates the contract (unless owing to circumstances attributable to the principal or because of the agent's advanced age or illness);
- the principal terminates the contract owing to default attributable to the agent (which would justify immediate termination for cause); or
- the agent, upon agreement with the principal, assigns and transfers its rights and duties under the agency contract to a third person.

The right to indemnity cannot be excluded by the parties unless the agent acts outside the European Economic Area (EEA) (section 92c HGB). This has been confirmed by the ECJ of Justice in its ruling on the international scope of the Commercial Agency Directive (decision of 16 February 2017, *Agro Foreign Trade & Agency Ltd/Petersime NV*; cf Rohrßen, *ZVertriebsR* 2017, 181 et seq). For details on the different levels of protection of commercial agents in various countries, see Rothermel,*Internationales Kauf-, Liefer- und Vertriebsrecht* (2nd ed. 2021), with overviews of 65 countries in Chapter H.

Distributors can claim indemnity only by analogic application of agency law. A distributor's indemnity can amount to its average annual net margin. For a long time, it was disputed whether a distributor's goodwill indemnity could be excluded under German law in advance when the distributor operates outside Germany but within the EEA. The BGH has recently denied such exclusion, provided the preconditions for analogic application of agency law are given, arguing that agency law restrictions applied to distributorships as well by way of analogy, and hence in the distributor's favour (BGH, decision of 25 February 2016, *Convection-reflow Soldering Systems*).

In its decision of 24 September 2020, the BGH clarified that the substantial benefits of the principal within the meaning of section 89b(1) sentence 1 no. 1 HGB consists of being able to continue to use the business relationships created by the commercial agent or authorised dealer after termination of the contract. It is therefore a matter of valuing this customer base created by the commercial agent or distributor ('goodwill') (BGH, decision of 24 September 2020, Case No. VII ZR 69/19, juris-paras 18, 20).

Franchisees can likely claim indemnity based on analogic application of agency law, but this has not yet been ruled out (BGH, decision of 23 July 1997, *Benetton*). The Federal Court of Justice has denied the franchisee's indemnity claim in the single case, but it would quite likely affirm it in the case of distribution franchising, where the franchisee buys the products from the franchisor, arguing that where the franchisee has been entrusted with the distribution of the franchisor's products and, after termination of the contractual relationship, the franchisor alone is entitled to the customers newly acquired by the franchisee during the term of the contract, the situation is similar to distributorship and commercial agency situations (BGH, decision of 29 April 2010, Case No. I ZR 3/09, *Joop*). However, no indemnity can be claimed where the franchise concerns anonymous bulk business and customers continue to be regular customers on a de facto basis (BGH, decision of 5 February 2015) or production franchising (bottling contracts, etc) where the franchisor or licensor is not active in the sector of products distributed by the franchisee or licensee (*Joop*).

Commission agents may also claim indemnity based on analogic application of agency law (BGH, decision of 21 July 2016, *Thomas Philipps*). The claim can probably be avoided, in particular by excluding the commission agent's obligation to transfer the customer base to the principal (for details, see Franke and Rohrßen*, IHR* 2017, 62–70).

Law stated - 8 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

A provision that prohibits the transfer of distribution rights will be enforced (section 399 BGB). Distribution rights are not assignable without the supplier's consent if the supplier has a reasonable interest in the distributor's or agent's personal performance (sections 613 and 664 BGB).

A transfer of ownership (change of control) cannot be hindered. However, the distributor can agree not to transfer ownership, and, in the event of a breach, the supplier is entitled to damages, including, if possible, retransfer of ownership (section 137 BGB). In addition, the parties can agree on a termination right in the case of change of control.

Law stated - 8 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Limitations exist, especially regarding the draft of standard business terms. Confidentiality provisions shall clarify the scope of confidentiality (what, who and how long). Contractual penalties may only apply if the receiving party culpably breached confidentiality, and the amount of the penalty has to be reasonable (sections 310, 307 and 343 German Civil Code (BGB) and section 348 German Commercial Code (HGB)).

Law stated - 8 February 2026

Competing products

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

Non-compete obligations towards distributors and franchisees are enforceable if they conform to antitrust law. Generally, agreements that aim at or result in restraints of competition are prohibited by antitrust law, namely by the German Act Against Restraints of Competition (GWB) and articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), details: Rohrßen, VBER 2022, EU Competition Law for Vertical Agreements.

Unless agreements contain hardcore restrictions, a safe harbour is provided by the De Minimis Notice of 30 August 2014 and the Vertical Block Exemption Regulation (VBER) (ex Regulation (EU) No. 330/2010, updated in 2022 because of the rise of internet sales and replaced by Regulation (EU) No. 2022/720). Agreements between non-competitors are safe if each party's market share does not exceed 15% in any relevant market affected.

If one party's market share exceeds 15%, but all market shares are below 30%, the parties can agree upon a non-compete obligation during the contractual term for a maximum period of five years. For non-competes, EU competition law now provides for new leeway: According to the European Commission so-called evergreening non-competes (ie, those that are tacitly renewable beyond a five-year term) can also be exempt under the VBER if the buyer can effectively renegotiate or terminate the vertical agreement with a reasonable notice period and at a reasonable cost in such a way that the buyer can effectively switch its supplier (Guidelines on Vertical Restraints of 30 June 2022, paragraph 248; cf Rohrßen,

VBER 2022: EU Competition for Vertical Agreements, Chapter 5.22). This time limit does not apply if the products are sold on premises owned by the supplier or leased by the latter from third parties who are independent of the buyer. In any case, the non-compete obligation cannot exceed the term for which the buyer is entitled to occupy the premises. Upon termination of the contractual term, a non-compete obligation involving a party with a market share exceeding 15%, but without market shares exceeding 30%, is valid if it is necessary to protect the know-how granted to the distributor and limited to competing products, to the distributor's premises and to a one-year term.

If one party's market share exceeds 30%, a non-compete obligation and any other restriction of competition can only benefit from the individual exemption under the strict criteria of article 101(3) of the TFEU (efficiency defence).

Restraints within franchisee agreements can be exempted. They are considered not to restrict competition in terms of EU antitrust law if they are essential for running the franchise system (similar to the ancillary restraints doctrine under US law) (cf Court of Justice of the European Union, 28 January 1986, *Pronuptia*). This is particularly true for non-compete obligations (for details, see Rohrßen, VBER 2022: EU Competition for Vertical Agreements, Chapter 7).

Non-compete obligations towards agents are enforceable. As the principal bears all risks connected with the sale and purchase of the products or services, antitrust law generally does not apply (Guidelines on Vertical Restraints of 19 May 2010, paragraphs 12 et seq, 18 and 49, now replaced by the Guidelines on Vertical Restraints of 30 June 2022, paragraph 29 et seq, with special comments on agency agreements in the platform economy in paragraphs 46 et seq). Specific limits apply under German commercial agency law to post-contractual non-compete obligations that were stipulated before termination: they must be limited to a two-year period, to the agent's territory or customers, and to the contractual products or services, and they must be done in writing and delivered to the agent. The principal is obliged to pay indemnity for the non-compete obligation's term (section 90a HGB).

Law stated - 8 February 2026

Prices

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

Generally, a supplier must not control the resale price or price level of its distributors or franchisees (except for suppliers selling newspapers, magazines and books, section 30 GWB). A violation of this rule represents a hardcore restriction and is therefore generally void (see article 4(a) VBER and Guidelines on Vertical Restraints of 10 May 2010, paragraphs 48 and 223, respectively Guidelines on Vertical Restraints of 30 June 2022, paragraphs 185 et seq; for practical tips cf Rohrßen, *ZvertriebsR* 2020, 406 et seq). By exception, the supplier can enforce the efficiency defence (eg, when introducing a new product or a coordinated short-term, low-price campaign). The supplier can also influence resale prices by recommending resale prices or setting maximum resale prices.

Suppliers can control the price at which they sell the products or services via agents because the antitrust law restrictions do not apply.

However, this strong market position must not be abused. Such abuse is deemed to exist if the supplier, through its own or affiliated dealerships, offers sale prices at the authorised dealer's level of trade that are so low that the dealer is unable to offer them at an economically profitable price and that are only possible for its own or affiliated dealerships by the entrepreneur compensating for their resulting loss. The decision of the Vienna Supreme Court of 17 February 2021 – 16 Ok 4/20d on section 4 paragraph 3 of the Austrian Cartel Act is also significant for Germany due to the comparable legal situation under section 20 paragraph 1 sentence 1 and section 19 paragraph 1 and paragraph 2 No. 1 of the German Act against Restriction of Competition (GWB).

Law stated - 8 February 2026

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?

A supplier may recommend resale prices or set maximum resale prices if the parties' market shares do not exceed 30% and if the recommendation or maximum resale price is not backed up by further negative (eg, pressure) or positive (eg, incentives) factors from one party (article 101(1) TFEU and article 4(a) VBER), such as announcing that the supplier will not deal with customers who do not follow its pricing policy.

Establishing a minimum advertised price policy is exempt from antitrust law if it is regarded as a recommendation. Otherwise, it can – very rarely – be exempted under the efficiency defence.

If, on the other hand, a supplier announces it will not deal with distributors or franchisees refusing its pricing policy, it will be treated as fixing the selling prices.

Law stated - 8 February 2026

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?

A most favoured nation or customer clause can be enforced only if agreed between non-competitors and if the parties' market shares amount to a maximum of 30% (otherwise, only the efficiency defence can be used to argue that the clause does not represent a prohibited restriction of competition).

Law stated - 8 February 2026

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, based on freedom of contract, a seller can charge different prices to different customers. However, this general rule does not apply if a seller:

- holds a dominant or similarly strong market position (sections 19 and 20 GWB and article 102 TFEU); and
- differentiates on grounds of race or ethnic origin. The same is true for grounds of gender, religion and disability. A different treatment is allowed if it is based on objective grounds, especially where it serves to avoid threats, prevent damage, etc (sections 19 and 20 Anti-Discrimination Act).

Law stated - 8 February 2026

Geographic and customer restrictions

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

Whether measures restrict competition and are prohibited is to be determined by the antitrust law of the country in which the measures have an effect (the effects doctrine). Within the European Union or the European Economic Area (EEA), a supplier is generally prohibited from restricting the territories in which or the customers to whom its intermediary sells; such restrictions are generally null and void (article 101(1)b, (2) TFEU and article 53 EEA Agreement). The following restrictions are, however, exempt from the ban owing to block exemption:

- active sales into an exclusive territory or customer group reserved to the supplier or another distribution partner;
- sales to end users if the distribution partner is a wholesaler;
- sales from members of a selective distribution system to unauthorised distributors within the system's territory; and
- sales of components, supplied for incorporation, to customers who would use them to produce analogous products (article 4(b-d and f) VBER 2022/720).

Active sales (now defined in article 1(1)(l) VBER 2022/720) refers to actively approaching actual or potential customers (eg, by direct, unsolicited mail, email, calls or visits) in a specific territory through specifically targeted promotions. Passive sales (now defined in article 1(1)(m) VBER 2022/720) refers to the response to unsolicited requests from individual customers, including advertisements addressed to customers outside exclusive territories or customer groups, if done reasonably.

This also holds true for the internet: in principle, online sales may not be excluded. A supplier may only require its intermediary to meet specific quality standards, especially in selective distribution systems (Guidelines on Vertical Restraints of 10 May 2010, paragraphs 51 and 54). The ECJ shed further light on internet resale restrictions within selective distribution systems during deliberation on the Higher Regional Court of Frankfurt's request to give a preliminary ruling on how to interpret European antitrust rules,

namely article 101 of the TFEU and article 4(b) and (c) of the VBER (decision of 19 April 2016, *Coty Germany,* File No. 11U 96/14 (Kart)). According to the ECJ's decision of 6 December 2017 (*Coty Germany,* Case No. C-230/16), manufacturers of luxury products may stop the distributors within their selective distribution network from selling the goods via third-party platforms if the contractual clause meets the following three conditions: "(i) that clause has the objective of preserving the luxury image of the goods in question; (ii) it is laid down uniformly and not applied in a discriminatory fashion; and (iii) it is proportionate in the light of the objective pursued." If these *Metro*-criteria for selective distribution (referring to the *Metro* case of 25 November 1977, Reference No. 26/76) are not met, the clause may nevertheless benefit from an exemption under the VBER by reason of article 101(3) of the TFEU, because banning sales via third-party online platforms does not, at least according to the court, under a selective distribution system for luxury goods, constitute a hardcore restriction as listed in article 4 of the VBER, which would otherwise exclude applying the block exemption to the whole vertical agreement (cf paragraph 47 of the Guidelines on Vertical Restraints of 10 May 2010). In particular, the third-party platform ban would not constitute a restriction of customers in terms of article 4(b) of the VBER, or a restriction of passive sales to end users in terms of article 4(c) of the VBER. The court left open whether this interpretation also applies to goods other than luxury goods and outside selective distribution. The German competition authority made the following declaration immediately via Twitter on 6 December 2017: "The #ECJ has taken care to limit its findings to genuine luxury products. #Brandmanufacturers have not received carte blanche to issue blanket #platformbans. First assessment: Limited impact on our practice."

The European Commission disagreed; in its Competition Policy Brief of April 2018, the European Commission stated that the ECJ's argumentation in the *Coty Germany* case applies irrespective of the luxury character of the products marketed:

> *The arguments provided by the Court are valid irrespective of the product category concerned (i.e., luxury goods in the case at hand) and are equally applicable to non-luxury products. Whether a platform ban has the object of restricting the territory into which, or the customers to whom the distributor can sell the products or whether it limits the distributor's passive sales can logically not depend on the nature of the product concerned.*

The ECJ's decision in the *Coty Germany* case provides good abstract arguments that manufacturers of both luxury and other brand-name products may ban their sale via internet platforms either according to the *Metro* criteria or according to the VBER. In this regard, see also the decision of the Higher Regional Court of Hamburg of 22 March 2018, which held that the ban that a producer of food and cosmetics (ie, not luxury goods, but products "qualitatively committed to a high (production) standard") imposed on its own distributor to sell via third-party internet platforms was valid (for details see Rohrßen-, *ZVertriebsR* 2018, 277–285 (281)).

The new VBER has now vastly codified these principles, as in its article 4(e) VBER has added a new hardcore restriction: suppliers must not prevent the buyers' (or their customers') effective use of the internet to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold within the meaning of points.

With regard to resale restrictions, the EU Geo-blocking Regulation (Regulation (EU) No. 2018/302) prohibits traders from discriminating against customers within the European Union for reasons of nationality, place of residence or place of establishment with regard to the access to online interfaces (article 3) and the application of general conditions of access to goods or services (article 4). Within the range of means of payment accepted, traders shall not apply different conditions for payment transactions based on nationality, place of residence, place of establishment of the customer, location of the payment account, place of establishment of the payment service provider or place of issue of the payment instrument within the European Union (article 5). Where distribution agreements impose obligations to exercise any form of unjustified geo-blocking as laid down in articles 3, 4 and 5, those provisions shall be automatically void (article 6(2)). The Geo-blocking Regulation has been applied since 3 December 2018. However, article 6(2) will only apply to agreements on passive sales concluded before 2 March 2018 as of 23 March 2020 (for details see Rothermel and Schulz*, K&R* 2018, 444–449; Rohrßen, *ZVertriebsR* 2018, 277–285 (283–284)).

Law stated - 8 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

Geographic or customer restrictions of resale, to the extent permitted, can be enforced through private legal action, namely by way of an action for an injunction, requiring the distributor to refrain from such breach of contract. If urgent, suppliers can request an interim injunction.

Law stated - 8 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Yes, a supplier may restrict e-commerce sales by its distribution partners (especially distributors or franchisees) under German and EU antitrust law; however, suppliers may hardly impose a comprehensive prohibition on the online sale of goods (or services) because they are considered passive sales (cf ECJ, decision of 13 October 2011, *Pierre Fabre,* Case No. C-439/09, reaffirmed in *Coty Germany*; paragraph 52 of the Guidelines on Vertical Restraints of 10 May 2010; and paragraph 212 of the Guidelines on Vertical Restraints of 30 June 2022; see also the *Asics* decision of the German Federal Court of Justice (BGH) of 12 December 2017, which states that a general ban on the use of price comparison tools is void, though setting up guidelines for the use of those tools may be valid (see Rohrßen*, ZVertriebsR* 2018, 277–285 (282–283)). Restrictions short of a total ban are commonplace, particularly the prohibition of sales via third-party online platforms (especially marketplaces), the ban of purely online sales by requiring the operation of brick-and-mortar shops (paragraph 52(c) of the Guidelines on Vertical Restraints of 10 May 2010) and setting quality criteria for internet sales regarding the domain name, the online store's appearance, the language, the services provided, etc (for details, see Rohrßen-*, GRUR-Prax* 2018, 39–41 and *DB* 2018, 300–306). Such restrictions within a selective

distribution system are allowed if they either meet the *Metro* criteria or can be exempt under the VBER, which requires that: the supplier's and the buyer's market shares do not exceed 30%; and there are no hardcore restrictions listed in article 4 of the VBER or excluded restrictions under article 5 of the VBER. To be exempt under the VBER, the new hardcore restriction of article 4(e) VBER must be observed: the distribution agreement must not have as its object "the prevention of the effective use of the internet by the buyer or its customers to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold (…)". What suppliers may explicitly impose, however, are other restrictions on online sales and restrictions on online advertising that do not have the object of preventing the use of an entire online advertising channel (for details: Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements, Chapters 4.5 and 9).

A supplier may require that e-commerce sales by its distribution partners (and now, also by their direct customers, cf Rohrßen, VBER 2022, Chapter 4.2.4) are not resold outside the distribution partner's assigned territory, but only with respect to active sales into the exclusive territory or an exclusive customer group reserved to the supplier or another distribution partner, and only provided that the supplier's and the distribution partner's market shares do not exceed 30%. Passive sales over the internet, that is, upon unsolicited requests from individual customers, can, in principle, not be restricted.

An alternative is to use commercial agents or commission agents because they are, in principle, exempt from the competition law restrictions: "Since the principal bears the commercial and financial risks related to the selling and purchasing of the contract goods and services all obligations imposed on the agent in relation to the contracts concluded and/or negotiated on behalf of the principal fall outside Article 101(1)" (paragraph 18 of the Guidelines on Vertical Restraints of 10 May 2010, now paragraph 30 of the Guidelines on Vertical Restraints of 30 June 2022).

A supplier may require reports of e-commerce sales in the same way that a supplier may require reports of any other sales from its distribution partner; however, care must be taken that this does not result in resale price maintenance. Invasion fees or similar amounts, regardless of how they are named (contractual penalties, liquidated damages, etc), may be stipulated in the distributorship agreement for any breach of contract for which the distributor is responsible, including active sales into territories exclusively reserved to the supplier or allocated to another distributor.

Law stated - 8 February 2026

21 May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

A distributor or agent may restrict a supplier's sales through e-commerce intermediaries if this has been stipulated in the distribution agreement and only in the following cases:

- active sales into the exclusive territory or an exclusive customer group reserved to the (maximum five) exclusive distributor(s) or the supplier itself (this shared exclusivity of up to five exclusive distributors is new, the concept of exclusivity has

been broadened by the VBER 2022, cf Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements (2023), cf. ECJ, decision of 8 May 2025 – C-581/23 (Beevers Kaas BV vs Albert Heijn NV);

- sales to end users if the e-commerce intermediary operates at wholesale level;
- sales from members of a selective distribution system to unauthorised distributors in the system's territory; and
- selling components, supplied for incorporation, to customers who would use them to manufacture the same kinds of products (article 4(b) VBER), provided that each party's market share does not exceed 15% on any relevant market affected.

Law stated - 8 February 2026

Refusal to deal

22 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 customers because of freedom of contract, unless restrictions by antitrust or anti-discrimination law apply.

A supplier may restrict its distributor's ability to deal with particular customers only if an exemption from antitrust law is given.

Law stated - 8 February 2026

Competition concerns

23 Under what 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?

Typically, German or European rules on merger control do not apply to the conclusion of a distribution or agency agreement because the agreement is a form of cooperation between companies that differs from a merger or acquisition. By way of exception, the conclusion of a distribution agreement may be subject to merger control under:

- German law if it is considered a "combination of undertakings enabling one or several undertakings to exercise directly or indirectly a material competitive influence on another undertaking" (section 37 et seq GWB). However, this combination shall only exist if the parties are somehow affiliated; mere economic influence shall not suffice; and
- European law if it results in gaining direct or indirect control of the whole or parts of one or more other undertakings, including by contract (article 3(1b) of the Merger Regulation (Regulation (EC) No. 139/2004)). This control may also exist because of

mere economic dependencies (which are to be measured on the circumstances of the case).

Law stated - 8 February 2026

24 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?

Generally, agreements that aim at or result in restraints of competition are prohibited by antitrust law. Certain hardcore restrictions are generally prohibited regardless of the parties' market shares: for example, price-fixing, restricting the geographic areas or categories of customers and – under the new VBER – vertical agreements that have the purpose of preventing buyers or their customers from using the internet effectively for the online sale of goods and services remain unlawful hardcore restrictions (article 4(e) VBER). Other hardcore restrictions apply in particular to selective distribution (eg, no restriction of cross-supplies between distributors within a selective distribution system).

Unless there are hardcore restrictions, a safe harbour is provided by the De Minimis Notice and the VBER. However, if the market share of one of the parties exceeds 30%, an agreement or concerted practice that restrains competition can only benefit from the efficiency defence of article 101(3) of the TFEU.

Antitrust law is mainly enforced by the authorities (the European Commission and the German Federal Cartel Office), especially through fines. However, it can also be enforced by private action, aiming to remove the infringement of antitrust law or claim damages (section 33 et seq GWB).

Also agreements concerning minimum purchase obligations are permissible in principle. Under the De Minimis Notice, a minimum purchase agreement may be exempted if the parties' combined market shares fall below 10% or 15%. The percentage is reduced to 5% if the individual contract is part of comprehensive distribution agreements and the contract network covers at least 30% of the relevant market. In addition, the minimum purchase obligation may be exempted pursuant to article 2(1) VBER.

However, agreements on minimum purchase obligations are subject to the test of reasonableness (BGH, decision of 25 April 2001, Case No. VIII ZR 135/00; BGH, decision of 13 July 2004, Case No. KZR 10/03) and thus may be ineffective under German law of standard form contracts if they significantly exceed the distributor's resale opportunities. If a minimum purchase obligation is combined with a non-competition clause or an exclusive purchasing obligation, the manufacturer is only entitled to refuse orders from its authorised dealer for objective reasons.

Law stated - 8 February 2026

Parallel imports

25

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

Distributors or agents cannot directly prevent parallel imports. Instead, they can only demand that their supplier use its rights, if existent, to prevent parallel imports. As a general rule, the trademark proprietor of an EU trademark is entitled to prevent all third parties that do not have his or her consent from using any sign that is identical or similar to the EU trademark in the course of trade, in relation to goods or services (article 9 of the Trademark Regulation (Regulation (EU) No. 2017/1001)). Such rights are exhausted 'in relation to goods which have been put on the market in the EEA under that trademark by the proprietor or with his consent' (article 15(1) of the Trademark Regulation). Trademark proprietors must present and prove only one of the elements of the infringement provided for under article 9 of the Trademark Regulation, and not the missing exhaustion (cf Higher Regional Court of Munich, decision of 19 July 2018; Rohrßen and Tenkhoff, *GRUR-Prax* 2018, 578). Moreover, the rights are not exhausted if a legitimate reason to prohibit the grey market sales exists, namely because the use of the trademark threatens to damage the good's reputation (as decided by the Court of Justice of the European Union, *Dior/Evora*, Case No. C-337/95). In recent years, a court decision confirmed that this is especially true for the image of brands that have a luxury and prestige character, as also reflected in how they are advertised. The right to prevent such sales is, however, limited to cases with "a risk of damage to the reputation", especially where the trademark used by the reseller "substantially damages" the trademark's reputation. The court found that the use of a distribution channel that did not comply with the selective distribution system caused damage to the reputation of the luxury cosmetics to be distributed, namely by presenting the products amid other very standard products for daily use, low-priced products and special deals, all of which did not require any need to give advice to the customers (Higher Regional Court of Düsseldorf, decision of 6 March 2018; for details, see Rohrßen and Tenkhoff*, GRUR-Prax* 2018, 235).

Law stated - 8 February 2026

Advertising

26 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 require them to share in its cost of advertising?

When advertising and marketing products, the parties generally have to observe the Unfair Competition Act, avoid misleading advertising and adhere to the Ordinance obliging sellers to mark goods with prices, as well as further provisions that regulate market behaviour in the interest of market participants (eg, labelling of textiles or food products). The parties are free to agree on the cost of advertising.

Law stated - 8 February 2026

Intellectual property

27

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

A supplier may safeguard its intellectual propertyby registering its patents, trademarks, utility models and designs in the territory where the products shall be distributed now or in the future. Thus, the supplier can exert the respective rights in the case of infringement. In addition, a supplier may stipulate indemnity clauses in their distributor contracts to cushion the consequences of possible infringements.

Technology transfer agreements are common and governed by the Technology Transfer Block Exemption (Regulation (EU) No. 316/2014).

Law stated - 8 February 2026

Consumer protection

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

Consumer protection laws apply at the end of the distribution chain. German statutory law grants a two-year warranty that products are free from defects from the moment of delivery. If a defect is detected during this period, the buyer can claim subsequent performance (ie, choosing between the remedy of the defect and the delivery of a new, defect-free product), a price reduction or withdrawal from the contract (all regardless of fault) and damages if the seller acted with fault (sections 437 and 280 et seq BGB). Although fault is generally assumed by law, the seller can exculpate itself, especially if it was not the manufacturer of the defective product. These consumer rights can neither be waived by the buyer nor contracted out by the supplier (sections 474 and 475 BGB).

If the product proves to be already defective when delivered, each seller within the distribution chain has a right of recourse against its own supplier (sections 445a, 445b and 478 BGB). To be able to enforce this right, the buyer (unless it is a consumer) must inspect the product at the time of delivery and inform the seller if any defect is detected (section 377 HGB).

In addition, special information duties towards consumers apply in the following cases:

- over-the-phone sales (section 312a(1) BGB);
- over-the-counter sales, except everyday sales (section 312a(2)2 BGB and article 246(2) Introductory Act to the Civil Code);
- e-commerce (section 312j BGB); and
- selling off-premises and distance contracts (section 312d BGB).

Statutory law also provides a limit to the fees that can be charged to a consumer for using certain means of payment, consumer hotlines, etc (section 312a(3–5) BGB). Finally, the consumer has a right of withdrawal in cases of distance and off-premises contracts (sections 312g and 355 BGB).

These consumer rights are harmonised throughout the European Union because they were aligned by EU Directive 1999/44/EC on the sale of consumer goods and EU Directive 2011/83/EU on consumer rights. However, there are differences relating to whether certain rules also apply in business-to-business relationships (eg, as regards the seller's obligation to give customers the opportunity to identify and correct input errors before placing their electronic orders), among other things.

Law stated - 8 February 2026

Product recalls

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

For consumer products, the General Product Safety Regulation (GPSR) foresees obligations for suppliers (article 9(8) and (12)), importers (article 11(8) and (10)), dealers (article 12 (4)), and online marketplaces (article 22(12)); with indications on the recall notice (article 36) and new remedy obligations by the relevant economic operators responsible (article 37), such as repair, replacement or adequate refund for the product recalled, regardless of any warranty periods. Beyond these general rules, there are generally no specific requirements set by statute law in regard to product recalls. Instead, according to case law, manufacturers must keep their products under surveillance and, when detecting risks concerning legally protected goods (such as healthcare products), they must promptly adopt the necessary preventive or corrective measures. The extent and time of these measures depend particularly on the product concerned and on the extent of the possible damage (BGH, decision of 16 December 2008).

The distribution agreement can identify which party shall be responsible for a recall and the relevant costs. No specific limits apply to individual agreements; however, in court, standard business terms are strictly reviewed: they can be declared void and unenforceable if they are incompatible with essential statutory principles or entail an unreasonable disadvantage, if they limit essential contractual rights and duties or if they are surprising or ambiguous (sections 310(1), 307 and 305c BGB). Therefore, standard business terms should be drafted while taking into account who would typically be responsible for recalls and relevant costs, depending on the product (eg, whether it is ready-made).

Law stated - 8 February 2026

Warranties

30 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?

A supplier may limit the warranty rights granted by statutory law towards its distribution partners, subject to a few limits concerningindividual agreements. The agreements must

not breach statutory prohibitions (section 134 BGB) and public policy (section 138 BGB). Further, they must not limit or exclude liability for wilful intent, fraudulently concealing defects (where a guarantee has been given) or product liability law (sections 202, 276, 444 and 639 BGB). If a consumer detects a defect in the product and the defect already existed upon the passing of risk to the distribution partner, a limitation of warranty can only be enforced if the supplier provides another compensation of equal value (section 478(2) BGB).

In standard business terms, statute law can hardly be derogated from, even in business-to-business contracts (sections 310(1) and 307 BGB).

It is possible to:

- modify the details of subsequent performance (namely the time, place and number of attempts);
- exclude liability for slightly negligent breaches of non-cardinal duties; and
- limit liability for slightly negligent breaches of non-cardinal duties to the typical damages foreseeable at the conclusion of the contract.

The same applies to warranties provided to each downstream customer unless the latter is a consumer, as a consumer's statutory rights cannot be waived or contracted out.

Law stated - 8 February 2026

Data transfers

31 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?

The exchange of information about customers is restricted by the Federal Data Protection Act (BDSG), which implemented EU Directive 95/46/EC, repealed by Regulation (EU) No. 2016/679 (the General Data Protection Regulation (GDPR)). The collection, processing and use of information on customers are only allowed if permitted by law (eg, owing to the performance of a contract) or with the customer's consent (article 6 GDPR (formerly section 4 BDSG); see also section 51 BDSG). Details on commercial collection and data storage for the purpose of transfer are laid down in article 5 et seq of the GDPR (formerly section 28 et seq BDSG).

The owner of customer information, if contained in a database, is the person who produced the database, provided that its assembly, verification or presentation required a substantial qualitative or quantitative investment (section 87a et seq of the German Copyright Act).

Data transfer between the EEA and the United States can currently only take place on the basis of standard contractual clauses. Both the Safe Harbour Agreement and the subsequent Privacy Shield Agreement have been declared void by the ECJ's *Schrems* and *Schrems II* decisions (6 October 2015 and 16 July 2020). It is now recommended to save the data in the EEA. When this is not possible, companies must obtain the approval of the customers and employees affected to transfer the data to the United States. This can

(only) be made by using standard contractual clauses that – according to the European Commission – offer sufficient safeguards on data protection for the data to be transferred internationally. However, this approach is not free of any risk. Customers or employees having doubts about whether their data is really sufficiently secured could contact the competent local data protection authority, which could under certain circumstances prohibit data transfers.

Law stated - 8 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Whenever a supplier or its distribution partner acts as a controller or a processor of personal data, they must implement appropriate technical and organisational measures to ensure an appropriate level of data security. These measures include:

- the pseudonymisation and encryption of personal data;
- the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Both controllers and processors of data must also ensure that any natural person acting under their authority does not process the data, except on instruction from the controller or unless required by EU or national law (article 32 GDPR).

Law stated - 8 February 2026

Employment issues

33 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?

The distribution partner is, in principle, free to decide which individuals to employ in order to manage the distribution partner's business unless the parties have agreed on a veto right for the supplier, in particular where if the agent or distributor has to render the services in person.

A supplier may terminate the relationship with notice (if the agreement is of an indefinite term, or agreed), or without notice, but for cause. However, termination for cause requires a more concrete cause than dissatisfaction with the management (unless individually agreed). It may suffice if culpable mismanagement has resulted in a strong decrease in turnover.

Law stated - 8 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

An agent may be considered a supplier's employee if the agent is not independent (ie, if he or she performs work that is subject to instructions and determined by the supplier). An agent acts independently if, based on the contractual framework and tasks, he or she freely organises his or her working time and activities (section 84(1)2 HGB). This also holds true – mutatis mutandis – for other types of distribution partners, especially distributors and franchisees.

If the sales intermediaries are classified as employees, they will be entitled to:

- employee protection, entailing, for example, a limited right of termination under the Dismissal Protection Act;
- continued payment of salary during public holidays, sick leave and holidays;
- minimum wage (in accordance with the Minimum Wage Act of 11 August 2014); and
- exclusive competence of labour courts if the employee has, over the previous six months of working activity, earned an average monthly salary not exceeding €1,000.

If the workers are classified as employees, the suppliers will also have to:

- pay social security contributions;
- pay income tax on salary; and
- adhere to worker participation and compliance with collective bargaining agreements, if applicable.

A supplier generally does not need to protect against responsibility for potential violations of labour and employment laws because the supplier is not required to respond to those violations unless it has contributed to them. However, the supplier can advise the distribution partner in the distribution agreement of the partner's sole responsibility.

Law stated - 8 February 2026

Commission payments

35 Is the payment of commission to a commercial agent regulated?

Yes, the agent has a right to:

- "del credere commission" if the agent assumes liability for fulfilment of contracts procured by the agent (section 86b HGB);
- follow-up commission (section 87 (1) alt 2 HGB) for intensified, existing customers to protect the commercial agent from direct business of the principal and to reward the advertising of regular customers. The prerequisite is repeat orders of the same type by the customer recruited by the agent. Such commission claim may, however, be

contracted out, cf ECJ, decision of 13 October 2022, Case No. C-64/21 (*Rigall/Bank Handlowy*), cf Rohrßen, *ZVertriebsR* 2023, Issue 1;

- commission as soon as the principal has executed the transaction (section 87a (1) HGB);
- calculation of commission on a monthly basis, which can be extended to a maximum of three months (section 87c (1) HGB); and
- commission irrespective of delivery and payment, unless the principal is not liable for such failure (section 87a (3) HGB). The principal is liable for the failure if the underlying circumstances fall within his or her entrepreneurial or operational sphere of risk or stem from a risk he or she has assumed (BGH, decision of 27 September 2023, Case No. VII ZR 12/23).

-The principal fulfils his or her obligation under section 87c (1) HGB if he or she applies the commission rate he or she deems correct (Higher Regional Court Hamm, decision of 13 December 2021, Case No. 18 U 31/21, juris para 60).

The agent also has a right to request information, statements of account, an excerpt from the books and inspection of the business records or analogous documents by an auditor (section 87c HGB). In any specific case, the information relevant to the commercial agent's commission depends on the commission arrangement agreed upon between the commercial agent and the principal (cf BGH, decision of 25 July 2024, Case No. VII ZR 145/23). The statement of accounts must enable the commercial agent to identify the individual transactions subject to commission and to verify the calculation of the commission, hence the statement must list which transactions were carried out with which customers in the respective accounting period, what the relevant transaction value (usually: price of goods) is and what commission amount the commercial agent is entitled to claim.

An entitlement to a book extract also exists with regard to those transactions for which it is doubtful whether the commercial agent is entitled to commission, but not insofar as these are transactions for which there is no doubt that commission is not payable (Higher Regional Court Hamm, decision of 13 December 2021, Case No. 18 U 31/21, juris-para 82; Thume/Rohrßen, in: Röhricht et al., HGB, 6th ed. 2023, § 87c para 16).

The extract from the books must be provided as an organised compilation. Neither access to an electronic agency information system nor the mere transmission of collected commission statements is sufficient (cf Regional Court Frankfurt am Main, partial decision of 16 August 2024, Case No. 2-21 O 224/20).

According to the case law of the German Federal Court of Justice (BGH), a commercial agent can no longer assert the right to request an excerpt from the books under section 87c(2) HGB if they have explicitly agreed with the principal on the commission statement. However, such an agreement cannot be inferred from the agent's passive behaviour; a clear declaration of intent is required. The assumption of a tacit waiver is subject to strict requirements. The commercial agent's right to receive an excerpt from the books under section 87c(2) HGB is also not fulfilled merely by the principal answering the agent's inquiries regarding the commission statement. The fact that the agent only requests or sues for the excerpt after prolonged correspondence does not result in the loss of this right. Instead, the agent's right to review the commission statements remains intact, particularly if

outstanding commission claims still exist (cf Higher Regional Court of Naumburg, decision of 20 November 2024, Case No. 5 U 66/24(Hs)).

The right to inspect the business records in accordance with section 87c (4) HGB extends to the entire (already existing) business records of the principal with relation to the payment claims of the commercial agent under the agency agreement covered by section 87c HGB, including electronically maintained business records. However, this does not give rise to a claim against the principal for the creation or external procurement of additional, unavailable documents. Rather, the right to inspect the books is limited to those documents that are held by the principal (Higher Regional Court Frankfurt, decision of 14 April 2022, Case No. 26 Sch 1/22, juris-paras 137 et seq).

The above-listed rules are mandatory and cannot be waived or contracted out (with the exception of follow-up commission, section 87(1) alt 2 HGB). Further details on the payment of commission (unless otherwise agreed) are provided under section 86b et seq of the HGB. According to section 87b(2) HGB, commission shall be calculated on the basis of the remuneration payable by the third party or the principal. However, this provision is dispositive, meaning that the amount of commission can also be made dependent on the quantity of goods sold (Higher Regional Court Hamm, decision of 15 February 2021, Case No. 18 U 60/20, juris-paras 75 f).

If a contract procured by the commercial agent is partially not executed, the principal's obligation to pay the commission depends on the concept of 'reason for which the principal is to blame' as laid down in article 11 of the Commercial Agency Directive and interpreted by the ECJ (decision of 17 May 2017,*ERGO Poist'ovňa*). In that case, the commercial agent may be required to refund a part of his or her commission, under the conditions that the partial amount is proportionate to the extent to which the contract has not been executed and that the non-execution is not due to a reason for which the principal is to blame (for details, see Franke and Rohrßen*, IWRZ* 2018, 107–111).

Agreements on commission are not subject to the strict review under German law of standard form contracts, as according to section 307(3)(1) BGB, the test of reasonableness applies only to provisions in standard business terms on the basis of which arrangements deviating from legal provisions, or arrangements supplementing those legal provisions, are agreed. Agreements on the direct object of the main service, on the other hand, as well as agreements on the remuneration to be paid by the other party, in particular insofar as they relate to its amount, are not subject to review in accordance with section 307(1) sentence 1, (2) BGB (Higher Regional Court of Hamm, decision of 15 February 2021, Case No. 18 U 60/20, juris-paras 72 and 75 et seq). However, this only applies to provisions that determine the type, scope and quality of the performance owed. Clauses that change, shape or modify the main performance promise in deviation from the law or the performance owed in good faith, on the other hand, are subject to review (BGH, decision of 9 April 2014, Case No. VIII ZR 404/12, NJW 2014, 2269 paragraph 43 et seq), including so-called ancillary price agreements.

Law stated - 8 February 2026

Good faith and fair dealing

36 What good faith and fair dealing requirements apply to distribution relationships?

The parties to distribution relationships have to safeguard each other's interests (sections 86, 86a and 90 HGB and section 242 BGB). Actually, the duty to safeguard interests under section 86 HGB is essential and mandatory for the agency agreement (for a list of mandatory commercial agency rules, see Rohrßen, *ZVertriebsR* 2023, issue 1).

In particular, the commercial agent is obliged to:

- check customers' creditworthiness;
- promptly inform the supplier about any business procured;
- keep any information obtained during his or her activity confidential; and
- refrain from acting for the supplier's competitors.

Similar obligations, except non-competition, also apply to distributors, commission agents and franchisees (cf the overview by Thume/Rohrßen, in: Röhricht et al, HGB, 6th ed. 2023, § 84 paragraph 40).

The supplier is obliged to assist and take care of its distribution partner subject, however, to the supplier's economic freedom.

Accordingly, commercial agents must refrain from any competition that is likely to harm the interests of their principal in accordance with section 86(1) HGB. If they violate this provision, they are liable for damages (cf eg, Regional Labor Court Berlin-Brandenburg, decision of 1 December 2022, Case No. 21 Sa 390/22, juris-paras 130, 143 et seq, 152–157, 167, 172).

The commercial agent's duty to safeguard the interests of the principal pursuant to section 86(1) HGH gives rise to a right to issue instructions. If the commercial agent acts on the basis of such instructions, he or she is acting in the interests of a third party and not independently, so that this activity is not subject to the prohibition of extrajudicial legal advice under section 3 Act on Out-of-Court Legal Services (RDG) (Higher Regional Court Dresden, decision of 26 April 2022, Case No. 14 U 2489/21).

According to section 86(1) HGB, the commercial agent is obligated to make efforts to negotiate or conclude business transactions and act in the principal's interests in doing so. In its recent decision of 22 September 2023 (Case No. 19 U 150/22), the Higher Regional Court of Cologne clarified that a commercial agent's duty to negotiate or conclude transactions does not automatically end upon termination of the agency contract. Instead, the commercial agent must continue efforts to secure business transactions and act in the principal's interest throughout the notice period, which is the time between the termination notice and the contract's actual end date. The court ruled that a commercial agent who fails to make sufficient efforts to secure new business during the notice period may be liable for damages under section 86(1) HGB. A significant decline in sales or transaction volume compared to previous years can serve as an indication of a breach of this duty. The burden then shifts to the agent to demonstrate that the decline was due to external factors rather than a reduction in their sales activities. This principle applies not only to commercial agents but also, by analogy, to other distribution intermediaries, including authorised dealers and franchisees. The ruling reinforces that contractual obligations remain binding throughout the notice period, requiring agents to continue promoting the principal's products or services until the contract formally ends.

The principal, on the other hand, must fulfil its obligations towards the commercial agent in accordance with section 86a HGB. This also includes the obligation to provide the commercial agent with the documentation required for the performance of his activities. The term "documentation" is to be understood broadly and, according to the BGH, also includes a point of sale system (BGH, decision of 17 November 2016, Case No. VII ZR 6/16). However, other opinions, including a recent decision by the Higher Regional Court of Cologne on 2 February 2024 (Case No. 19 U 73/23), take a more restrictive view. According to this view, only those documents that are specifically necessary for the agent to carry out his or her sales activities – such as workplace systems (hardware and software) – must be provided free of charge.

General business costs, such as office equipment, are to be borne by the commercial agent itself. Furthermore, cashless payment options are not to be provided by the principal as a required document, as the commercial agent can procure this payment service him or herself and thus continue to be able to carry out his activities (Berlin Court of Appeal, decision of 17 March 2022, Case No. 2 U 4/20, juris-para 18 et seq).

Law stated - 8 February 2026

Registration of agreements

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

No.

Law stated - 8 February 2026

Anti-corruption rules

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

German anti-bribery and anti-corruption laws may also apply to the relationship between a supplier and its distribution partner, especially to practices such as:

- taking and giving bribes in commercial practice;
- restricting competition in the context of public invitations to tender; and
- taking or giving bribes to public officials, including inducing or assisting with those acts (section 298 et seq and section 333 et seq of the German Criminal Code).

Any underlying agreement to such practice can and typically will be declared void as being in breach of law (section 138 BGB); for example, an agency agreement that aims to bring about a bribe agreement with public officials (Higher Regional Court of Stuttgart, decision of 10 February 2010).

Law stated - 8 February 2026

Prohibited and mandatory contractual provisions

39 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?

No, except for mandatory provisions provided by the relevant statutes and case law. The respective statutory law will apply even if the contract is silent.

Law stated - 8 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

The parties are generally free to choose the law governing their contract (article 3 of the Rome I Regulation). However, if all elements relevant to the choice of law at the time of the choice are located in a country other than that of the chosen law, the choice of the parties shall not prejudice the application of provisions that cannot be derogated from by agreement (article 3(3) and (4) of the Rome I Regulation).

Further, overriding mandatory provisions of the law of the forum cannot be excluded by choosing another law. Similarly, the courts may also apply overriding mandatory provisions of the country where the contractual obligations have to be performed (article 9 of the Rome I Regulation). One typical example of laws that the courts qualify as overriding mandatory rules within distribution agreements is the provisions of commercial agency law because they are based on the EU Commercial Agency Directive of 1986. Accordingly, the agent's claim for goodwill indemnity cannot be waived or contracted out when the agent acts within the European Union. This is true even if the parties choose the law of a non-EU country, as decided by the ECJ on 9 November 2000 (*Ingmar*)on the former Rome Convention on Law Applicable to Contractual Obligations of 1980. Arguments for applying the same principles under the Rome I Regulation exist; however, a clear confirmation by the courts has yet to be reached. According to a recent judgment of the Superior Court of Justice of Berlin (*Kammergericht* Berlin, decision of 1 July 2025, Case No. 2 U 37/22, paragraph 32) the *Ingmar* line of case law should not be applied to distributors, since they are not covered by the same above-mentioned Directive. Accordingly, a foreign manufacturer may validly choose a non-EU law and a non-EU court for its distributorship contracts, without automatically giving German distributors the right to rely on German compensation law under *Ingmar*. However, this position has not yet been ruled on by the ECJ itself, so the final answer may change in future jurisprudence. As a consequence, legal certainty has increased in favour of suppliers.

Law stated - 8 February 2026

Choice of forum

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

The parties are generally free to choose a court, especially if:

- the other party is domiciled outside Germany in an EU member state, and the parties have agreed that a court or the courts of an EU member state shall have jurisdiction (article 25 of the Brussels Ia Regulation);
- the other party is domiciled in Iceland, Switzerland or Norway, and the parties have agreed that the courts of one of these states or of Germany will take jurisdiction over any disputes (article 23 of the Lugano II Convention); or
- both parties are merchants, legal persons under public law or special assets under public law, or the other party is domiciled outside Germany (section 38 of the Code of Civil Procedure (ZPO)).

As an alternative, the parties may choose arbitration (section 1029 et seq ZPO, article 1(2)d of the Brussels Ia Regulation and article 1(2)d of the Lugano II Convention). However, the choice of court proceedings or arbitration can hardly avoid overriding mandatory provisions. This has been confirmed by the BGH (decision of 5 September 2012, following a decision of the Higher Regional Court of Munich of 17 May 2006).

In its decision of 24 November 2022 (C-358/21), the ECJ ruled on the validity of a choice of forum clause contained in general terms and conditions (GTCs), where a written contract merely referenced the GTCs via a hyperlink to a website that allowed the contracting party to read and store them. The key issue was whether a mere reference to the GTCs via a hyperlink – without explicitly providing them to the other party or requiring express acceptance (eg, through "click-wrapping") – was sufficient to constitute a valid choice of forum clause under article 23 of the Lugano Convention. The ECJ confirmed that it is sufficient if the contract includes a hyperlink that allows the counterparty to permanently access the GTCs.

Law stated - 8 February 2026

Litigation

42 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?

Suppliers and distribution intermediaries can make use of all means of dispute resolution, including out-of-court negotiation, mediation, arbitration or litigation. Restrictions exist only insofar as the application of overriding mandatory provisions cannot be excluded by means of dispute resolution. Fair treatment in German courts is to be expected because the judges

are independent and impartial, well trained and determined beforehand, and the parties are entitled to due process under the Constitution (articles 101 and 103). The advantages of resolving disputes in Germany are, inter alia, that court rulings are quite foreseeable and trials relatively quick (17.5 months on average in the district courts, according to the latest statistics of the Federal Office of Justice). Moreover, more and more courts are establishing English-speaking court bodies, such as the Chamber for International Commercial Disputes of the Landgericht Frankfurt am Main; others have, for example, been installed in Hamburg and Cologne. The Chamber shall be an attractive forum for cross-border disputes of English-speaking parties, providing the benefit from Germany's reliable public dispute resolution mechanisms at no extra cost.

Law stated - 8 February 2026

Alternative dispute resolution

43 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?

Yes, an agreement to mediate or arbitrate disputes will be enforced in Germany (section 1029 et seq and section 278a ZPO). Arbitration may be disadvantageous if only small sums are concerned (the costs for German courts are typically lower than the costs for arbitration if the amount in dispute is less than €5 million).

Limitations on an agreement to arbitrate with respect to the arbitration tribunal, the location of the arbitration or the language of the arbitration do not exist.

Typical advantages of arbitration are that proceedings are confidential and lead to a final decision without the opportunity to appeal, and the award is enforceable in far more countries than court judgments (because of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards).

Law stated - 8 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

Current developments especially concern the EU competition law enforcement and ECJ case law under the Vertical Block Exemption Regulation (VBER), new decisions on franchising, dual distribution and the rising supply chain and product compliance rules.

New EU competition law rules for distribution – revised Vertical Block Exemption Regulation

In July 2021, the European Commission published the proposed draft revised VBER and the draft revised Vertical Guidelines, which have been further amended and put into force on 1 June 2022. The new VBER (Regulation (EU) No. 2022/720) and guidelines replace the current VBER, which came into force in 2010 and expired on 31 May 2022. According to the new VBER, the basic framework remains unchanged: it exempts from prohibition agreements that: (1) are concluded vertically (between non-competitors); (2) between companies with market shares up to a maximum of 30%; and (3) do not contain hardcore restrictions. The prohibited hardcore restrictions continue to include resale price maintenance.

However, as set out in the background note accompanying the two drafts, significant changes were introduced to:

- readjust the safe harbour provided by the VBER to its intended scope, as regards the four areas of dual distribution, parity obligations, active sales restrictions and certain indirect measures restricting online sales;
- provide stakeholders with up-to-date guidance for a business environment reshaped by the growth of e-commerce and online platforms and ensuring a more harmonised application of the vertical rules across the EU; and
- reduce compliance costs for businesses, notably small and medium-sized enterprises, by simplifying and clarifying certain provisions perceived as particularly complex and difficult to implement.

For details, see Rohrßen, VBER 2022, EU Competition Law for Vertical Agreements (2023).

In a recent judgment (decision of 8 May 2025, Case No. C-581/23) the ECJ held that:

- exclusive distribution is block-exempt only if all excluded distributors are bound (explicitly or implicitly) not to actively sell into the exclusive territory;
- mere unilateral expectations are insufficient; and
- failure results in a hardcore restriction under article 101 Treaty on the Functioning of the European Union.

Companies operating an exclusive distribution system should ensure that exclusive territorial allocations are clearly stipulated and that distributors without territorial exclusivity are contractually prohibited from engaging in active sales into the protected territory. Where such stipulations are not yet in place, the associated risks should be mitigated through appropriate supplementary contractual provisions. As a consequence, exclusivity clauses now require even tighter drafting and documentation.

Franchising

From a franchise contractual perspective, a decision by the Higher Regional Court Munich (dated 7 November 2019, Case No. 29 U 4165/18 Kart) has found that franchisors may advertise products to be sold by outlets at low prices as long as the franchisees are not prevented from charging lower prices than those advertised; in this situation, the low prices only have the effect of a permissible maximum price-fixing in relation to the franchisees.

Moreover, the same court decision promotes reviewing clauses regarding advertising fees because the court established that the franchisor is likely subject to a fiduciary duty regarding the capital earned by advertising fees if the respective advertising fee clause stipulates that the franchisor becomes active for its franchise system. Accordingly, the franchisor's use of an advertising contribution by the franchisor contrary to this clause may breach the franchise contract. However, such breach does not generally give rise to a contractual or legal claim for the franchisee to prohibit such other use.

Finally, another recent decision (Higher Regional Court of Jena, 22 April 2020, Case No. 2 U 287/18) sets out the principles for price adjustment clauses applicable to continuing obligations. As the franchisor is generally obliged to develop its system or concept, franchise agreements regularly contain clauses on system adaptation as well as corresponding price adjustment clauses. Since franchise agreements are aimed at maintaining the uniformity of the respective system, they are by their very nature to be regarded as general terms and conditions and are thus subject to the strict provisions on general terms and conditions pursuant to sections 307 et seq German Civil Code (BGB). To comply with these provisions, price adjustment clauses should especially be formulated as clearly and understandably as possible, laying down the preconditions and the extent of a potential price adjustment. For details, see Rohrßen, *ZVertriebsR* 2021, 31 et seq.

Dual distribution – new rules on information exchange

There is an ongoing trend in distribution to move from single or multichannel distribution to cross-channel or even omnichannel distribution. This trend has had a further boost owing to the restrictions implemented as a result of the covid-19 pandemic. The trend combines all channels to provide customers with a seamless shopping experience, integrating services such as click and collect, click and reserve, click and deliver, and in-store touchpoints.

To avoid friction within the distribution system, omnichannel distribution strategies require clear communication as well as stipulation between the supplier and its distribution partners regarding the use of online stores, social media, local mobile marketing and the coordination and integration of all these services (especially because restrictions on online sales have been under scrutiny by the antitrust authorities in recent years). As far as dual distribution (manufacturers selling directly to end customers and through sales intermediaries) is concerned, the VBER 2022, the Vertical Guidelines and the revised Horizontal Guidelines regulate the information exchange in dual distribution more in detail, recognising that a certain degree of exchange is characteristic for competitive markets. To be exempt under the VBER, the exchange of information between a supplier and its buyer shall be (1) directly related to the implementation of the vertical agreement and (2) necessary to improve the production or distribution of the contract goods or services (for details and examples, cf Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements, Chapter 2.4.3 and Chapter 8).

Regulatory is rising – new regulatory requirements under EU law to be observed when distribution products

New regulatory frameworks, particularly under EU law, are reshaping the landscape of product distribution and compliance requirements.

A notable example is the Supply Chain Due Diligence Act, effective since 1 January 2023, which mandates compliance for German companies with a workforce of 1,000 employees since 1 January 2024. Affected entities are compelled to revamp their operational strategies, particularly focusing on procurement practices, to align with the Act's provisions.

Crucially, these companies must proactively mitigate potential violations of human rights and environmental obligations across their operations and supply chains. This involves instituting robust risk management systems tailored to departments such as procurement, compliance and sustainability. Moreover, they must conduct regular risk analyses to identify any lapses in compliance, with a focus on human rights and environmental concerns.

Policy formulation is pivotal, as companies are required to articulate their approach to human rights and environmental stewardship. This policy statement must delineate compliance procedures, identify specific risks and outline expectations from both employees and suppliers.

Preventive and remedial measures constitute another key aspect of compliance efforts. Based on the outcomes of risk analyses, companies must implement or review preventive measures such as supplier selection criteria, codes of conduct, training programmes and sustainable procurement strategies.

Furthermore, the establishment of a formal complaints procedure is mandated to facilitate the reporting of human rights violations or risks thereof. Comprehensive documentation and reporting are imperative, with companies obligated to maintain records of their compliance efforts and publish annual reports submitted to the relevant regulatory authority.

Non-compliance with the Supply Chain Due Diligence Act carries significant penalties. The competent authority, the Federal Office of Economics and Export Control, can impose fines of up to €8 million for breaches of due diligence and reporting obligations. For companies with an average annual turnover exceeding €400 million, fines may amount to 2% of their turnover if they fail to implement remedial actions.

Moreover, companies risk exclusion from public tenders for up to three years, emphasising the importance of strict adherence to the Act's provisions. Notably, compliance is essential for all entities along the supply chain, not just the primary company or direct suppliers.

EU harmonisation legislation and public distribution law

In addition to the Supply Chain Due Diligence Act, the EU Deforestation Regulation, the Corporate Sustainability Due Diligence Directive, the Corporate Sustainability Reporting Directive, the Ecodesign for Sustainable Products Regulation, and the EU Chemicals Strategy for Sustainability including the forthcoming REACH reforms, distributors face further regulatory challenges arising from recent EU product regulations. These include the EU Battery Regulation (Regulation (EU) No. 2023/1542), the General Product Safety Regulation (Regulation (EU) No. 2023/988) (cf *Spiegel*, ZVertriebsR 2023, 71–80), the Machinery Regulation (Regulation (EU) No. 2023/1230, cf. Rohrßen, ZfPC 2025, 6 ff. on robots as machinery with embedded AI), the Product Liability Directive 2024/2853 (cf. Rohrßen, ZfPC 2024, 2 ff.), the Regulation on packaging and packaging waste (Regulation (EU) No. 2025/40), the EU Batteries Regulation 2023/1542 (cf. *Spiegel*, ZfPC 2024, 194

ff.) and the Ecodesign Regulation (Regulation (EU) No. 2024/1781), each imposing unique obligations on economic operators for their products across the supply chain.

Moreover, distribution agreements are increasingly influenced by EU harmonisation legislation, often referred to as "public distribution law". As the EU puts it: "Modern supply chains encompass a wide variety of economic operators who should all be subject to enforcement of Union harmonisation legislation." Such harmonisation legislation, also known as EU product safety law, covers many product categories and spans the entire supply chain, from the manufacturer/supplier to the importer and distributor. Public distribution law also covers the use of AI, which is regulated by the AI Act (Regulation (EU) No. 2024/1689). This regulation governs the use of AI and prohibits, among other things, its use when deploying subliminal, purposefully manipulative or deceptive techniques that materially distort a person's behaviour – such as impairing their ability to make informed purchasing decisions (cf the overview by Rohrßen, ZfPC 2024, 111 et seq; on machinery with integrated AI/the new EU Machinery Regulation and the AI Act, compare Rohrßen, ZfPC 2025, 5 et seq).

Compliance with these rules is essential for ensuring access to the EU market. The General Product Safety Regulation 2023/988 outlines the basic rules for product safety, while the Product Liability Directive establishes liability concerns for economic operators within the supply chain (for an overview, see Rohrßen, ZfPC 2024, 2 et seq).

Given the multifaceted nature of these regulatory developments, staying abreast of the latest legal requirements is paramount to ensure a compliant and functioning distribution set-up.

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Yes, a foreign supplier can establish an entity in India for import and distribution, subject to compliance with the foreign exchange control regulations, namely the Foreign Exchange Management Act 1999 and accompanying regulations and the prevailing Foreign Direct Investment Policy (the FDI Policy).

The FDI Policy prescribes, among other things, the types of business entities that may be established by a foreign party, the cap on foreign investments and the minimum investments that should be made by foreign parties. Foreign suppliers can acquire up to a 100% stake in an Indian entity engaged in a wholesale cash-and-carry business, single-brand retail trading (SBRT), or an e-commerce marketplace platform business. However, foreign parties can acquire up to a 51% stake, with government approval, in an Indian entity engaged in multi-brand retail trading (MBRT). The FDI Policy also prescribes several other compliance obligations for Indian entities with foreign ownership engaged in SBRT, MBRT, wholesale cash-and-carry business and e-commerce market platform business. For example, entities engaged in MBRT should ensure that at least 30% of the value of products purchased should be sourced from India. Similarly, minimum sourcing conditions apply to the entities that are engaged in SBRT and where foreign investment is more than 51%.

Law stated - 3 February 2026

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

Yes, a foreign supplier can be a partial owner in an Indian entity along with one or more local Indian parties.

Law stated - 3 February 2026

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?

Foreign parties can set up a public or private limited company under the Companies Act 2013 for import and distribution of products in India. A private limited company is most suitable if the intent is to have only a few shareholders in the Indian entity.

The Companies Act is the primary legislation that regulates companies in India. The Companies Act regulates, among other things, incorporation of companies; management and administration of companies; duties and responsibilities of directors; corporate governance framework; issuance and transfer of shares and debentures; maintenance of books of account; and dissolution and winding up of companies.

The incorporation of a company in India involves several steps, such as: preparing by-laws for the proposed company; seeking approval for the name of the proposed company; and filing the by-laws with the Ministry of Corporate Affairs, along with several declarations and affidavits from the shareholders and the directors of the proposed company.

Law stated - 3 February 2026

Restrictions

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

Under the prevailing FDI Policy, 100% foreign ownership is permitted in Indian entities engaged in wholesale cash-and-carry business, SBRT and e-commerce market platform business. In the case of entities engaged in MBRT, up to 51% foreign investment is possible with prior approval of the government of India.

Law stated - 3 February 2026

Equity interests

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

Yes, a foreign supplier can hold an equity interest in the local distributing entity, subject to conditions that are prescribed in the FDI Policy. These conditions may relate to the maximum permitted foreign ownership in the local entity, the minimum value of foreign investments that should be made in the Indian entity, government approvals for making foreign investments, and other performance conditions that may be applicable to the local entity with foreign shareholding.

Law stated - 3 February 2026

Tax considerations

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?

Various taxes may be applicable, including income tax (applicable on profits and income), goods and services tax (applicable on sale of goods and services provided) and customs duty (on import of products into India). Withholding tax may apply for payments made by an Indian entity to a foreign supplier.

Law stated - 3 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

The most common structure used by a foreign supplier is a simple distribution arrangement for the entire country or a specific region. Franchising is used for concepts or systems being licensed and is gaining popularity. Trademark licensing is mostly used when the intention is to produce goods in India for sale using the supplier's trademark only. Joint ventures are most commonly used when foreign and Indian parties combine to use the foreign partner's technology to manufacture goods in India, either for domestic sales or for exports.

Law stated - 3 February 2026

Legislation and regulators

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?

The relationship between a supplier and its distributor, agent or other representative is contractual in nature. The Indian Contract Act 1872 is the primary legislation on such contracts. The Sale of Goods Act 1930, which provides for certain implied conditions and warranties for sale and purchase of goods, may also apply. Additionally, the Competition Act 2002, the Income-tax Act 1961, the Foreign Exchange Management Act and the Trade Marks Act 1999 are other important pieces of legislation that regulate distribution and agency arrangements.

There are no government agencies that regulate the relationship between a supplier and its distributor or agent or other representative. Lastly, there are limited industry self-regulatory bodies that may impact the distribution or agency relationship.

Law stated - 3 February 2026

Contract termination

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 relationship between a supplier and its distributor is contractual in nature. The law does not restrict a supplier from terminating a distribution contract without cause where such termination is permitted under the contract. Similarly, the renewal or non-renewal of a contract will also be governed by the contract between the parties.

Law stated - 3 February 2026

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

There is no statutory requirement for a party terminating the contract, with or without cause, to pay any compensation or indemnify the non-terminating party, unless such termination itself is unlawful under the terms of the contract, resulting in a loss to the non-terminating party. Compensation or indemnity payable to the non-terminating party would depend on the contractual terms. In the absence of any understanding, courts are free to determine the quantum of compensation payable by the terminating party to the non-terminating party. Generally, Indian courts tend to limit damages awarded to direct damages only, and special, consequential, or exemplary damages are not awarded.

Law stated - 3 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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, such provisions are generally enforceable. However, a restriction on the transfer of ownership of the distributor or agent, or their respective businesses to a third party may not be enforceable where the courts are likely to arrive at a determination that such restrictive covenants operate in restraint of trade or are unreasonable.

Law stated - 3 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Confidentiality provisions are generally enforceable, both during the term and post termination of the contract. Confidentiality covenants must be reasonable in time and scope, and should not be an artefact to restrict a distributor from dealing with its supplier's competitors.

Law stated - 3 February 2026

Competing products

13

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

In accordance with the Competition Act, restrictions on the distribution of competing products during the term of a contract may be enforceable, provided they do not cause any appreciable adverse effect on the competition (AAEC) in India.

Although the Competition Act does not define an AAEC, it specifies the following factors that shall be considered by the Competition Commission of India (CCI) when determining the presence of an AAEC, namely:

- creation of barriers to new entrants in the market;
- driving existing competitors out of the market;
- foreclosure of competition by hindering entry into the market;
- benefits or harm caused to consumers;
- improvements in production or distribution of goods, or provision of services; and
- promotion of technical, scientific and economic development by means of production or distribution of goods, or provision of services.

Furthermore, such restrictions should not be imposed by a supplier as an abuse of its dominant position. Dominant position means a position of strength enjoyed by an enterprise, in the relevant market in India that enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour.

Law stated - 3 February 2026

Prices

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

In accordance with the Competition Act, any agreement for resale price maintenance among enterprises or persons at different stages or levels of the production chain in different markets shall be void if such resale price maintenance causes or is likely to cause an AAEC in India. Resale price maintenance involves the fixation of a minimum price of products, below which the products cannot be sold.

A supplier may control the prices at which its distribution partner resells its products, provided that such control in prices by the supplier does not have an AAEC in India.

Law stated - 3 February 2026

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?

Although a supplier may influence resale prices, any arrangement or artefact by the supplier for resale price maintenance (ie, fixation of minimum price of products) shall be void if the resale price maintenance causes or is likely to cause an AAEC in India.

Law stated - 3 February 2026

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?

Yes.

Law stated - 3 February 2026

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?

Legally, sellers are not restricted from charging different prices to different customers based on location, type of customer, quantities purchased or any other parameters.

Law stated - 3 February 2026

Geographic and customer restrictions

18 | May a supplier restrict the geographic areas or categories of customers to which its distribution partner resells? Are exclusive territories permitted? Is there a distinction between active sales efforts and passive sales that are not actively solicited, and how are those terms defined?

A supplier may restrict the geographic areas, territory or categories of customers to which its distribution partner resells, provided that the restriction does not cause an AAEC in India. The applicable law does not make any distinction between active sales efforts or passive sales for determining market restrictions.

Law stated - 3 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

In accordance with the Competition Act, agreements that limit, restrict, or allocate any area or market for sale of products will be considered void if they cause or are likely to cause an AAEC in India. Similarly, an agreement restricting the customers to whom products may be sold will be void if it causes or is likely to cause an AAEC in India.

Law stated - 3 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

In accordance with the Competition Act, a supplier may restrict or prohibit e-commerce sales by its distribution partners, and levy an invasion fee for violation of such restrictive covenants, provided that such restriction or prohibition does not cause or is not likely to cause an AAEC in India.

Law stated - 3 February 2026

21 | May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

Yes, a distributor or agent and its supplier can agree in a contract that the supplier will not sell through e-commerce intermediaries into the distribution partner's territory, and an invasion fee for violation of such restrictive covenants can be levied.

Law stated - 3 February 2026

Refusal to deal

22 | 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?

There are no statutory restrictions on a supplier's ability to refuse to deal with customers. However, a contract between a supplier and its distributor placing restrictions on the distributor's ability to deal with particular customers will be void if the restrictions will cause or are likely to cause an AAEC in India.

Law stated - 3 February 2026

Competition concerns

23 | Under what 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?

Under the Competition Act, distribution or agency arrangements are not reportable transactions and do not require any clearance from the CCI or any other authority.

Law stated - 3 February 2026

24 | 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?

The Competition Act broadly stipulates that any agreement among enterprises or persons at different stages or levels of the production or supply chain in different markets that imposes any conditions that may cause an AAEC in India shall be void. Such agreements may include tie-in arrangements, exclusive dealing agreements, exclusive distribution agreements, arrangements for refusal to deal, and arrangements for resale price maintenance. The restrictive covenants in agreements among enterprises or persons at different stages or levels of production or supply chain are not per se void unless they have or may have an AAEC in India.

Additionally, the Competition Act prohibits abuse of dominance by any business entity, including a supplier, that enjoys a position of strength or dominance in the relevant product or service market. Certain practices by a dominant entity, including predatory pricing and denial of market access, are prohibited.

In accordance with the Competition Act, the CCI, on its own motion or based on information received from any person, including the consumer or distributor, or on a reference made to it by the central or state government or any statutory authority, may initiate an inquiry into any alleged violation of the . An appeal can be made to the National Company Law Appellate Tribunal and thereafter to the Supreme Court of India in relation to any decision made by the CCI.

The Competition Act also provides that non-parties to a contract, including consumers can approach the CCI and obtain declaratory orders and injunctions. However, compensation claims must be brought before the National Company Law Appellate Tribunal.

In the case of a conviction under the Competition Act, the CCI is empowered to pass any or all of the following orders:

- direct the concerned undertakings to discontinue and not to re-enter the agreement or discontinue the abuse of the dominant position;
- impose a penalty, which may be up to 10% of the average turnover for the three preceding financial years of the concerned undertakings;
- direct that the agreement shall stand modified to the extent and manner as may be specified by the CCI; and
- pass such other orders as it may deem fit.

The CCI is empowered to issue interim orders, temporarily restraining a party from carrying on an anticompetitive act, where it is satisfied that the anticompetitive act has been committed or is about to be committed.

The Competition Act also provides for a settlement and commitment mechanism, whereby parties may apply to the CCI for a settlement or commitment upon being accused of certain violations of the .

Law stated - 3 February 2026

Parallel imports

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

The Patents Act 1970 allows parallel imports in relation to patents, and the Trade Marks Act provides for the principle of international exhaustion of rights, which suggests that parallel imports are allowed if the goods are genuine and have not been materially altered or impaired. However, there are certain exceptions to parallel imports, most notably in the case of parallel imports of products whose designs are protected under the Design Act 2000 and in the case of goods bearing a false trademark or a false trade description. The distributor or agent may cite these exceptions in a genuine case to prevent parallel imports of the supplier's products in its designated territory.

In general, the interpretation of parallel imports is ambiguous in India and is a subject that has been highly debated in various judicial forums without definite conclusions regarding its legality. Generally, no action can be taken to restrain the parallel import of products that are protected under the Patents Act or the Trademarks Act, unless it can be proved that the products are counterfeit or fake, or materially altered or impaired. With regard to articles whose design is protected under the Designs Act, parallel imports of even genuine goods are presently prohibited. However, to enforce this exception, the product design should have registration in India in accordance with the Designs Act.

Law stated - 3 February 2026

Advertising

26 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 require them to share in its cost of advertising?

There are several industry-specific laws regulating advertisements in India. These include the Consumer Protection Act 2019, which prohibits false or misleading advertisements that are prejudicial to the interest of any consumer or are in contravention of consumer rights. The Food Safety and Standards Act 2006 prescribes that an advertisement relating to the standard, quality, quantity or usefulness of any food product should not be misleading or deceiving. The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 prohibits any direct and indirect advertisement of tobacco products. There are other industry-specific laws and an examination of these laws is important to determine whether there is any restriction on the supplier's or distributor's ability to advertise and market the products it sells. Apart from this, the Advertising Standards Council of India (ASCI), a non-statutory and self-regulatory body, has issued a Code for Self Regulation in Advertising (the ASCI Code), which applies to persons involved in the commissioning, creation, placement or publishing of advertisements. The ASCI Code does not have any statutory force and is merely considered good practice, but has been adopted by various advertising industry bodies. However, the ASCI Code has been incorporated by reference

into the Cable Television Networks Rules 1994, and advertisements carried on cable television networks are statutorily required to comply with the provisions of the ASCI Code.

A supplier may pass on any or all costs incurred by it in advertising the contract products to its distributor. In a similar vein, the supplier may also share the costs incurred by its distributor in advertising the concerned products.

Law stated - 3 February 2026

Intellectual property

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

The rights of an intellectual property holder are protected under common law in India in cases where there is no registration of intellectual property; however, it is advisable that suppliers register their intellectual property to seek protection under statutory laws. Registration of intellectual property in India acts as prima facie proof of ownership in favour of the registered proprietor. Furthermore, to avoid misuse of intellectual property, a supplier should incorporate clear provisions in the agreement regarding the scope of intellectual property rights that are to be granted or licensed to its distributors. Periodic checks and monitoring of the physical and online market should be undertaken to identify potential infringements of rights so that timely action can be taken against the infringer.

India does not have any specific laws in respect of trade secrets and know-how, and the protection of trade secrets and know-how is purely contractual.

Law stated - 3 February 2026

Consumer protection

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

In general, the following consumer protection laws and their accompanying rules and regulations may be relevant to a supplier or distributor: the Consumer Protection Act; the Legal Metrology Act 2009; the Food Safety and Standards Act 2006; and the Competition Act.

Law stated - 3 February 2026

Product recalls

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

The laws relating to the recall of distributed products vary depending on the nature of the products. For example, the Consumer Protection Act, which in general deals with the sale of products and services to individuals who are end consumers, provides that the Central Consumer Protection Authority may order the recall of goods that are dangerous, hazardous or unsafe for consumers. The Food Safety and Standards Act 2006 requires food business operators (which includes manufacturers, packagers and distributors) to recall a food product at any stage of the supply chain that the food operator considers or has reason to believe has not been processed, manufactured or distributed in compliance with the applicable law, or where the product may pose a threat to the public health. The food operator recalling the product is also required to inform the competent authority about the recall and provide reasons for product withdrawal. Similarly, the Drugs and Cosmetics Act 1940 and Rules framed thereunder provide elaborate provisions for a recall and rapid alert system for drugs.

Generally, the parties are free to mutually agree and delineate their responsibilities and liabilities, if any, in the distribution agreement with respect to the recall of products.

Law stated - 3 February 2026

Warranties

30 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?

Under the Sales of Goods Act 1930 (SGA), where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. In the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

There is an implied warranty or condition regarding the fitness and quality of goods for the following:

- where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose;
- where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality; and
- an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Unless there is a contract to the contrary, the buyer has the right to initiate a product liability claim under the circumstances described above. Therefore, the supplier may contractually agree with its distribution partner to vary or extinguish the implied warranties and conditions

provided under the SGA. Similarly, the supplier and its distribution partner may include suitable disclaimers in the contract with its downstream customers for varying or excluding the implied warranties and conditions.

Law stated - 3 February 2026

Data transfers

31 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?

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (the IT Rules) impose conditions on the collection, storage, processing, transfer and disclosure of 'sensitive personal data or information' of natural persons using computer resources. The IT Rules prescribe the manner in which sensitive personal data or information may be collected, transferred or disclosed by a business entity. These conditions include obtaining prior consent of the provider of information for disclosure and transfer of sensitive personal data or information. A body corporate handling sensitive personal data or information is obligated to implement and maintain certain reasonable security practices and procedures prescribed under the IT Rules, and no transfer of sensitive personal data or information should be made to an entity that does not ensure the same level of data protection that is adhered to by the transferee.

The IT Rules do not expressly clarify the ownership of sensitive personal data or information; however, the presumption is that the data is owned by the provider of the information.

Law stated - 3 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

The IT Rules require that a body corporate collecting, storing, processing or handling sensitive personal data or information of natural persons using computer resources should implement security practices and standards that have a comprehensive documented information security programme and information security policies that contain managerial, technical, operational and physical security control measures that are commensurate with the information assets being protected. The international standard ISO/IEC 27001 'Information Technology – Security Techniques – Information Security Management System – Requirements' is an example of a security practice and standard.

Law stated - 3 February 2026

Employment issues

33 | 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?

A supplier may do so, provided the distribution contract confers a right upon the supplier to take such action. However, such rights are rarely used by suppliers.

Law stated - 3 February 2026

34 | Are there circumstances under which a distributor or agent, or its employees, 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?

It is unlikely that a distributor or agent or its employees would be treated as an employee of the supplier. However, it is always advisable to clarify this aspect in the contract between the supplier and its distributor or agent, especially where the supplier or the agent is an individual.

Law stated - 3 February 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

Payment of commission to a commercial agent is not regulated under Indian law, except in defence and government procurement deals. In accordance with the Indian Contract Act, no consideration is necessary to create an agency. Provisions relating to the commission payable to an agent are agreed upon mutually by the parties to a contract.

Law stated - 3 February 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

The Indian Contract Act does not expressly incorporate the doctrine of good faith. However, several courts have opined that every contract inherently includes the principle of good faith.

Law stated - 3 February 2026

Registration of agreements

37 |

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

Distribution agreements or intellectual property licence agreements are not required to be approved by any government agency. Furthermore, registration of such agreements is not mandatory.

Law stated - 3 February 2026

Anti-corruption rules

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

The Prevention of Corruption Act 1988 (PCA) is the primary anti-corruption legislation in India. The PCA criminalises the offering of undue advantage to induce or reward any public servant for the improper performance of his or her public duty. Currently, there is no law to regulate private commercial bribery.

In accordance with the PCA, a commercial organisation can be punished with a fine, if any 'person associated' with the commercial organisation gives or promises to give any undue advantage to a public servant to obtain any advantage for the conduct of business or to retain business for the commercial organisation. A commercial organisation will be able to avoid prosecution only if it is able to prove that it had in place adequate procedures that comply with the guidelines prescribed under the PCA to prevent persons associated from undertaking such conduct. The government is yet to frame guidelines for commercial organisations regarding the control or supervision they should exercise over the associated persons to prevent them from offering any undue advantage to a public servant on behalf of the organisation.

A person is said to be associated with a commercial organisation if he or she performs services for or on behalf of the commercial organisation irrespective of any promise to give any undue advantage to a public servant. Whether a person can be classified as a 'person associated' with a commercial organisation will be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between the person and the commercial organisation.

A supplier may be liable under the PCA if a distributor offers any bribe to a public servant to secure any business for the products of the supplier, unless the supplier is able to prove that sufficient control was put in place to prevent the distributor from offering any bribe to a public servant.

Law stated - 3 February 2026

Prohibited and mandatory contractual provisions

39 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?

The Indian Contract Act recognises the freedom of parties to contract freely and does not prescribe any mandatory provisions to be included in the distribution contract. However, there are certain provisions that will not be enforceable even if they are included in a contract. For example, any provision where a party is absolutely restricted from instituting legal proceedings to enforce its legal rights is void. A contract will also be void if:

- it is uncertain;
- both parties to the contract have misunderstood a matter of fact essential to the contract; and
- the consideration or object of the contract is of such a nature that, if permitted, it would defeat the provisions of any local law or is fraudulent, or involves or implies injury to the person or property of another, or is contrary to public policy.

Furthermore, a contract where consent of a party was obtained through coercion, undue influence, fraud or misrepresentation is voidable at the option of the party that gave consent.

Law stated - 3 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

Although Indian law does not expressly prohibit a foreign party from agreeing to foreign governing law in a contract with an Indian party, Indian courts are not comfortable adjudicating disputes under such contracts due to their lack of familiarity with foreign law.

A foreign party may opt for foreign governing law should it decide to resolve disputes through arbitration seated in India or in a foreign country.

Law stated - 3 February 2026

Choice of forum

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

While there are no restrictions on the parties' contractual choice of courts or arbitration tribunals (whether in India or a foreign country) to resolve disputes, this choice must be made carefully after analysing the challenges that may be faced during enforcement of judgments of foreign courts or foreign arbitration awards in India.

In accordance with the Code of Civil Procedure 1908, a conclusive foreign judgment passed by a foreign "superior court" situated in 'reciprocating territory' can be enforced in India. A "reciprocating territory" means a foreign country that is notified as a reciprocating

territory by the central government of India for the purpose of enforcement of foreign judgments. The term 'superior courts' means courts situated in a reciprocating territory and notified by the central government of India as superior courts.

The parties to an international distribution agreement may opt to arbitrate either in or outside India. In accordance with the Arbitration and Conciliation Act 1996, foreign arbitration awards can be enforced in India if they are passed in a country that is notified by the government of India and is also a signatory to either the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention) or the Geneva Convention on the Execution of Foreign Arbitral Awards (commonly known as the Geneva Convention).

Law stated - 3 February 2026

Litigation

42 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?

Indian law does not prescribe a separate set of procedures for the resolution of disputes involving distributors and suppliers. If a distributor or supplier decides to resolve their dispute in an Indian court, all such disputes will be resolved according to the Code of Civil Procedure 1908, which applies to all contractual and other civil cases.

India has a unified judicial system, with the Supreme Court at the top of the hierarchy followed by the high courts of each state. The district court is positioned below the state's high court and is followed by various subordinate courts. In addition to the regular civil courts, various tribunals (including appellate tribunals) have been set up for specialised matters, such as income taxes, debt recovery, intellectual property and company law. Appeals from the orders of these tribunals lie with the designated appellate tribunals, the state's high court or the Supreme Court, as the case may be.

With the exception of the Supreme Court, each court in India has a defined territorial limit over which it can exercise its jurisdiction. Furthermore, a pecuniary limit has been prescribed for all district and subordinate courts, and a court cannot exercise jurisdiction over a matter whose value exceeds the pecuniary limit set for that court. Generally, subject to the applicable pecuniary limit, a suit should be filed in the court that has jurisdiction over the place where the cause of the action arose, or where the defendant resides or carries on its business. Appeals from subordinate courts lie with the state's district court. Similarly, an appeal from a district court can be filed with the state's high court and then with the Supreme Court.

Indian procedural law treats a foreign party fairly and equally to an Indian party. No additional benefits or advantages are conferred to a foreign party over an Indian party desiring to resolve disputes through Indian courts. However, resolution of disputes in Indian

courts is likely to result in protracted litigation owing to a huge backlog of cases and slow disposal rates.

Law stated - 3 February 2026

Alternative dispute resolution

43 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?

The Arbitration and Conciliation Act 1996 (the Arbitration Act) governs domestic arbitration, international commercial arbitration and the enforcement of foreign arbitral awards. The Arbitration Act defines an international commercial arbitration as an arbitration involving commercial disputes arising from a legal or contractual relationship between two or more parties, wherein one of the parties is a foreigner.

The parties to an international distribution agreement may opt to arbitrate either in India or outside India in any country that is notified by the government of India and is also a signatory to either the New York Convention or the Geneva Convention.

The Arbitration Act requires that the arbitration agreement by the parties to submit to arbitration all or certain disputes between them in respect of a defined legal relationship should be made in writing. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement is deemed to be in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication, including communication through electronic means, that provide a record of the agreement.

No additional benefits or advantages are conferred to a foreign party over an Indian party desiring to resolve disputes through arbitration. However, arbitration of disputes, as opposed to litigation in court, provides a speedy remedy.

Law stated - 3 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

In August 2023, India's central legislature passed the Digital Personal Data Protection Act 2023 (DPDPA), the country's first comprehensive legislation regarding personal data privacy.

Although the DPDPA received presidential assent and became law in August 2023, the legislation prescribed that it would become effective on a date that would be notified by the Indian government.

Subsequently, in November 2025, the Indian Government also published the final version of the delegated legislation under the DPDPA (ie, the Digital Personal Data Protection Rules 2025 (DPDP Rules)). In addition to this, the Indian government also notified the dates on which provisions of the DPDPA would become effective. With these developments, India's personal data privacy governance is set to be entirely overhauled in May 2027.

The DPDPA puts into place specific obligations on data controllers (referred to in the law as data fiduciaries) regarding obtaining consent of data subjects (referred to in the law as data principals) for processing their personal data, ensuring data minimisation and purpose limitation, data breach notification requirements, and instituting grievance redressal mechanisms for data subjects. The law also provides data subjects with various rights (such as right to access, correction and erasure of personal data, and the right to withdraw consent) and makes data controllers squarely responsible for ensuring that these rights are provided to data subjects.

Penalties under the DPDPA have also been significantly enhanced from the current regime, with contraventions of the DPDPA punishable with penalties of up to 2.5 billion rupees.

In addition to the above, the DPDP Rules provide additional clarity on the obligations of data fiduciaries, such as the contents of the privacy notice to be made available to data principals, the security measures regarding personal data that data fiduciaries must implement, detailed data breach notification requirements, data retention periods, requirements for verifiable parental consent prior to processing personal data of minors, and data localisation requirements.

Indian suppliers and distributors who act as data controllers under the DPDPA, as well as foreign entities who may fall under this classification, would be liable for compliance with the DPDPA once it is put into force in May 2027.

Law stated - 3 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

A foreign supplier may establish its own entity in the Netherlands.

Law stated - 20 February 2026

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

A foreign supplier may be a partial owner with a local company of the importer of its products.

Law stated - 20 February 2026

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?

The most common business entities in the Netherlands are the private limited liability company (Besloten Vennootschap, or BV) and the public limited liability company (Naamloze Vennootschap, or NV). Both entities have legal personality and provide limited liability for their shareholders. The managing directors run the business on a day-to-day basis. A BV or NV may appoint a supervisory board to monitor their board of directors (two-tier board) or the supervisors may be part of the board of directors (one-tier board). A BV or NV must be incorporated by notarial deed. All businesses active in the Netherlands must be registered in the Business Register of the Netherlands Chambers of Commerce.

On 1 January 2024, the Act on the Online incorporation of private limited liability companies came into force, implementing EU Directive 2019/1151 in the Netherlands. The Act facilitates the establishment of a Dutch BV entirely online for EU nationals and EU legal entities, eliminating the need for physical presence at the notary's office and enabling the electronic signing of documents. The Act further permits the drafting of the notarial deed and subsequent articles of association amendments in English, provided the initial incorporation was done through an electronically notarised English document without subsequent language changes.

Law stated - 20 February 2026

Restrictions

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

The Netherlands has an investment screening regime that focuses solely on national security concerns. The new investment screening regime entered into force on 1 June 2023 and applies retroactively to investments completed after 8 September 2020. The regime is a general investment control regime that equally applies to non-EU, EU and Dutch investors. It primarily targets the investment's target rather than the investor's identity, and it aims to protect sensitive infrastructure and technologies. Otherwise, Dutch law does not restrict foreign businesses from operating in the Netherlands or limit foreign investment in or ownership of Dutch business entities.

Law stated - 20 February 2026

Equity interests

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

A foreign supplier may own an equity interest in a Dutch entity that distributes its products.

Law stated - 20 February 2026

Tax considerations

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?

The main Dutch taxes levied from a foreign supplier or a Dutch limited liability company owned by a foreign supplier are corporate income tax, dividend withholding tax and personal income tax, VAT and import duties.

Dutch tax-resident companies are subject to corporate income tax based on their worldwide income. Non-Dutch tax-resident companies are subject to corporate income tax from certain Dutch sources, including Dutch permanent establishments or permanent representatives, shareholdings of at least 5% in Dutch companies that cannot pass certain anti-abuse tests and other specific sources, including Dutch real estate, directorship services and the exploration of natural resources. The Dutch corporate income tax rate in 2026 is 19% for taxable profits up to and including €200,000, and 25.8%for taxable profits exceeding this amount.

Non-Dutch tax-resident individuals are subject to Dutch personal income tax on income from certain Dutch sources (box 1 income) or shareholdings of at least 5% in Dutch companies (box 2 income).

Income tax in box 2 is levied at a rate of 24.5% for taxable income up to and including €68,843 (€137,686 for tax partners) and 31% for taxable income exceeding this amount in 2026. In many cases, if a Dutch BV is held by a qualifying foreign-resident legal entity, no tax is due upon distribution. In the case of a private individual shareholder, Dutch taxation

is mostly limited to the Dutch dividend withholding tax, which may be reduced by virtue of a tax treaty. The most efficient setup depends on all facts and circumstances, including local taxation in the home jurisdiction of the entrepreneur.

Furthermore, businesses are, in principle, required to file VAT returns and are entitled to a refund of (input) VAT charged, provided they are engaged in VAT-taxable transactions. These requirements also apply if the non-Dutch supplier has a fixed establishment for VAT purposes in the Netherlands.

Law stated - 20 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

Freedom of contract exists in the Netherlands for commercial contracts in principle, meaning that parties have freedom to structure their relationships as they wish. Distribution agreements, commercial agency or sales representatives agreements, and franchising are most common, although private label agreements, trademark licensing and joint ventures also occur.

Law stated - 20 February 2026

Legislation and regulators

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?

Distribution agreements, under which the distributor acts as an independent reseller of the supplier, are governed by the common statutory rules on commercial contracts and a body of case law. There are no specific statutory rules on distribution agreements.

EU Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the member states relating to self-employed commercial agents as implemented in Title 7 of Book 7 of the Dutch Civil Code applies to commercial agents (ie, self-employed intermediaries who negotiate sale agreements on behalf of the supplier). The statutory rules include mandatory provisions on minimum notice periods for termination and a right to a goodwill indemnity due upon termination.

Since 1 January 2021, franchisors and franchisees must conform to the Dutch Franchise Act. From this date, franchise agreements with franchisees in the Netherlands must comply with the provisions of this Act as implemented in Title 16 of Book 7 of the Dutch Civil Code. The transition period of two years, within which existing franchise agreements had to be aligned with the new Act, expired on 1 January 2023. Agreements concluded after 1 January 2021 must comply with the new Act, including the mandatory provisions on the

pre-contractual four-week stand-still period, the goodwill indemnity due upon termination, and consent requirements for interim amendment of the franchise agreement or formula.

Law stated - 20 February 2026

Contract termination

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?

Under Dutch law, agreements can be entered into for a fixed or indefinite period. Fixed-term agreements generally cannot be terminated prematurely, unless:

- otherwise agreed;
- this follows from reasonableness and fairness, which – pursuant to article 6:248 of the Dutch Civil Code – always applies to agreements concluded between the parties; or
- there are unforeseen circumstances as referred to in article 6:258 of the Dutch Civil Code.

Agreements for an indefinite term are, in principle, always terminable. However, reasonableness and fairness and the nature and content of the contract may imply that termination is only possible if a sufficiently serious ground for termination exists or provided a certain minimum notice period is observed or the termination is accompanied by an offer for compensation.

For distribution agreements, in the absence of an agreed notice period, the following rules of thumb regarding the notice period to be observed can be distilled from case law:

- for contracts of 0–2 years: three months' notice;
- for contracts of 2–4 years: six months' notice;
- for contracts of 4–10 years: 8–12 months' notice; and
- for contracts of 10–20 years: 1–2 years' notice.

However, what constitutes a reasonable notice period remains dependent on the circumstances of the case. The reasonable notice period serves to give the other party the opportunity to prepare for the moment when the agreement is actually terminated and to take the necessary measures, such as finding a new supplier. Other relevant circumstances for determining the length of the notice period may therefore include, inter alia, the extent to which investments have been made, the time needed to recoup them and the possibility of finding an alternative.

A commercial agency agreement for an indefinite term may in general also be terminated without cause if permitted by contract. If there is no notice period agreed upon, the notice period to be adhered to shall be four months for an agreement of no more than three years, five months for an agreement with a duration of more than three years and six months for

agreements with a duration of more than six years. A notice period contractually agreed upon must be at least one month for agreements with a duration of less than one year, two months for agreements with a duration of less than two years and three months for agreements with a duration of more than three years.

Law stated - 20 February 2026

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

In general, a distributor has no right to compensation, indemnity or goodwill upon the regular termination of a distribution agreement. In certain circumstances, compensation for incurred costs may be due (eg, if the distributor with knowledge of the supplier has made investments with a view to the continuation of the agreement that cannot be recouped in the notice period). If the supplier terminates the agreement without cause and without applying the agreed period of notice, the supplier must normally pay compensation for damages to the distributor. Usually, this is an amount equivalent to the loss of profits due to premature termination.

Termination of a commercial agency agreement without cause in accordance with the contract generally does not cause a right to damages. However, in case of termination, the agent will be entitled to a goodwill indemnity if the principal will continue to benefit from the contract after termination. The amount of the indemnity may not exceed commissions over one year, calculated from the commercial agent's average annual remuneration over the preceding five years. Termination without cause and without observing the notice period entitles the agent – besides goodwill indemnity – to compensation unless the termination is a result of compelling reasons. The compensation normally equals the agent's remuneration, calculated based on the average amount of commission earned during the 12 months prior to the termination that would have been received by the agent if the notice period had been respected by the principal.

Law stated - 20 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

A non-transferability clause is in principle legally valid, binding and enforceable.

Law stated - 20 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

In principle, there are no limitations regarding confidentiality clauses in distribution and commercial agency agreements.

Law stated - 20 February 2026

Competing products

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

In the Netherlands, both EU and Dutch competition law apply. EU competition law applies to distribution agreements that have an effect on the EU internal market. Otherwise, the Dutch Competition Act, which is materially similar to EU competition law, applies.

Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits all agreements and concerted practices that have as their object or effect the restriction or distortion of competition within the internal market, and in particular those that:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 101(3) TFEU allows for certain exemptions to the prohibition of article 101(1) TFEU. The EU Vertical Block Exemption Regulation (VBER), enacted under article 101(3) TFEU, allows certain exemptions from the prohibition of article 101(1) TFEU provided that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services. Above the market share threshold of 30%, in principle no agreements that have as their object or effect the prevention, restriction or distortion of competition within the internal market are allowed.

The VBER defines "non-compete obligation" as any direct or indirect obligation causing the distributor not to manufacture, purchase, sell or resell goods or services that compete with the contract goods or services, or any direct or indirect obligation on the distributor to purchase from the supplier or from another undertaking designated by the supplier more than 80% of distributor's total purchases of the contract goods or services and their substitutes on the relevant market. The exemption provided for by the VBER does not apply to:

1. direct or indirect non-compete obligations during the term of the agreement for an indefinite period or exceeding five years;
2. direct or indirect obligations for the distributor, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services;
3. direct or indirect obligations causing the members of a selective distribution system not to sell the brands of particular competing suppliers;
4. any direct or indirect obligation causing a buyer of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services.

The restriction under (2) does not apply to any direct or indirect obligation causing the distributor, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services provided all of the following conditions are fulfilled:

- the obligation relates to goods or services that compete with the contract goods or services;
- the obligation is limited to the premises and land from which the buyer has operated during the contract period;
- the obligation is indispensable to protect know-how transferred by the supplier to the buyer; and
- the duration of the obligation is limited to a period of one year after termination of the agreement.

Law stated - 20 February 2026

Prices

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

EU and Dutch competition law prohibit both direct and indirect forms of price fixing, including fixing margins, setting a maximum discount, requiring that distributors obtain supplier's consent to revise their prices, the use of price reporting and monitoring systems putting pressure on distributors to deter discounting, warnings and similar practices. This prohibition does in principle not apply to commercial agents or sales representatives, as these only intermediate between the supplier and the buyer and the sales agreement is executed directly between the supplier and the buyer.

The EU Commission and the Dutch Authority for Consumers and Markets are responsible for the administrative enforcement of the EU and Dutch competition rules and may levy fines. Depending on the circumstances, these fines may be substantial. In addition, buyers that have been harmed by the fixed prices may file civil (follow-on) claims for compensation for the damage they suffered.

Law stated - 20 February 2026

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?

EU and Dutch competition law do allow recommended and maximum resale prices (the latter act as a ceiling for prices, thereby benefiting consumers).

Law stated - 20 February 2026

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?

Most-favoured-nation (MFN) clauses have caused growing concern among competition authorities. In particular, price comparison tools and online marketplaces have been the target of a number of antitrust enforcement cases and market studies in Europe.

Two main types of MFN clauses have been considered by competition authorities across Europe:

- "wide" MFNs: these typically require suppliers and retailers to publish on a price comparison tool or online marketplace the same or better price and conditions as those published on any other sales channel; and
- "narrow" MFNs: these typically require suppliers and retailers to publish on a price comparison tool or online marketplace the same or better price and conditions as those published on their own (direct) website.

In respect of wide MFNs, European competition authorities have held that they soften competition between platforms, and impede innovation, entry and expansion by new platforms.

Outside the area of price comparison tools and online marketplaces, there seem in principle to be few objections to MFN clauses.

Law stated - 20 February 2026

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?

Article 102 TFEU stipulates that any abuse of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market insofar as it may affect trade between EU member states. Such abuse may, in particular, consist in applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

A supplier has a dominant position where it has the ability to behave independently of its competitors, customers, suppliers and the final consumer.

In the absence of a dominant position in the market, no obligation to charge uniform rates exists under European or Dutch competition rules.

Law stated - 20 February 2026

Geographic and customer restrictions

18 | May a supplier restrict the geographic areas or categories of customers to which its distribution partner resells? Are exclusive territories permitted? Is there a distinction between active sales efforts and passive sales that are not actively solicited, and how are those terms defined?

Provided that the market share held by the supplier and the distributor does not exceed 30% of the relevant market on which they respectively sell and purchase the contract goods or services, the VBER allows the supplier to restrict:

- active sales by the distributor and its direct customers into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five other exclusive distributors; and
- active or passive sales by the distributor and its customers to unauthorised distributors located in a territory where the supplier operates a selective distribution system for the contract goods or services.

The VBER defines active sales as actively targeting customers (eg, by visits, emails or through targeted advertising and promotion, offline or online). Passive sales are defined as sales made in response to unsolicited requests from individual customers.

A selective distribution system is a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the supplier to operate that system.

Law stated - 20 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

The EU Commission and the Dutch Authority for Consumers & Markets (ACM) are responsible for the administrative enforcement of the EU and Dutch competition rules and may levy fines. Depending on the circumstances, these fines may be substantial. Also, buyers that have been harmed by the fixed prices may file civil (follow-on) claims for compensation for the damage they suffered.

Law stated - 20 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Provided that the market share held by the supplier and the distributor does not exceed 30% of the relevant market on which they respectively sell and purchase the contract goods or services, the VBER allows restrictions of online sales and online advertising, provided that they do not, directly or indirectly, in isolation or in combination with other factors controlled by the parties, have the object of preventing the effective use of the internet by the distributor or its customers to sell the contract goods or services to particular territories or customers, or of preventing the use of an entire online advertising channel, such as price comparison services or search engine advertising.

Law stated - 20 February 2026

21 May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

A distributor or agent may restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory and may require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner.

Law stated - 20 February 2026

Refusal to deal

22 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 restrict its distributor's ability to deal with particular customers unless this would qualify as abuse of a dominant position within the internal market or in a substantial part of it as prohibited within the meaning of article 102 TFEU.

Law stated - 20 February 2026

Competition concerns

23 Under what 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?

It is unlikely that a distribution or agency agreement would be classified as a reportable transaction under the merger control rules.

Under Dutch and European competition laws, transactions are deemed reportable under the merger control rules if it is considered a concentration of businesses, encompassing mergers, acquisitions or joint ventures. Although it is theoretically plausible for an agency

or distribution agreement to indirectly lead to the acquisition of control by the supplier or principal over the distributor or agent, such scenarios are highly uncommon. The inclusion of terms in distribution or agency agreements that permit the supplier or principal to acquire (indirect) control over the distributor or agent is unconventional. Furthermore, these clauses in the agreement might be invalidated by the Dutch courts for contravening the principle of reasonableness and fairness in contract law.

In the unlikely scenario that an agency or distribution agreement were to meet the criteria of a concentration of businesses, it would only be considered a reportable transaction if it surpasses a specified financial threshold. Under the Dutch Competition Act, reporting obligations arise only when the combined global revenue of the businesses involved exceeds €150 million, and at least two of these businesses generate revenues of at least €30 million in the Netherlands.

Law stated - 20 February 2026

24 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?

The interaction between the distributor and supplier falls under the purview of Dutch and European antitrust regulations. In principle, distribution agreements are prohibited from incorporating clauses that intentionally or indirectly lead to the limitation of competition. Distribution agreements involving parties with market shares below 30% that do not contain "hardcore restrictions", are, in principle, exempt from antitrust regulations under the VBER. Hardcore restrictions encompass clauses governing resale prices, market sharing and production restrictions.

Companies that act in violation of competition laws risk being fined by national competition authorities such as the ACM or the European Commission.

The Netherlands is widely regarded as a highly favourable jurisdiction for the private enforcement of competition law. In private enforcement of competition law, it is private entities that invoke competition law in disputes or legal proceedings. This typically involves cases seeking damages, where the claiming party alleges to have suffered harm due to a violation of competition rules by other parties. For instance, this may occur when a group of businesses forms a price cartel and, over an extended period, charges consumers or buyers an excessively high price for their products. Consumers harmed by a violation of competition rules may file a claim for damages in court as a collective in a so-called class action.

The antitrust and competition laws in principle do not extend to the relationship between the agent and principal, provided it is a genuine commercial agency agreement and the agent does not bear any of the risks associated with contracts negotiated on behalf of its principal. However, competition rules may apply to both exclusive agency provisions and non-compete provisions, as such clauses are capable of infringing the competition rules so far as they entail locking up the market concerned.

Law stated - 20 February 2026

Parallel imports

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

Within the EU and the European Economic Authority (EEA), the doctrine of exhaustion of intellectual property rights applies. This means that once the intellectual property owner has placed the goods up for sale (either itself or has given consent for another to sell the products within the EU and EEA), in relation to these goods its rights are exhausted, and it cannot prevent others from importing the goods and reselling them in any other EU member state. This leaves the possibility that the intellectual property owner may oppose importing goods incorporating its intellectual property rights into the EU and EEA from third countries.

Law stated - 20 February 2026

Advertising

26 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 require them to share in its cost of advertising?

A supplier is free to pass all or part of its cost of advertising on to its distribution partners or require them to share in its cost of advertising.

Law stated - 20 February 2026

Intellectual property

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

Patents, trademarks and designs may be protected by registration in the relevant national, Benelux or EU registers. Copyrights are protected in the Netherlands under the Berne Convention for the Protection of Literary and Artistic Works. A supplier may safeguard its intellectual property rights (including trade secrets and know-how) from infringement by its distribution partners by making appropriate contractual arrangements. EU Directive 2004/48/EC on the enforcement of intellectual property rights as implemented in the Dutch Code on Civil Procedure provides for effective tools to combat the infringement of intellectual property rights by third parties. This Directive provides a minimum set of measures, procedures and remedies allowing effective civil enforcement of intellectual property rights across the EU, ensuring a standardised level of protection throughout the internal market. Technology transfer agreements are common.

Law stated - 20 February 2026

Consumer protection

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

Most consumer protection laws consist of EU legislation implemented in Dutch law. EU Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees was implemented in Book 7 of the Dutch Civil Code. The most important rule of this Directive is that the seller must deliver goods to the consumer that are in conformity with the contract of sale. Consumer goods are presumed to be in conformity with the contract if they:

- comply with the description given by the seller;
- are fit for any particular purpose for which the consumer requires them and which was made known to the seller at the time of conclusion of the contract and which the seller has accepted; and
- are fit for the purposes for which goods of the same type are normally used.

EU Directive 93/13/EEC on unfair terms in consumer contracts, as implemented in Book 6 of the Dutch Civil Code, has introduced a blacklist of that which may not be used in contracts with consumers and a grey list of terms that are presumed to be unreasonable. The EU Unfair Commercial Practices Directive defines unfair business-to-consumer commercial practices that are prohibited in the European Union. In particular, misleading commercial practices (by action or omission) and aggressive commercial practices are considered unfair. Further, restrictions exist for the (tele)marketing of products (eg, a ban on unsolicited telesales).

Law stated - 20 February 2026

Product recalls

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

Product recalls are aimed at preventing unsafe products from entering or remaining on the market. The required measures will vary from recall to recall. In some cases, a single warning to intermediaries will suffice, but often a producer will be confronted with a diverse range of measures to be taken, aimed at preventing further use and recall of the product. A product recall in general involves significant costs (eg, costs for investigating the extent and cause of the product's unsafety, replacement costs and the retrieval and destruction of these unsafe products), as well as lost sales and damages, and reputational damage. In general, parties are free to delineate which party is responsible for bearing the cost of a recall.

Law stated - 20 February 2026

Warranties

30 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?

The supplier is, in principle, free to limit the warranties it provides to its distribution partners. In case of serious fault, wilful misconduct or gross negligence a contractual limitation of warranties could be set aside by the Dutch court. The warranties to downstream customers may be equally limited, except for the statutory warranties to consumers.

Law stated - 20 February 2026

Data transfers

31 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?

Data about the distributor's customers and end users are in principle owned by the distributor. The EU General Data Protection Regulation (GDPR) applies to all processing of personal data (ie, information relating to an identified or identifiable natural person (data subject)). Exchange of personal data is only allowed to the extent the data subject has given consent or this is necessary for:

- the performance of a contract to which the data subject is party or to take steps at the request of the data subject prior to entering into a contract;
- for compliance with a legal obligation;
- to protect the vital interests of the data subject or of another natural person; or
- for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by interests of the data subject that require the protection of personal data.

No special requirements apply to data transfers from the Netherlands to other EEA countries. Transfers of personal data to countries outside the EEA, however, require – with a few exceptions – either a decision of the European Commission that the destination country ensures an adequate level of protection (this is the case for the United Kingdom, Switzerland, Canada, Israel, the Republic of Korea and Japan, for example), or appropriate safeguards to protect the data subjects' rights (such as the Commission's standard contractual clauses (SCCs) or binding corporate rules approved by a supervisory authority).

By its decision of 16 July 2020 in *Data Protection Commissioner v Facebook Ireland, Maximillian Schrems* (*Schrems II*), the Court of Justice of the European Union (CJEU) invalidated the EU–US Privacy Shield Framework, regulating transatlantic exchanges of personal data for commercial purposes between the EU and the US. In 2022, a new

EU–US Data Privacy Framework (DPF) was agreed and on 10 July 2023, the European Commission formally adopted a new adequacy decision on the EU-US Data Privacy Framework. The decision concludes that the United States ensures an adequate level of protection – comparable to that of the European Union – for personal data transferred from the EU to companies in the United States participating in the Data Privacy Framework. On the basis of the new adequacy decision, personal data can flow safely from the EU to US companies participating in the framework, without having to put in place additional data protection safeguards. In terms of which US companies are participating in the framework, this can be checked on the DPF website.

Schrems II also dealt with SCCs. The SCCs are a standard set of contractual terms and conditions that require both the exporter and importer of personal data to offer an equal level of protection for EU personal data. The CJEU decided that, while SCCs can still be used, they require additional work. Companies must ensure that the recipient country has equivalent data protection to that of the EU. They cannot rely on SCCs alone.

On 4 June 2021, the European Commission issued modernised SCCs. These modernised SCCs replace the three sets of SCCs adopted under the previous Data Protection Directive 95/46. It is no longer possible to conclude contracts incorporating these earlier sets of SCCs and on 27 December 2022, the grace period for using contracts incorporating these earlier sets of SCCs expired.

Law stated - 20 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

The GDPR requires that personal data shall be retained no longer than is necessary for the purposes for which the personal data are processed and are processed in a manner that ensures appropriate security of the personal data, using appropriate technical or organisational measures.

Law stated - 20 February 2026

Employment issues

33 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?

The distribution partner is an independent party and, as such, a supplier is not entitled to control who is employed by the distributor, nor is a supplier able to terminate the employment agreement between a distributor and an employee. Theoretically, while it is not considered common practice in the Netherlands, it is possible to agree that the supplier may influence (in certain scenarios) hiring and firing decisions with regard to (key) personnel. However, mandatory Dutch employment law would still apply, including the regulations regarding termination of employment.

Law stated - 20 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

Under Dutch employment law, an agreement qualifies as an employment agreement if the following criteria as laid down in article 7:610 of the Dutch Civil Code are met: personal performance of work under the authority of the company, in return for remuneration. If an agreement qualifies as an employment agreement, (mandatory) Dutch employment law and regulations apply.

If an individual claims in court that their agreement with a company qualifies as an employment agreement, a judge will assess that claim based on all relevant circumstances of the case. This includes not only the wording of the agreement, but also the way in which the parties execute the agreement in practice. If the agreement qualifies as an employment agreement, all aspects of (mandatory) Dutch employment law (retroactively) apply to the agreement. This includes the entitlement to holiday pay and payment during sickness, as well as the applicability of the mandatory regulations regarding termination of employment and payment of statutory severance upon termination of the employment agreement. The qualification of the agreement as an employment agreement may also have significant tax consequences.

After a temporary enforcement moratorium, as of 1 January 2025 the Dutch Tax Authority has resumed the regular enforcement of false self-employment cases. The Tax Authority will intensify its scrutiny of the employment relationships of freelancers or independent contractors. This development forces organisations to proactively evaluate their contracts with freelancers/independent contractors. Enforcement will primarily target the client employer, which may be subject to the payment of (wage) tax and fines.

Law stated - 20 February 2026

Commission payments

35 Is the payment of commission to a commercial agent regulated?

In general, the commercial agent and principal are free to agree on the commission due. In the absence of a contractual arrangement, article 7:431 sub 1 Dutch Civil Code stipulates that the agent is entitled to commission for contracts concluded during the term of the commercial agency agreement if these contracts:

- have been concluded mainly as a result of the activities of the agent;
- have been concluded with a third party previously put forward by the agent for conclusion of a similar contract; or
- have been concluded with third parties belonging to a specific group of customers or residing in a specific geographical area that has been assigned to the agent,

provided that the agent and principal have not explicitly agreed to the non-exclusivity of said group or geographical area.

Law stated - 20 February 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

There are no specific good faith and fair dealing requirements concerning distribution agreements and commercial agency agreements. Nevertheless, the general rules of Dutch contract law (such as the standard of reasonableness and fairness stipulated in articles 6:2 and 6:248 Dutch Civil Code) are applicable to distribution agreements and commercial agency agreements.

Law stated - 20 February 2026

Registration of agreements

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

No laws require registration or approval of distribution agreements or intellectual property licence agreements by any government agency. However, registration of a licence agreement with the relevant patent, trademark or design register has the advantage that third parties must respect the licence.

Law stated - 20 February 2026

Anti-corruption rules

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

Bribery in commercial relations is prohibited under article 328-ter of the Dutch Criminal Code.Employees accepting or requesting gifts, promises or services in response to what they have done or omitted to do or will do or omit to do in breach of their duty in their employment or in the performance of their duty, are punishable with imprisonment up to four years or a fine with a maximum of €110,000. The same sanctions apply to the person offering the gift, promise or service. Acting in breach of duty shall in any case include concealing from the employer or principal, contrary to good faith, the acceptance or solicitation of a gift, promise or service.

Law stated - 20 February 2026

Prohibited and mandatory contractual provisions

39 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?

Distribution agreements may not violate public order and good morals and must comply with EU and Dutch competition laws, but in principle no other restrictions exist.

Law stated - 20 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

The applicable law on agency contracts is determined by the Hague Convention of 14 March 1978 on the Law Applicable to Agency. The applicable law regarding distribution agreements is determined by the EU Rome I Regulation (Regulation (EC) No 593/2008). Both the Rome I Regulation and the Hague Agency Convention provide that parties may choose which law applies. However, they may not evade the protective provisions of EU law by choosing the law of a non-member state. This applies, for example, to a commercial agent's entitlement to a goodwill indemnity upon termination of the agency agreement. If no choice of law is made, the law of the country where the commercial agent or distributor has its habitual residence applies. Under Dutch Private International Law, there is an exception for agency contracts: if the agent mainly operates in the country where the principal resides, the law of that country applies.

Law stated - 20 February 2026

Choice of forum

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

Under the EU Brussels I bis Regulation and the Dutch Code on Civil Procedure, parties are in general free to make a contractual choice of courts or arbitration tribunals, whether within or outside the Netherlands.

Law stated - 20 February 2026

Litigation

42

> 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?

Dutch courts have jurisdiction if the defendant is domiciled in the Netherlands or if the parties have elected a Dutch court to judge any disputes arising from their legal relationship.

In the Netherlands, in the first instance there are two main types of civil proceedings: proceedings for ordinary civil suits initiated by summons and less formal proceedings initiated by an application for suits on specific topics (eg, employment, leases, family and certain corporate matters). In general, for commercial disputes the proceedings by summons is used. In first instance, disputes are resolved by the competent District Court. It is possible to file an appeal with the competent Court of Appeal. From judgments of the Court of Appeal, appeal is possible to the Dutch Supreme Court. The Supreme Court does not examine the facts but purely observes whether the court of appeal has correctly applied the law.

A party with a sufficiently urgent interest in injunctive relief may initiate summary proceedings. The requested injunction will be granted if it is sufficiently likely that the court in the proceedings on the merits will come to an identical decision. The injunction applies until a decision is reached in the proceedings on the merits. The range of possible injunctions is broad. For example, the court may order the pre-judgment attachments to be lifted, the execution of a ruling to be suspended or an agreement to be performed.

There exist no restrictions on foreign businesses' ability to make use of these courts and procedures, except that upon request of the other party a foreign business may be required first to provide security for the costs of the proceedings and damages which they could be sentenced to pay (the *cautio iudicatum solvi*). The *cautio iudicatum solvi* does not apply if this is excluded by treaty (eg, The Hague Convention on Civil Procedure and the Dutch American Friendship Treaty).

Parties that prefer to litigate in English for resolving their international disputes, may contractually choose for the jurisdiction of the Netherlands Commercial Court (NCC). The NCC District Court is a chamber the Amsterdam District Court, and NCC Court of Appeal is a chamber of Amsterdam Court of Appeal. Proceedings and judgments are in English. Also the Rotterdam District Court allows maritime, transport and international sale of goods cases to be conducted in English.

In the Netherlands, there is no jury system. The judiciary is independent and judges can only be removed from office for malfeasance or incapacity. The Netherlands is a small country with an open economy, and the Dutch courts are accustomed to dealing with foreign parties; foreign businesses can expect fair treatment.

In principle, court hearings in civil cases are public. Under special circumstances, the court may decide to conduct hearings behind closed doors – for example, in case of a dispute about trade secrets or if public policy or morality so demands.

The judge has a passive role in determining the scope of the dispute; this is determined by the parties and the claims they bring before the court.

It is up to the parties to sufficiently substantiate their claims using any legal means necessary. In civil lawsuits, all forms of evidence are permissible unless the law provides otherwise. Evidence may be filed in English, French and German, without a translation in Dutch. No discovery procedures comparable to those in common law systems exist, although article 21 of the Dutch Code on Civil Procedure obliges parties to state the facts relevant to the decision fully and truthfully. Under article 843a of the Dutch Code on Civil Procedure, parties may request inspections or copies of certain documents (production of exhibits) from the other party. Cumulative conditions must be satisfied for the request for the production of exhibits. The court can refuse the request pursuant to substantial reasons or if a proper administration of justice can be guaranteed without the requested information.

There are various awards available to a successful claimant (eg, specific performance, damages, an application for an order or injunction, a declaratory decision, rescission or annulment). Final judgments or judgments with immediate effect may be enforced after being served by the bailiff.

In principle, parties must pay their own litigation costs. However, the losing party is usually ordered to pay the litigation costs of the prevailing party. The costs that the losing party must pay are based on fixed amounts for certain standard activities but are also dependent on the value of the claim. The actual litigation costs incurred by the prevailing party are often not fully covered by the amount awarded. In intellectual property cases the losing party may be sentenced to pay the prevailing party's full litigation costs provided these are reasonable.

Court litigation in the Netherlands has the advantages that legal proceedings tend to be time and cost efficient and that the Dutch courts are accustomed to deal with international disputes. In the event recourse is sought outside the EU and EEA, a judgment of a Dutch court may have little use due to the absence of treaties on the mutual recognition and enforcement of judicial awards with most countries outside the EU and EEA.

Law stated - 20 February 2026

Alternative dispute resolution

43 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?

If the parties have executed an arbitration agreement in which the place of arbitration is in the Netherlands, the arbitration is subject to the Dutch Arbitration Act. There are in principle no limitations (such as the arbitration tribunal, the location of the arbitration or the language of the arbitration) on the terms of an agreement to arbitrate, except that matters not at the discretion of the parties (eg, matters of public policy, criminal law and intellectual property law) cannot be dealt with in arbitration.

An appeal against an arbitral award cannot be lodged with the Dutch civil court. However, arbitral appeal is possible if the parties have expressly included this in the arbitration agreement. In specific circumstances and on specific grounds it is possible to revoke or set aside an arbitral award.

The party that wants to enforce the arbitral award must obtain prior judicial leave (exequatur) from the provisional relief judge of the competent Dutch district court. The Netherlands is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, the Netherlands cannot impose more onerous conditions for the recognition or enforcement of Convention awards than are imposed on the recognition or enforcement of arbitral awards rendered under Dutch law. Leave (exequatur) for the enforcement of a foreign arbitral award must be applied for to the competent Dutch appeal court.

Given the absence of treaties on the mutual recognition and enforcement of judicial awards with most countries outside the EU and EEA, arbitration is the preferred option for dispute resolution if one of the parties resides outside the EU and EEA.

There are no specific statutory rules on mediation. The parties are free to agree to mediation. Mediation clauses entered into by the parties constitute legally binding contracts. However, the legal implications of a mediation clause are very limited. It has been established by decisions of the Dutch Supreme Court that parties who have agreed to resolve a dispute by way of mediation will always be free subsequently to decline to mediate. Consequently, a mediation clause does not have an impact on the jurisdiction of national courts to hear the dispute.

A mediator is appointed by the parties prior to or pending legal proceedings before an arbitral tribunal or national courts. Parties may also be assisted by an institution that facilitates mediation proceedings to choose a mediator. When court proceedings are pending, a Dutch court can refer the dispute to mediation in accordance with the "mediation alongside litigation" procedure.

Any settlement agreement resulting from a mediation process is considered to be a legally binding agreement. However, the settlement agreement is not (directly) enforceable until established as such in court.

Law stated - 20 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

EU Data Act

Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data, the Data Act entered into force on 11 January 2024 and into application on 12 September

2025. The Data Act is designed to empower consumers and businesses by giving them greater control over the generated by their connected devices, such as cars, smart TVs and industrial machines. With this aim, the Data Act:

- ensures that connected devices on the EU market are designed to allow data sharing;
- gives consumers the possibility to choose more services, without having to rely on the manufacturer of the device;
- gives business users access to data about the performance of industrial equipment opening up opportunities to enhance efficiency and optimise operations; and
- allows consumers to easily transfer data and switch between cloud providers, prohibits unfair contracts that could prevent data sharing.

Cyber Resilience Act (CRA)

Regulation (EU) 2019/881 on ENISA (the European Union Agency for Cybersecurity) and on information an communications technology cybersecurity certification sets mandatory cybersecurity requirements for all hardware and software products with digital elements sold in the EU, aiming to make them more secure by design, improve incident reporting and ensure security updates, applying to manufacturers, importers and distributors for products from smartwatches to apps, with full implementation phased in from late 2024 to late 2027. Reporting obligations start on 11 September 2026, and the CRA will become fully applicable on 11 December 2027.

Law stated - 20 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Yes, foreign suppliers can generally establish their entity to import and distribute their products in Switzerland, subject to compliance with Swiss laws and regulations. Switzerland is known for its open economy and favourable business environment, which includes a legal framework that supports foreign investment and company establishment. However, to set up an entity and commence operations, a foreign supplier must adhere to several legal requirements, including:

- Registration and legal structure: the foreign supplier must choose an appropriate legal structure for its Swiss entity.
- Commercial Register: the new entity must be registered with the Swiss Commercial Registry. This process involves submitting the required documents and information about the company, including its name, address, purpose and details about its directors and officers.
- Compliance with Swiss law: the entity must comply with Swiss laws, including tax obligations, labour laws, and specific regulations related to the import and distribution of products. Depending on the nature of the products, this could involve obtaining necessary licences or permits and ensuring compliance with safety and quality standards.
- Customs and import regulations: the entity must navigate Swiss customs procedures and comply with import regulations, including paying import duties and VAT. Switzerland has agreements with the European Union and other countries that may affect the import conditions for certain products.
- Market regulations: if the products fall under specific regulatory categories (such as banking, insurance, pharmaceuticals, defence, food products or chemicals), additional regulations and standards may apply. This might require obtaining approvals from Swiss regulatory agencies before the products can be distributed.

Law stated - 6 February 2026

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

Yes.

Law stated - 6 February 2026

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?

The public limited company (AG) and the limited liability company (GmbH) are the most appropriate legal forms for an importer owned by a foreign supplier.

Public limited company (AG)

The AG is well suited for larger operations due to its flexibility in share transfer, which can facilitate investment. It is often chosen by businesses planning significant import and distribution activities.

To form an AG, you need at least one shareholder, and the minimum share capital required is 100,000 Swiss francs, of which at least 50,000 Swiss francs must be paid in. The formation process includes drafting and notarising the articles of association, registering the company with the Commercial Registry, and meeting compliance requirements, such as appointing a board of directors.

AGs are governed by the Swiss Code of Obligations. They are subject to corporate income tax, capital tax, and VAT, depending on their activities.

Limited liability company (GmbH)

The GmbH is often preferred by small to medium-sized enterprises (SMEs) due to its less formal structure and lower minimum capital requirement. It suits businesses needing a closely held structure and is especially useful for family-owned enterprises or small import and distribution operations.

A minimum of one shareholder is needed to form a GmbH, with a minimum share capital of 20,000 Swiss francs, fully paid in. The process involves drafting and notarising the articles of association, registering with the Commercial Registry, and complying with similar requirements as an AG, including the need for a managing director or directors from within the company.

Like AGs, GmbHs are governed by the Swiss Code of Obligations. They face similar tax obligations, including corporate income tax and VAT.

Law stated - 6 February 2026

Restrictions

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

Switzerland is known for its open and liberal market economy, and it generally does not impose restrictions on foreign businesses operating within its jurisdiction or on foreign investment in or ownership of domestic business entities. However, some restrictions exist concerning the residency requirements of the companies' representatives as well as the acquisition of real estate by non-residents.

Foreign-owned businesses must consider that an AG or a GmbH must be represented by at least one person with a single signature or by two persons with joint signatures who are resident in Switzerland. These representatives must be directors or executive officers.

The acquisition of residential real estate by non-residents is restricted under the Lex Koller legislation. These restrictions do not generally apply to real estate used for permanent commercial purposes (such as offices, retail and manufacturing premises, warehouse facilities, etc).

Law stated - 6 February 2026

Equity interests

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

Generally, yes.

Law stated - 6 February 2026

Tax considerations

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?

The Swiss Confederation consists of 26 cantons with approximately 2,300 communes. The cantons are sovereign and may, therefore, levy taxes to the extent that their sovereignty is limited by the Federal Constitution. Switzerland's tax system is therefore complex, involving federal, cantonal and communal levels, with variations in tax rates and regulations across the different cantons. For foreign suppliers and the formation of an importer owned by a foreign supplier, the following tax considerations must be taken into account.

Corporate taxes

Profit taxes

Companies domiciled in Switzerland or companies with a permanent establishment in the country are subject to corporate income tax on their worldwide income, except for income attributed to foreign branches or real estate. The combined effective corporate tax rates (including federal, cantonal, and communal taxes) vary by canton but generally range from 12% to 24%.

Capital taxes

Some cantons impose a capital tax on a company's equity. Rates vary across cantons ranging from 0.1 to 5.5%, and in some cases, equity related to participation or intellectual property may be exempt or subject to relief.

VAT

Switzerland levies VAT on goods and services. The standard VAT rate is 7.7%, with reduced rates for certain goods and services (eg, 2.5% for foodstuffs, drugs and newspapers). Foreign companies providing taxable supplies in Switzerland may need to register for VAT if their annual turnover from these supplies is 100,000 Swiss francs or more.

Withholding tax

Dividends, interest and royalties paid by Swiss companies to foreign recipients are subject to Swiss withholding tax of 35%. However, the rate may be reduced under double taxation agreements (DTAs) between Switzerland and the recipient's country of residence.

Stamp duty

Switzerland imposes stamp duties on certain transactions, including the issuance of equity and the transfer of securities. However, exemptions and reliefs are available, especially for transactions involving related parties.

Law stated - 6 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 | What alternative distribution relationships are available to a supplier?

In Switzerland, the principle of freedom of contract underpins the establishment and operation of various distribution relationships, allowing suppliers and their partners to negotiate terms that best suit their business objectives and market strategies, within the bounds of mandatory laws and public policy. This foundational principle offers suppliers various options for establishing distribution relationships to bring their products to the Swiss market. Each option has its own legal and operational implications, and the choice depends on the supplier's strategy, the nature of the products, and the level of control or investment the supplier wishes to maintain. The most common distribution structures chosen by suppliers in Switzerland are the following.

Distributors

Distributors purchase products from the supplier and resell them independently in a specific territory. This arrangement allows suppliers to enter the Swiss market without establishing their entity in Switzerland. The distributor takes on the risk of stocking and (re)selling the products. The legal relationship is governed by a distribution agreement, which may exist

in various forms. In its simplest form, the distribution agreement may be limited to the buying and reselling of products to the end consumers. The agreement may also provide that the distributor must safeguard the supplier's interests and comply with a marketing or service concept. An even higher level of integration may be reached with a selective distribution agreement. In such a system, the distributors entitled to resell the products are selected by the supplier based on different quantitative and qualitative criteria. A distribution agreement may also be exclusive if a specific geographical area or clientele is allocated to the distributor.

Commercial agents

Commercial agents are independent intermediaries who negotiate or conclude sales on behalf of the supplier, without taking ownership of the products. They are usually compensated through commissions on sales. This relationship is highly regulated in Switzerland, particularly in terms of contract termination and indemnity payments to the agent.

Franchising

Franchising involves a franchisor granting a franchisee the right to use its trademark, business model and knowledge to sell goods or services under the franchisor's brand. This allows for rapid market penetration while maintaining brand consistency. The franchisor typically provides support and exercises certain controls over the franchisee's operations. Franchisees are generally self-employed distributors and therefore bear the marketing and sale risks.

Private label

In a private label agreement, a supplier manufactures products and sells them under the retailer's brand name. This can be an effective way to enter the Swiss market, especially for suppliers capable of producing goods that meet the retailer's specifications. The key legal considerations include intellectual property rights, quality control, and liability.

Trademark licensing

Trademark licensing allows a supplier to license its brand to a third party in Switzerland, who can then use the trademark to sell products. This requires a detailed licensing agreement covering aspects such as the scope of use, quality control, and financial terms.

Joint ventures

A joint venture involves a supplier partnering with a Swiss or foreign company to jointly undertake business activities in Switzerland. This can provide shared resources and local knowledge. Joint ventures can be structured through a separate entity (often an AG or GmbH) or contractual agreements. Key considerations include governance, profit sharing and exit strategies.

Consignment

Placing goods on consignment with Swiss retailers or distributors can be another strategy, where the supplier retains ownership until the goods are sold.

Law stated - 6 February 2026

Legislation and regulators

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?

Applicable laws

In Switzerland, the relationship between a supplier and its distributor, agent, or other representative is primarily regulated by the principle of freedom of contract, which is a fundamental aspect of Swiss contract law. The Swiss Code of Obligations (CO) is the primary source of law governing contracts. Among the various types of distribution relationships, only the commercial agency relationship is explicitly regulated in the Swiss Code of Obligations (articles 418a et seq CO). Conversely, other forms of distribution relationships, such as distributorships, franchising, private label arrangements, trademark licensing or joint ventures, are considered innominate agreements under Swiss contract law. These do not have specific statutes in the Swiss Code of Obligations and are instead governed by the general principles of Swiss contract law, as well as any relevant specific laws related to industries or activities. Under certain conditions, specific provisions of other nominate contracts (such as employment or commercial agency agreements) may apply by analogy to certain innominate distribution relationships.

Suppliers and distributors must also comply with the Federal Act on Cartels and Other Restraints of Competition (Cartel Act, CartA) as well as with the Federal Act against Unfair Competition (Unfair Competition Act, UCA). The Cartel Act aims to prevent the harmful economic or social effects of cartels and other restraints of competition. It may affect distribution agreements, particularly in terms of pricing, territorial restrictions, and exclusive dealings. The Unfair Competition Act provides a framework to combat unfair practices in the marketplace, protecting both competitors and consumers. It can impact distribution relationships, especially in marketing, advertising and sales practices.

For distribution relationships involving the use of trademarks, such as franchising or trademark licensing, the Swiss Federal Act on the Protection of Trademarks and Indications of Source (Trade Mark Protection Act, TmPA) regulates the use and protection of trademarks, ensuring that the rights of trademark owners are maintained.

If the distribution relationship involves the processing of personal data, the Swiss Federal Data Protection Act (Data Protection Act, FDPA) applies, requiring compliance with principles related to data security, transparency, and individuals' rights.

Government agencies

The COMCO enforces the Cartel Act, ensuring that distribution agreements and practices do not unlawfully restrict competition.

The Swiss Federal Institute of Intellectual Property (IPI) manages intellectual property rights, including trademarks, which may be relevant for licensing or franchising agreements.

The State Secretariat for Economic Affairs (SECO) plays a role in broader economic policies that could affect distribution relationships, particularly in sectors that are heavily regulated or monitored for economic stability.

Industry self-regulatory constraints

In addition to the above-mentioned laws and regulatory bodies, certain industries may have self-regulatory organisations (SROs) or codes of conduct that impose additional rules on distribution relationships. These could relate to advertising standards, product safety, ethical practices and more. Participation in these SROs or adherence to industry-specific standards may be voluntary or required for market access.

Law stated - 6 February 2026

Contract termination

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?

Swiss law, particularly under the principle of freedom of contract, allows parties to define the terms of their relationship, including termination rights and conditions, within their agreements. The freedom of contract also entails the freedom of terminating or non-renewal of a distribution relationship.

Where a distribution agreement was entered for a fixed term, it ends without notice of the expiry of that term. Any distribution relationship may also be terminated at any time upon mutual agreement of the parties. The decision not to renew does not inherently require cause, provided the decision complies with the contract terms and any notice requirements. However, abrupt non-renewal without due notice, especially when the other party expects renewal based on the contract execution or business practices, may under certain circumstances be challenged based on the principle of good faith.

Where no fixed terms have been stipulated, the parties may give notice to terminate a distribution agreement by observing the contractually prescribed notice periods and termination dates. For commercial agents, article 418q of the Swiss Code of Obligations (CO) provides specifically that a commercial agency agreement may be terminated by either party during the first year of the contract by giving one month's notice, expiring at the end of the following calendar month. Any agreement of a shorter notice period shall be agreed in writing. If the agency agreement has lasted more than one year, it may be terminated by giving two months' notice, expiring at the end of a calendar quarter.

Additionally, under Swiss law, any contract can be terminated at any time for just cause, as this is a general principle recognised across the legal framework. This principle allows either party to exit a contractual relationship when continuing under the current terms becomes untenable due to circumstances that could not have been foreseen at the contract's inception and that significantly alter the foundation upon which the agreement was based. Just cause could include, but is not limited to, serious breaches of contract, failure to meet obligations in a timely manner, or any substantial change in circumstances that impacts one party's ability to fulfil their contractual duties. This overarching principle ensures that contractual bindings do not become instruments of injustice or undue hardship, allowing for a legal mechanism to address unforeseen and significantly impactful changes.

Law stated - 6 February 2026

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

If the commercial agent’s activities have resulted in a substantial expansion of the principal’s clientele and considerable benefits accrue even after the end of the agency relationship to the principal from its business relations with clients acquired by the agent, the latter may claim for an adequate compensation for clientele provided this is not inequitable (article 418u paragraph 1 CO). However, no claim exists where the agency relationship has been dissolved for a reason attributable to the agent (article 418u paragraph 3 CO). The amount of this claim is capped to the agent’s net annual earnings from the agency relationship calculated as the average for the last five years or, where shorter, the average over the entire duration of the contract (article 418u paragraph 2 CO). The compensation for clientele pursuant to article 418u CO is mandatory and thus cannot be validly waived in advance to the detriment of the agent.

In its decision BGE 134 III 497, the Federal Supreme Court held that a distributor may, under certain circumstances, be eligible to receive compensation for clientele in the analogous application of article 418u CO. However, this provision may be applicable by analogy only if the situation of the distributor is economically comparable to that of an agent. This might be the case if (1) the distributor is integrated into the sales and distribution organisation of the supplier and (2) the customers remain faithful to the supplier upon termination of the distribution contract.

The question of a possible analogous application of article 418u CO to the franchising agreement has not yet been resolved by the Federal Supreme Court. However, most authors consider that the franchisee, given its status of quasi-subsidiary of the franchisor, may likely claim compensation for clientele in an analogous application of article 418u CO.

Law stated - 6 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

In Switzerland, the enforcement of these provisions is generally supported by the principle of contractual freedom, which allows parties to define the terms and conditions of their contractual relationships. These provisions are often included in distribution agreements to protect the supplier's interests, such as maintaining the quality of distribution or ensuring that the products are marketed effectively and in alignment with the supplier's brand values.

Swiss law, particularly the Swiss Code of Obligations (CO), does not explicitly prohibit such provisions. However, the enforceability of these restrictions is subject to general contract law principles, including the principle of good faith, according to which any contract shall be interpreted and executed in good faith (article 2 of the Swiss Civil Code (CC) and article 18 CO).

These restrictions should also comply with Swiss competition law, as enforced by the Swiss Competition Commission (COMCO). Clauses that significantly restrict competition may be deemed unlawful under the Cartel Act. It is, therefore, important to assess whether the restriction could be considered as limiting competition in an unjustifiable manner.

Law stated - 6 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Generally, no. The principle of freedom of contract also prevails in this regard.

Law stated - 6 February 2026

Competing products

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

Restrictions on the distribution of competing products in distribution agreements can be enforceable, both during the term of the agreement and afterwards, to a certain extent. However, the enforceability of such restrictions is subject to conditions that ensure they do not violate competition law principles. As a general rule, article 5 paragraph 1 of the Cartel Act prohibits agreements that significantly restrict competition in a market for specific goods or services and are not justified on grounds of economic efficiency, including agreements that eliminate effective competition. The Swiss Competition Commission's (COMCO) latest Notice regarding the Competition Law Treatment of Vertical Agreements of 12 December 2022 (Vertical Notice (VN)) and the related guidelines provide a framework

for assessing the legality of vertical restraints, including non-compete obligations in distribution agreements.

Distribution agreements with non-compete obligations exceeding five years or entered for an indefinite period respectively with an automatic renewal mechanism are deemed to significantly restrict competition and are likely to be considered unlawful (article 5 paragraph 1 Cartel Act (CartA), article 15 lit g VN). The same applies to post-contractual non-competition clauses that have been entered for more than one year (article 15 lit h VN) as well as to non-compete obligations imposed on members of a selective distribution system in respect of resales of specific competing suppliers' products (article 15 lit i VN).

Law stated - 6 February 2026

Prices

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

The control a supplier can exert over the resale prices of its distribution partners is significantly limited by competition law. The Cartel Act prohibits practices that significantly affect competition in the market. Agreements between undertakings at different levels of the production and distribution chain regarding fixed or minimum prices are presumed to eliminate effective competition ("hardcore restriction") and are thus considered unlawful by Swiss competition law (article 5 paragraph 4 CartA). However, the specifics can vary depending on the nature of the relationship, such as whether the partner is a distributor or a commercial agent:

Distributors

For distributors, which buy products to resell them, Swiss competition law generally prohibits agreements that fix or influence the resale prices. Suppliers may suggest retail prices or set maximum resale prices, but distributors must remain free to set their selling prices to end customers. This ensures competition and prevents price-fixing practices. If a supplier attempts to enforce resale price maintenance, it could face investigations and sanctions by the COMCO.

Commercial agents

The situation for commercial agents, who sell products on behalf of the supplier without taking ownership of them, is slightly different. Since commercial agents act as an extension of the supplier, the supplier may have more latitude in setting the prices at which the agent sells the products. However, this can depend on the specific nature of the agent's relationship with the supplier and whether the agent bears any risks associated with the sales of the products.

Law stated - 6 February 2026

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?

In principle, a supplier may recommend a non-binding resale price to its distributors provided it does not lead de facto to a fixed or minimum sale price because of pressure from, or incentives offered by, any of the parties. Indicators of an unlawful price agreement may also be seen in the fact that most of the supplier's distributors actually follow the price recommendation, if it is not explicitly declared as 'non-binding' or if a price recommendation is only made available to the distributors but not to the public.

A supplier shall refrain from establishing a minimum advertised price policy and from declaring that it will not deal with customers who do not follow its pricing policy. This may be regarded as an indirect way of setting a fixed or a minimum price. These practices may, therefore, fall under article 5 paragraph 4 Cartel Act and thus be considered unlawful.

If a supplier attempts to enforce resale price maintenance, it could face investigations and sanctions by the COMCO. Parties to distribution agreements containing resale price maintenance clauses may then be fined up to 10% of the turnover achieved in Switzerland in the preceding three financial years. However, in practice, these fines are mostly imposed on the suppliers.

Law stated - 6 February 2026

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?

A most-favoured-customer (MFC) clause, which specifies that the supplier's price to a distributor will be no higher than its lowest price to other customers, is generally permissible under Swiss law. However, the legality of these clauses depends on their impact on competition and market conditions. While MFC clauses can, in some contexts, increase competition by ensuring that a distributor receives prices as favourable as those offered to the supplier's most favoured customers, they might, under certain circumstances, have anticompetitive effects. For example, if an MFC clause is used by a dominant market player, it could make it difficult for competitors to compete on price, thus harming competition.

The assessment of whether an MFC clause is permissible under Swiss law will typically consider factors such as the market power of the supplier, but also whether the clause in question leads to negative effects on competition, such as preventing price decreases or hindering entry into the market by new competitors. In some cases, if the parties can demonstrate that the clause leads to efficiencies that outweigh its restrictive effects on competition, it might also be considered legal.

Regarding online reservation platforms in particular, in 2015, the COMCO had to deal with a contractual agreement between suppliers of internet booking platforms and hotels that prohibited the latter from making more profitable offers on distribution channels with lower commissions. The COMCO considered these contractual clauses unlawful. Moreover, as of 1 December 2022, the Unfair Competition Act prohibits parity clauses concerning the price, availability or conditions in contracts between online booking platforms and hotels (article 8a Unfair Competition Act, UCA).

Law stated - 6 February 2026

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?

Under Swiss law, sellers have considerable freedom to set prices, including the possibility of charging different prices to different customers based on criteria like location, customer type, quantities purchased, or other factors. This pricing flexibility is generally permissible if it does not constitute an abuse of a (relative) dominant market position. Discriminatory pricing may be fined up to 10% of the turnover achieved in Switzerland in the preceding three financial years.

Law stated - 6 February 2026

Geographic and customer restrictions

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

Under Swiss law, a supplier can impose restrictions on the geographic areas or categories of customers to which its distribution partner resells products, including granting exclusive territories, provided these restrictions comply with the Cartel Act and the guidance provided by the COMCO in the Vertical Notice. These arrangements are commonly found in distribution agreements to protect distributors' investments and structure the market.

According to the Cartel Act, distribution agreements that allocate territories or customer groups can be seen as problematic if they explicitly prevent sales by other distributors into these territories, particularly if these restrictions are interpreted as an unlawful limitation on passive sales. Notably, even exclusive sourcing obligations imposed on distributors may be viewed as an illegal constraint of passive sales under Swiss law, potentially resulting in turnover-based fines (article 49a CartA). This stance is significant as these obligations might be exempt under EU competition law; hence, their admissibility under Swiss law requires careful examination.

The VN clarifies that while suppliers can generally restrict their distributors from actively selling into exclusive territories or to exclusive customer groups assigned to the supplier or up to five other distributors, these restrictions must not impede passive sales (article 15 VN). Distributors must be allowed to fulfil unsolicited orders from customers outside their designated territories or customer categories. This distinction between active and passive sales is crucial, with internet sales typically regarded as passive, except when specific marketing efforts overtly target customers in another distributor's exclusive territory.

Law stated - 6 February 2026

19 ' If geographic and customer restrictions are prohibited, how is this enforced?

Enforcement against prohibited geographic and customer restrictions in Switzerland involves a combination of public civil or administrative actions led by COMCO, and the option for private legal actions by affected parties seeking remedies for damages. While most of the enforcement related to competition law violations, including prohibited geographic and customer restrictions, is administrative or civil, certain egregious violations of the Cartel Act could potentially lead to criminal sanctions. However, criminal proceedings in the context of anticompetitive practices are relatively rare in Switzerland and typically reserved for the most severe cases of unlawful behaviour, such as fraudulent misrepresentation in the context of cartel investigations.

Law stated - 6 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Under Swiss law, while suppliers have some degree of control over the distribution of their products, including through e-commerce, this control must align with the Cartel Act and the Unfair Competition Act. In this context, it shall be noted that e-commerce sales are generally regarded as passive sales, except in scenarios where a website or marketing strategies specifically target customers in a distributor's exclusive territory. Consequently, suppliers are not permitted to restrict or prohibit e-commerce sales that fall outside a distributor's designated territory, as these restrictions could unjustly limit competition and market access.

The imposition of 'invasion fees' or similar penalties on distributors for passive sales into the territory of another is generally considered unlawful. This is because passive sales, by nature, support market integration and consumer choice without the active solicitation of customers outside a distributor's exclusive area. However, suppliers may establish qualitative standards that distributors must adhere to in their e-commerce activities, ensuring that the brand's reputation and quality standards are maintained.

Moreover, the Unfair Competition Act incorporates a geo-blocking prohibition like Regulation (EU) 2018/302, which addresses unjustified geo-blocking and other discriminatory practices based on nationality, residence or establishment within the internal market. This prohibition makes it illegal to differentiate between customers concerning prices and payment conditions, restrict or block access to online interfaces, or redirect customers to a different interface without an objective justification, based on the customer's nationality, residence or the location of their payment service provider.

Law stated - 6 February 2026

21 | May a distributor or agent restrict a supplier’s sales through e-commerce intermediaries into the distribution partner’s territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

A distributor or agent typically has less leverage to restrict a supplier's direct sales, including through e-commerce intermediaries, into the distributor's or agent's territory. The principle of competition and market access would generally favour the supplier's right to use various sales channels, including e-commerce, to reach consumers directly.

However, in specific contractual arrangements, a distributor or agent may negotiate terms with the supplier that include certain restrictions on direct sales to protect the distributor's investment and market position. Any restrictions must be reasonable and comply with Swiss competition laws.

Regarding the requirement for suppliers to provide sales reports by territory and pay "invasion fees", such conditions could also be part of a negotiated agreement but must be carefully structured to ensure they do not contravene competition laws or create unfair restrictions on market access.

Law stated - 6 February 2026

Refusal to deal

22 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 by invoking the principle of freedom of contract. However, if a supplier holds a dominant market position, refusals must not constitute abuse of market dominance.

Law stated - 6 February 2026

Competition concerns

23 Under what 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?

Distribution or agency agreements could fall under merger control rules and require clearance by the COMCO if they lead to a concentration of companies. This may occur if the agreement results in a change of control over a company or part of a company. A transaction must be reported to the COMCO if the involved companies collectively have a global turnover of at least 2 billion Swiss francs or a turnover in Switzerland of at least 500 million Swiss francs, and at least two of the involved companies each have a turnover in Switzerland of at least 100 million Swiss francs (article 9 CartA). If the relevant turnover thresholds are reached, the COMCO will assess whether the transaction significantly impedes effective competition, particularly by creating or strengthening a dominant position liable to eliminate effective competition (article 10 CartA). Distribution or agency agreements typically do not lead to a change of control and thus are less likely to be subject to merger control. However, complex arrangements or those involving joint ventures could trigger scrutiny.

Law stated - 6 February 2026

24 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?

Swiss competition law generally prohibits agreements that significantly restrict competition in a market for specific goods or services and are not justified on grounds of economic efficiency, as well as any other agreements that eliminate effective competition (article 5 paragraph 1 CartA). In the case of vertical agreements, the elimination of effective competition is presumed in the case of agreements that set fixed or minimum prices, and in the case of agreements contained in distribution contracts regarding the allocation of territories to the extent that sales by other distributors into these territories are not permitted ('hard core restrictions'). The Vertical Notice specifies the criteria under which vertical agreements may unlawfully restrict or eliminate competition.

Suppliers or distributors with a dominant market position are prohibited from engaging in practices that hinder competition, such as unfair pricing, discrimination, or refusal to deal.

Competition law is mainly enforced by the COMCO, which can conduct investigations, issue decisions and impose fines. The COMCO may impose administrative sanctions on any undertaking that participates in an unlawful agreement pursuant or that behaves unlawfully. The imposed sanction may amount to up to 10% of the turnover that the faulty undertaking achieved in Switzerland in the preceding three financial years (article 49a CartA).

Private parties can bring actions under competition laws. They can file a complaint with the COMCO or pursue civil litigation for damages resulting from anticompetitive behaviour. However, considering the burden of proof requirements as well as the substantial prospective court costs that must usually be advanced by the claimant, civil procedures are not, in practice, used frequently.

Law stated - 6 February 2026

Parallel imports

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

Under Swiss law, combatting parallel or "grey market" imports poses a significant challenge. COMCO is actively engaged in preventing any illegal efforts to block parallel or grey market imports. While distributors and agents can request their suppliers or principals to address situations where other distributors or agents intrude upon their exclusive territories, the effectiveness of these measures is limited, especially when parallel imports result from passive sales, such as fulfilling unsolicited orders from distributors in different territories.

In scenarios involving 'leakages' within a lawful selective distribution system – a system where distributors are chosen based on specific criteria – there are generally no effective methods to stop an unauthorised distributor from selling products in Switzerland. Swiss intellectual property laws do not permit IP rights holders to prevent the further commercialisation of products once these have been legitimately placed on the market by the rights holder, whether within Switzerland for trademark or copyright-protected goods, or within the European Economic Area for patent-protected goods, with certain exceptions like pharmaceuticals.

Furthermore, amendments to the Federal Cartel Act, effective from 1 January 2022, forbid restrictions that prevent customers from purchasing goods or services at the market prices and usual terms available in Switzerland or abroad. This is particularly relevant if customers seek to purchase these goods or services from abroad and the restrictions are imposed by dominant or relatively dominant companies. This prohibition extends to intra-group relations, including the relationships between suppliers and their subsidiaries, further complicating the ability to control grey market imports.

Law stated - 6 February 2026

Advertising

26 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 require them to share in its cost of advertising?

Restrictions on the ability of a supplier or distributor to advertise and market the products they sell are primarily governed by the Unfair Competition Act. This Act regulates advertising content, including prohibitions on deceptive advertising and protects consumers and competitors from unfair practices.

Regarding the sharing of advertising costs, a supplier can agree with its distribution partners to pass all or part of its advertising costs onto them or require them to share in these costs, based on the principle of freedom of contract.

Law stated - 6 February 2026

Intellectual property

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

Swiss law provides robust protection for intellectual property (IP) rights, aligning with international standards. The Swiss Federal Institute of Intellectual Property (IPI) is the key agency responsible for IP matters in Switzerland, offering registration services and information on IP protection. In the case of infringement, suppliers can turn to Swiss courts, which can provide remedies such as injunctions, compensation, and, in certain cases, the destruction of infringing goods. A supplier can take several measures to safeguard its IP

from infringement by distribution partners and third parties. These measures can be both legal and practical, ensuring the protection of patents, trademarks, designs, and copyrights, among other forms of IP. Here are some strategies:

- Clear contractual agreements: the foundation of IP protection in distribution partnerships is a clear and enforceable contract. This should include specific provisions that outline the use of the supplier's IP by the distribution partner, restrictions on sublicensing, and obligations to cease use upon termination of the agreement. It should also address the consequences of IP infringement.
- IP registration strategy and prosecution: ensuring that all relevant IP is properly registered in Switzerland and, if applicable, internationally, provides a stronger basis for enforcement. Switzerland is a member of various international IP protection regimes (among others, the Madrid international trademark system, the Hague international design system, the Patent Cooperation Treaty and the European Patent Convention), allowing for streamlined registration processes across multiple jurisdictions.
- Monitoring and enforcement: regular monitoring of the market for potential infringements and taking swift legal action against unauthorised use of IP is crucial. This may involve cease and desist letters, litigation and, where appropriate, seeking injunctive relief and damages.
- Non-disclosure agreements (NDAs): NDAs with distribution partners and employees can help protect confidential information and trade secrets, which are often integral to a company's IP strategy.
- Technology transfer agreements: these agreements are common and serve as a formal way to license IP, including patents, trademarks and know-how, from one party to another. They can facilitate the commercialisation of technology and ensure that the IP owner retains control over how the technology is used, while also benefiting from royalties or other compensation. These agreements must be carefully drafted to specify the scope of the rights transferred, duration, territory and usage rights to prevent unauthorised exploitation.

Law stated - 6 February 2026

Consumer protection

28 | What consumer protection laws are relevant to a supplier or distributor?

In Switzerland, several consumer protection laws are relevant to suppliers and distributors, ensuring fair trade practices and safeguarding consumer interests. Key laws and regulations include:

- the Swiss Code of Obligations (CO) provides the foundation for contract law, including provisions on warranty and liability for defects in goods and services. It outlines the rights and obligations of parties in commercial transactions, ensuring that consumers are protected against defective products;
-

the Unfair Competition Act (UCA) protects consumers from misleading advertisements, aggressive marketing practices, and other forms of unfair competition. It aims to ensure that consumers are not deceived or misled by businesses;

- the Federal Act on Consumer Information (CIA) ensures consumers have access to essential information about goods and services, enabling informed purchasing decisions. This act covers labelling requirements, product safety information and other relevant details that must be disclosed to consumers;
- the Product Safety Act (PSA) ensures that products distributed or sold in Switzerland meet strict safety standards. It is designed to protect consumers from products that could pose risks to health and safety;
- the Ordinance on Price Disclosure (PD) requires businesses to transparently disclose prices of goods and services to consumers. It is designed to ensure that consumers have clear, understandable information about prices before making a purchase decision, facilitating fair competition and preventing deceptive or misleading pricing practices; and
- the Data Protection Act (DPA) protects, inter alia, consumers' data. Suppliers and distributors must ensure that consumer data is collected, processed, and stored in compliance with the DPA, safeguarding privacy and personal information.

These laws collectively contribute to a comprehensive framework aimed at protecting consumers and ensuring fairness, transparency and safety in the marketplace. Suppliers and distributors operating in Switzerland must comply with these regulations to avoid legal pitfalls and maintain trust with consumers.

Law stated - 6 February 2026

Product recalls

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

Swiss law does not specifically outline requirements for product recalls. Nevertheless, the Federal Act on Product Safety (PSA) mandates certain post-market responsibilities for producers and importers of consumer products, or products that could foreseeably be used by consumers, as per article 8 of the PSA. This includes the obligation for producers and importers to implement adequate measures for risk awareness, danger prevention, and product traceability. They must also work in collaboration with the relevant enforcement authorities to mitigate risks and must notify these authorities if they believe any of their products could pose a safety or health risk to users or third parties. In extreme cases, these authorities may order the withdrawal or recall of hazardous products from the market.

Within the framework of contractual freedom, parties in a distribution agreement may define the conditions under which one party might be responsible for initiating and covering the costs associated with a product recall.

Law stated - 6 February 2026

Warranties

30 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?

Reflecting the principle of contractual freedom, parties can decide to completely waive or restrict warranty obligations, even in consumer contracts. Nonetheless, any agreement to waive or limit warranty is nullified if the seller deceitfully hides any defects from the buyer, as outlined in article 199 CO. Furthermore, if a waiver or limitation of warranty included in the general terms and conditions significantly disrupts the balance of rights and obligations between the parties in a way that unfairly disadvantages the consumer, it could be considered unfair under the standards of good faith, according to article 8 UCA.

Law stated - 6 February 2026

Data transfers

31 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?

In Switzerland, the exchange of information between a supplier and its distribution partners regarding customers and end-users is subject to data protection and privacy regulations. The revised Federal Act on Data Protection (FADP), which aligns more closely with the EU General Data Protection Regulation (GDPR), emphasises the importance of protecting personal data. Even though Switzerland is not an EU member, Swiss companies processing data of EU citizens or operating in the EU market must comply with GDPR requirements in addition to the FADP. The Federal Act on Data Protection (FADP) governs the handling of personal data and aims to protect the privacy and fundamental rights of individuals when their data is processed. This law applies to both automated and manual processing of personal data.

Under the FADP, personal data must be processed lawfully and in good faith, and must be proportionate. Individuals whose data is being processed have the right to be informed about the collection and use of their data, the right to access their data, and the right to request correction or deletion if their data is incorrect or processed unlawfully.

Generally, the concept of "ownership" of information per se does not apply under Swiss data protection law. However, the entity that collects and processes personal data (the data controller) must ensure that data processing complies with legal requirements, including data protection principles and obligations.

Regarding international data transfers, such as between the US and Europe, *Schrems II* and the invalidation of the Privacy Shield regime have raised concerns about the adequacy

of data protection measures in cross-border data transfers. Swiss companies must ensure that any transfer of personal data outside Switzerland complies with FADP and, where applicable, GDPR transfer mechanisms. Adequate protection can be ensured through standard contractual clauses, binding corporate rules, or relying on an adequacy decision by the Swiss Federal Data Protection and Information Commissioner (FDPIC).

Law stated - 6 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Suppliers and their distribution partners must implement appropriate technical and organisational measures to ensure the security of the customer data they hold, protecting against unauthorised or unlawful processing, accidental loss, destruction or damage. This includes encryption, access controls, secure data storage solutions and regular security assessments.

Law stated - 6 February 2026

Employment issues

33 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. Within the boundaries of contractual freedom, a supplier may accept or deny the individuals overseeing the distributor's operations, provided the contract explicitly grants this right. The terms for ending the relationship largely hinge on the specific classification of the contract by the parties involved. If classified as an employment contract, the supplier must follow the requirements in article 334 seq CO, such as ending the contract with a minimum notice period or for a justified reason. If viewed as an agency contract, the supplier can terminate the agreement following the guidelines of article 418q CO.

Law stated - 6 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

An agent or distributor might be qualified as an employee if they are under the supplier's control and required to adhere strictly to the supplier's broad guidelines and specific instructions. Case law suggests that the principal imposing restrictions on the distributor or agent concerning time management or the organisation of work can signal a subordinate relationship. In contrast, a distributor or agent is considered self-employed if they operate independently and assume their own financial risks. Nonetheless, making this distinction can be challenging, as it relies on the specific details of each case.

Should a distribution relationship be recognised as an employment contract, the supplier must adhere to various compulsory labour law requirements aimed at protecting employees. These include provisions concerning protection against termination, entitlement to wages during holidays and sickness, obligations for social security contributions and more.

Therefore, the supplier should ensure that its distributor or agent is afforded adequate autonomy, particularly in terms of managing their time and organising their work. The independence of the distributor or agent should be clearly reflected in the terms of the agreement. Furthermore, it is common practice to obtain confirmation from the relevant AHV (Old Age and Survivors' Insurance) compensation office that the distributor or agent has been recognised as self-employed.

Law stated - 6 February 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

Yes, under article 418g CO, the agent may receive the agreed upon or customary commission for all transactions that were facilitated or concluded by the agent during the term of the contract. This provision is mandatory, meaning it cannot be waived by the parties in advance. Unless specified otherwise in a written agreement, the commercial agent also has the right to the agreed upon or customary commission for all transactions completed during the agency period by the principal without the agent's direct involvement, but with clients that the agent had acquired for such transactions, as well as for transactions completed within an exclusive territory or with an exclusive client base assigned to the agent.

Furthermore, if the agent can accept and collect payments, it may qualify for a "collection commission" on any sums it successfully collects and passes on to the principal, following the principal's instructions, as stated in article 418l CO. Additionally, if the agent takes on the responsibility for the clients' payments, it may be entitled to a "del credere"commission, as outlined in article 418c paragraph 3 CO.

Law stated - 6 February 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

Under Swiss law, the principle of good faith and fair dealing is a fundamental concept that permeates various aspects of legal relationships, including distribution relationships. The principle is codified in article 2 of the Swiss Civil Code (CC), which requires all persons to exercise their rights and fulfil their obligations according to the principles of good faith. This overarching requirement affects distribution relationships in several key ways as follows.

- Contract formation and execution: parties to a distribution agreement are expected to negotiate, conclude, and execute their contracts in a manner that respects the interests of the other party. Misrepresentation, concealment of material facts, or exploitation of a weaker party's mistakes are contrary to good faith principles.
- Information and communication: parties must communicate honestly and transparently, providing all relevant information that could affect the other party's decision-making or interests within the distribution relationship.
- Performance and enforcement: the exercise of rights and performance of obligations under a distribution contract must be carried out in a manner consistent with the intentions of the contract and the expectations of the parties, as long as these expectations were reasonable and established in good faith.
- Termination: the termination of a distribution relationship, whether through expiry, mutual agreement or unilateral decision, should be handled with due notice and in a manner that reflects respect for the other party's legitimate interests and investments made in reliance on the distribution agreement.

Any violation of the good faith requirement can lead to legal remedies, including damages, modification or termination of the contract, as well as restitution for losses incurred.

Law stated - 6 February 2026

Registration of agreements

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

No.

Law stated - 6 February 2026

Anti-corruption rules

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

In Switzerland, anti-bribery and anti-corruption laws are comprehensive and apply broadly to all business activities, including relationships between suppliers and their distribution partners. The Swiss Criminal Code (SCC) prohibits both public and private bribery, making it illegal to offer, promise, or grant benefits to a public official or to any private individual to influence their actions related to their official or business duties. This legal framework ensures that commercial practices are conducted with integrity and transparency.

Moreover, companies operating in Switzerland are also subject to compliance with international anti-corruption conventions to which Switzerland is a party, such as the OECD Anti-Bribery Convention. This international framework complements Swiss laws by

promoting cooperation and setting common standards to prevent corruption in international business transactions.

Law stated - 6 February 2026

Prohibited and mandatory contractual provisions

39 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?

Swiss statutory law does not specifically regulate most distribution agreements, with the notable exception being the commercial agency contract, which is covered by article 418a seq CO. The CO includes several mandatory provisions designed to safeguard the agent's position and interests. Key sections, such as the del credere clause (article 418c paragraph 3 CO), competition prohibition (article 418d paragraph 2 CO), commission statement (article 418k CO), work incapacity (article 418m CO), special lien (article 418o CO), termination notice (article 418q CO), and client compensation (article 418u CO) are not subject to negotiation and must be adhered to by the parties.

The Federal Supreme Court held in its decision BGE 134 III 497 that article 418u CO, which pertains to compensation for clientele, cannot be waived in advance by the parties, even when applied by analogy. Therefore, distributors and franchisees should be mindful of such limitations.

Law stated - 6 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

Generally, no. Parties to a distribution contract are generally free to choose the law of any country to govern their contract, reflecting the principle of autonomy in international contractual relationships. This freedom is subject to certain limitations, such as not circumventing mandatory provisions of the Federal Act on Private International Law (PILA) or international conventions to which Switzerland is a party, especially those provisions that protect weaker parties, such as consumers.

Law stated - 6 February 2026

Choice of forum

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

Generally, no. Parties to a distribution agreement are generally free to contractually agree to the jurisdiction of courts or arbitration tribunals, whether within or outside Switzerland, for resolving their disputes. Should at least one party be based in a country that is a signatory to the Lugano Convention, the Swiss court designated by the agreement typically cannot refuse jurisdiction, as per article 23 of the Lugano Convention. In situations where neither party resides in a Lugano Convention member state, PILA comes into effect. Under article 5 PILA, parties may choose a jurisdiction agreement, if it does not abusively deprive a party from the protection granted to it by a forum provided by Swiss law. For parties both domiciled within Switzerland, article 17 of the Swiss Civil Procedure Code (CPC) generally allows for the freedom to decide on the jurisdiction for any disputes related to their legal relationship, although this is subject to any compulsory jurisdiction stipulated by article 9 CPC. Parties may also opt for arbitration to resolve their disputes.

Law stated - 6 February 2026

Litigation

42 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?

Generally, disputes between suppliers and their distribution partners are settled by the ordinary courts in Switzerland. Most cantons have a two-tier judicial system at the cantonal level, with final recourse to the Swiss Federal Court – provided the value in dispute exceeds 30,000 Swiss francs. In the cantons of Zurich, Berne, Aargau and St Gallen, commercial courts are the exclusive cantonal authority for commercial disputes involving claims over 30,000 Swiss francs, as well as – among others – for disputes concerning intellectual property, competition law or unfair competition.

Foreign businesses are not restricted in their ability to use Swiss courts and can expect fair treatment. The extent of document disclosure and testimony is generally limited compared to common law jurisdictions, focusing on specific evidence rather than broad discovery. For foreign businesses, the advantages of litigating in Swiss courts include neutrality, predictability and efficiency, while disadvantages may include language barriers and the potential for limited discovery.

Law stated - 6 February 2026

Alternative dispute resolution

43 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?

Agreements to mediate or arbitrate disputes are enforced in Switzerland. The country is known for its arbitration-friendly legal framework, significantly supported by its ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. While Swiss law allows considerable freedom in formulating arbitration agreements with respect to the arbitration tribunal, location, or language of the arbitration, there are a few limitations to ensure fairness and due process.

- arbitrability: disputes must be arbitrable under Swiss law, meaning they involve rights that the parties can freely dispose of;
- form requirements: arbitration agreements must satisfy certain form requirements, such as being in writing. The Swiss Federal Supreme Court interprets this requirement liberally, accepting agreements made by email or other forms of electronic communication; and
- public policy: the arbitration process and the enforcement of arbitral awards cannot contravene Swiss public policy.

For foreign businesses, the advantages of arbitrating in Switzerland include confidentiality, expertise of arbitrators, neutrality, and enforceability of awards. Disadvantages may include costs and the formalities of the arbitration process.

Law stated - 6 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

A partial revision of the Cartel Act was adopted by the Swiss Parliament on 4 December 2025. The revision is intended to enhance the effectiveness of the Cartel Act and to implement three parliamentary interventions. Its central element is the modernisation of Swiss merger control. By replacing the current qualified dominance test with the "significant impediment to effective competition" test, Swiss merger control is aligned with internationally recognised standards. In addition, the revision strengthens civil antitrust law, improves the opposition procedure, and introduces several measures aimed at improving the procedural position of small and medium-sized enterprises in cartel proceedings. The revised provisions are expected to enter into force in the course of 2027, subject to the adoption of the necessary implementing ordinances.

Beyond merger control, the revision also introduces a more effects-based approach to the assessment of anticompetitive agreements. Under the amended framework, not only the form of a restriction, but also its actual or potential effects on effective competition must be taken into account. While agreements containing traditionally defined hardcore restrictions remain subject to strict scrutiny, their qualification as hardcore infringements will no longer be based solely on their qualitative nature. Instead, such agreements must be capable, in the specific case, of significantly impairing effective competition.

Consequently, the establishment of a hardcore restriction will require an assessment of the agreement's concrete competitive effects, taking into account quantitative elements such as market shares, market structure, and barriers to market entry. Abstract assumptions or qualitative criteria alone, including references to empirical experience with comparable agreements, will no longer suffice. Other competition agreements must likewise be assessed by weighing both the nature of the restriction and its effects in order to determine whether effective competition is significantly restricted.

This shift towards an effects-based analysis constitutes a legislative response to the Federal Supreme Court's *GABA* judgment, which had held that certain categories of agreements listed in the Cartel Act were, by their very nature, presumed to significantly restrict competition without the need for a case-by-case assessment of their economic impact. The revision recalibrates the balance between legal presumptions and economic analysis, reaffirming the primacy of actual and potential effects on competition in Swiss antitrust enforcement.

Law stated - 6 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

The Taiwan Company Act provides that a foreign company must not conduct business in the Republic of China under its own name without registering a branch office. Therefore, a foreign supplier must establish a branch office or a subsidiary in Taiwan to engage in import and distribution activities within the jurisdiction.

Law stated - 4 February 2026

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

Yes, a foreign supplier may be a partial owner of a local company that imports its products, provided that the foreign supplier is not from mainland China. In these cases, acquiring shares or capital in a Taiwanese company requires prior approval from the Department of Investment Review, Ministry of Economic Affairs, in accordance with relevant regulations. If the supplier is from mainland China, the situation is more complex. Approval is contingent upon whether the products being distributed fall under the categories specified in the Act Governing Relations Between the Peoples of the Taiwan Area and the Mainland Area. Additionally, if the products involve regulated industries, such as pharmaceuticals or medical devices, further approvals from the relevant authorities, such as health departments, are necessary before commencing operations. The approval process for mainland investments is generally more intricate compared to that for foreign investments.

Law stated - 4 February 2026

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?

For a foreign supplier looking to establish an importer in Taiwan, the most suitable business entities are a branch office or a subsidiary. A branch office can be set up without prior approval from the Department of Investment Review, Ministry of Economic Affairs allowing for a more streamlined process. In contrast, if the foreign supplier opts to establish a subsidiary, prior approval from the Department of Investment Review is required. Once the entity is formed, it must be registered as an importer-exporter with the Bureau of Foreign Trade in accordance with the relevant trade laws. This registration is essential for engaging in import activities in Taiwan, ensuring compliance with local regulations and facilitating smooth business operations.

Law stated - 4 February 2026

Restrictions

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

In Taiwan, foreign businesses are generally permitted to operate without specific restrictions, provided they do not fall under the category of "mainland Chinese investment". The term mainland Chinese investment means any individual, legal entity, organisation or institution incorporate or domiciled in Mainland China (excluding Hong Kong and Macau SAR) or their entities investing in a third region that engage in investment activities in Taiwan. For distribution activities, including wholesale and retail, foreign entities are allowed to engage in business unless the products involved pertain to regulated industries, which require approval and relevant licences from the competent authorities. There are no particular limitations or prohibitions on foreign investment or ownership in domestic business entities, except for cases involving mainland Chinese investments. In these instances, if the products being distributed do not fall under the "positive investment list" of permitted business activities, the foreign entity is prohibited from engaging in related distribution activities.

Law stated - 4 February 2026

Equity interests

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

Yes, a foreign supplier may own an equity interest in a local entity that distributes its products, provided that the foreign supplier is not from mainland China. In these cases, the acquisition of shares or capital contributions in a Taiwanese company must be approved in advance by the Department of Investment Review, Ministry of Economic Affairs, in accordance with relevant regulations. However, if the supplier is from mainland China, the approval process becomes more complex. Under the Act Governing Relations Between the Peoples of the Taiwan Area and the Mainland Area, the eligibility for investment depends on whether the products being distributed fall under the "positive investment list" of business items. In this scenario, prior approval from the Department of Investment Review is also required, and the review process is more intricate compared to that for foreign investments from other regions.

Law stated - 4 February 2026

Tax considerations

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?

In accordance with Taiwan's tax regulations, foreign suppliers establishing a subsidiary in Taiwan, without applicable tax treaties, are subject to a corporate income tax rate of 20%. Dividends distributed from after-tax profits are subject to a withholding tax rate of 21%, while undistributed earnings incur a 5% tax. Conversely, if a foreign entity sets up a branch in Taiwan, the corporate income tax remains at 20%, but there are no taxes on dividends remitted to the parent company overseas or on undistributed earnings. Additionally, foreign suppliers may encounter various taxes in Taiwan, including business tax, customs duties, commodity tax, stamp tax and specific taxes on imported tobacco and alcohol products, as well as special goods and services tax and health welfare surcharges on tobacco products.

Law stated - 4 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 What alternative distribution relationships are available to a supplier?

Under Taiwanese law, suppliers have several alternative distribution relationships available to them, including the use of agents, sales representatives, franchising, private labelling, trademark licensing, joint ventures and other contractual arrangements. These relationships can be structured through contractual terms that define the rights and obligations of each party involved. Agents and sales representatives can facilitate market entry and customer engagement, while franchising allows for brand expansion with local partners. Private labelling and trademark licensing enable suppliers to leverage existing brands for market penetration. Joint ventures can provide shared resources and expertise, enhancing competitiveness. Overall, these alternatives offer flexibility and strategic options for suppliers seeking to optimise their distribution strategies in Taiwan.

Law stated - 4 February 2026

Legislation and regulators

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?

The relationship between a supplier and its distributor, agent or other representatives is primarily governed by the principle of freedom of contract, allowing both parties to negotiate terms flexibly. In the absence of specific contractual provisions, the general provisions of Taiwan's Civil Code apply. However, it is crucial to be aware that certain clauses in distribution agreements, such as those imposing resale price restrictions, limiting sales territories or targets or establishing exclusive dealings, may raise concerns under the Fair Trade Act and could lead to administrative penalties. Therefore, a comprehensive assessment of the parties' intentions, objectives, market positions, market structure, product characteristics and the impact of their actions on market competition is necessary for case-by-case evaluation.

Law stated - 4 February 2026

Contract termination

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?

Under Taiwan's Civil Code, there are no mandatory provisions regarding the grounds or notice period for terminating a distribution relationship, allowing suppliers and distributors to negotiate terms based on factors such as investment costs, industry characteristics, bargaining power and historical transaction relationships. If the distribution agreement does not specify termination grounds or notice periods, the Supreme Court has interpreted distribution contracts as mixed contracts involving both sales and agency services, allowing either party to terminate with a three-month notice period. Additionally, given the service nature of distribution contracts, failure to adhere to this notice period may result in liability for damages to the notified party. The considerations may differ when deciding not to renew the contract upon expiration, depending on the specific terms agreed upon by the parties.

Law stated - 4 February 2026

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

In Taiwan, the Civil Code does not impose mandatory compensation or indemnity for the termination of a distribution agreement without cause. Consequently, suppliers and distributors are free to stipulate the grounds for termination and whether compensation for damages is required in the event of a termination without cause, including the possibility of agreeing on liquidated damages or penalty clauses. However, it is important to note that, according to the Supreme Court's interpretation, distribution agreements are considered mixed contracts involving both sales and agency services. Therefore, under the provisions of the Civil Code, while either party may terminate the distribution agreement at any time, if the termination occurs at a time disadvantageous to the other party, the terminating party may be liable for damages incurred by the other party.

Law stated - 4 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

Where the products distributed do not fall under regulated industries (such as licensed sectors), there are no legal restrictions preventing distributors from transferring distribution rights to third parties. Suppliers and distributors may establish contractual provisions to determine whether and under what conditions distribution or agency rights can be assigned to third parties. However, if the products in question are related to regulated industries, such as pharmaceuticals or medical devices, the assignee must obtain approval from the relevant regulatory authority, such as the health bureau of the municipality or county, and secure the necessary licences. Thus, the enforceability of such provisions largely depends on the nature of the products and the specific contractual agreements in place.

Law stated - 4 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

In general, confidentiality provisions in distribution agreements can be tailored by the parties involved. Such agreements may include stipulations that allow for the disclosure of "confidential information" when required by law, governmental agencies or judicial orders. In these circumstances, either party may be exempt from their confidentiality obligations without prior notice to the other party. However, it is essential to ensure that such exceptions are clearly defined within the agreement to avoid potential disputes. Overall, while confidentiality provisions are enforceable, they are subject to limitations based on legal and regulatory requirements.

Law stated - 4 February 2026

Competing products

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

In distribution agreements, clauses that restrict the sale of competing products may potentially violate the Fair Trade Act, specifically concerning the penalties imposed by the Fair Trade Commission. However, judicial interpretations suggest that such violations do not automatically render the relevant contractual provisions invalid. Consequently, these restrictions on competing products are generally considered enforceable between suppliers and distributors.

In practice, the assessment of whether these clauses contravene the provisions of the Fair Trade Act involves a careful weighing of their economic benefits and drawbacks. Positive effects may include reduced costs for upstream and downstream businesses, enhanced loyalty from downstream entities, increased investment willingness from suppliers, protection of trade secrets and maintenance of product quality and supplier reputation. Conversely, negative effects may encompass limitations on the operational freedom of

downstream businesses, barriers to market entry for competitors and restrictions on consumer choice.

Law stated - 4 February 2026

Prices

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

Under the Fair Trade Act, suppliers are generally prohibited from controlling the resale prices of their products by distribution partners, unless there are legitimate reasons for doing so. Legitimate reasons may include encouraging downstream businesses to enhance the efficiency or quality of presale services, preventing free-riding effects, facilitating the entry of new businesses or brands and promoting competition among brands. In the absence of such justifications, any contractual or other restrictions imposed by suppliers on the resale prices of distributors would be deemed invalid. The Fair Trade Commission has the authority to order suppliers to cease or rectify such practices and may impose fines ranging from NT$100,000 to NT$50 million (around US$3,030 to US$151,515). If compliance is not achieved within the stipulated time frame, further penalties may be imposed, escalating to fines between NT$200,000 and NT$100 million (around US$6,060 to US$3,030,300) until the supplier takes corrective action.

Law stated - 4 February 2026

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?

A supplier's influence on resale prices through other means may still qualify as a restriction on resale prices under the Fair Trade Act. The Fair Trade Commission clarifies that the term "restriction" in this context extends beyond contractual arrangements to encompass actions that a supplier compel its downstream businesses to adhere to specified resale prices. These actions may include revoking distributorships for non-compliant distributors, raising supply prices, shortening billing periods or payment terms and refusing to supply products (eg, by demanding the removal of products from store shelves or halting shipments). However, to the extent that the measures implemented by the supplier do not exert substantial binding force on the counterparty, such actions will not be considered illegal under the Fair Trade Act. For instance, merely printing a "suggested resale price" on products without mandating compliance from downstream distributors or prohibiting discounts does not violate the Fair Trade Act.

Law stated - 4 February 2026

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?

The restriction on "maximum resale price" also constitutes a form of restriction on resale price. Such restrictions are prohibited unless justified by a reasonable cause under the Enforcement Rules of Fair Trade Act.

Law stated - 4 February 2026

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?

According to the Fair Trade Act, a seller may provide differential treatment to other businesses concerning pricing and sales conditions – such as payment methods, transaction terms and packaging – when there are "justifiable reasons" and no risk of "restricting competition" in the market. The determination of what constitutes '"justifiable reasons" must be made on a case-by-case basis, in accordance with the Enforcement Rules of Fair Trade Act. The following factors should be considered:

- market supply and demand conditions: for instance, seasonal or perishable products may warrant special discounts to facilitate inventory clearance or accelerate sales of items nearing discontinuation;
- cost differences: a seller may offer varying discounts or transaction terms based on differing costs incurred for transportation, packaging, marketing and other related expenses;
- transaction volume: larger order quantities or higher purchase amounts may justify greater discounts for buyers, reflecting the economies of scale;
- credit Risk: sellers may extend more favourable pricing or payment terms to long-term clients with strong credit ratings, recognising their reliability and lower risk; and
- other reasonable causes: this may include offering reduced supply prices to charitable organisations for public welfare purposes or providing differential treatment based on the level of cooperation from business partners.

Law stated - 4 February 2026

Geographic and customer restrictions

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

Restrictions imposed by suppliers on the sales territories or categories of customers are classified as "conduct that imposes restrictions on the business activities of the counterparty as a condition of trade", under the Fair Trade Act. However, not all such restrictions are considered illegal. These restrictions only constitute prohibited conduct

under the Fair Trade Act when the supplier fails to provide a legitimate justification and when the imposed restrictions are likely to restrain market competition.

To determine whether such restrictions are unjustifiable, a comprehensive assessment is required in accordance with the Enforcement Rules of Fair Trade Act. This assessment should take into account various factors, including the intent and purposes of the parties involved, their respective market positions, the structure of the relevant market, the characteristics of the goods or services in question, and the anticipated impact of enforcing these restrictions on market competition. Generally, brand owners with a significant market share – previously set at over 10% and recently adjusted to 15% – are more likely to be viewed as having the potential to restrict competition, which may lead to a violation of the Fair Trade Act. Conversely, smaller brand owners with limited market power, where distributors have considerable freedom to choose whether to distribute their products, face a lower legal risk associated with these arrangements. It is important to note that the Fair Trade Act does not distinguish between active and passive sales in its regulatory framework.

Law stated - 4 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

If a supplier imposes restrictions on a distributor's sales territory or customer categories that may hinder market competition, such actions constitute a violation of the Fair Trade Act. Under such circumstance, the Fair Trade Commission has the authority to order the supplier to cease the prohibited conduct, rectify the non-compliance or implement necessary corrective measures within a specified time frame. Additionally, the supplier may face administrative fines ranging from NT$100,000 to NT$50 million (around US$3,030 to US$151,515).

Should the supplier fail to comply with the Commission's order within the designated period, the Commission may issue further directives for compliance and impose additional fines ranging from NT$200,000 to NT$100 million (around US$6,060 to US$3,030,300) for each instance of non-compliance until the unlawful conduct is terminated, rectified or appropriate corrective measures are taken. Suppliers who do not comply with the Commission's orders and the repeated violators may face criminal liability may be subject to criminal liability, which could result in imprisonment for up to two years, detention or fines of up to NT$50 million, or both. Furthermore, if a supplier's violation causes harm to others – such as competitors or consumers – the supplier may be held liable for damages in accordance with the Fair Trade Act. In cases of intentional violations, compensation may be determined based on the severity of violations, but it will not exceed three times the proven amount of damages.

Law stated - 4 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

A supplier may impose restrictions on distributors or cooperative e-commerce platforms regarding the resale of distribution products outside designated regions, provided that such restrictions are justified by legitimate reasons and do not hinder market competition. Under these circumstances, the supplier is entitled to require the distributor to pay "invasion fees" or similar amounts payable by the distributor to the distribution partner as stipulated in the distribution agreement.

Conversely, if this practice constitutes a violation of the Fair Trade Act due to potential anticompetitive concerns, the Taiwan courts' opinions suggest that while the supplier may incur administrative penalties (primarily in the form of administrative fines), this does not automatically render the relevant contractual clause null and void. Therefore, the provision in the distribution agreement that mandates the distributor to pay invasion fees or similar amounts may still be enforceable.

Law stated - 4 February 2026

21 May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

Distributors or agents that impose restrictions on suppliers' sales of products or services to specific areas via e-commerce intermediaries may be classified as "the conduct restricting the business activities of the counterparty as a condition of trade" under the Fair Trade Act. However, these restrictions are not automatically deemed illegal. They only constitute a prohibited act under the Fair Trade Act if the distributor fails to provide a legitimate justification for the territory restrictions (including the payment of invasion fees or similar amounts) and if they are likely to hinder market competition.

Law stated - 4 February 2026

Refusal to deal

22 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?

Based on the principles of freedom of contract, suppliers generally have the right to determine whether to engage in transactions with specific customers. However, if a supplier qualifies as a "monopolistic enterprise" under the Fair Trade Act – defined as an entity holding a market share of 50% or more in the relevant market – and it refuses to engage in transactions or unjustifiably restricts distributors from transacting with certain customers, thereby directly or indirectly impeding the ability of other enterprises to compete, such actions may constitute a violation of the prohibition against the abuse of monopolistic position as outlined under the Fair Trade Act.

Moreover, even if a supplier does not meet the criteria for a monopolistic enterprise as defined under the Fair Trade Act, if it coerces distributors to refrain from conducting transactions with specific customers with the intent to harm a particular competitor or

prevent that competitor from participating in the market in the future, such conduct may be classified as "boycott" behaviour, which is prohibited under the Fair Trade Act.

Law stated - 4 February 2026

Competition concerns

23 Under what 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 relationship does not qualify as a merger under the Fair Trade Act unless there is a formal establishment of a "regular joint operation" between the parties. This can occur through the formation of a joint venture or the execution of a joint operation contract, or through an "entrusted operation", where the entire business is delegated to a trustee enterprise for management. Furthermore, if there is no control or subordinate relationship between the supplier and distributor – meaning that neither party possesses the ability to directly or indirectly control the business operations or personnel decisions of the other – then a merger is not constituted, and there is no obligation to submit a merger filing to the Fair Trade Commission in this context.

Law stated - 4 February 2026

24 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?

In the absence of a legitimate justification, a supplier that restricts resale prices of products by distributors through contracts or other means, unjustly limits the sales territories of distributed products or prohibits distributors from selling products to specific businesses, constitutes a violation of the Fair Trade Act. The Fair Trade Commission has the authority to order the supplier to cease such conduct, correct the behaviour or implement necessary corrective measures within a specified time frame. The Commission may also impose fines ranging from NT$100,000 to NT$50 million (around US$3,030 to US$151,515). Failure to ensure compliance by the specified deadline may lead to additional fines of NT$200,000 to NT$100 million (around US$6,060 to US$3,030,300) for each instance of non-compliance until the behaviour is ceased, corrected or appropriate measures are taken.

Furthermore, suppliers who disregard the Commission's orders and the repeated violators may face criminal liability, which could result in imprisonment for up to two years or fines of up to NT$50 million, or both. Additionally, if a supplier violates the Fair Trade Act, thereby causing losses or damage to a third party – including competing businesses and, theoretically, consumers – they may be held liable for damages in accordance with the Fair Trade Act. In cases of intentional violations, compensation can be up to three times the proven damages, depending on the severity of the situation.

Law stated - 4 February 2026

Parallel imports

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

The provisions of the Trademark Act and the Patent Act allow for the parallel importation of genuine goods. However, the Trademark Act also stipulates that the trademark owner (eg, supplier) or an exclusive licensee (eg, distributor or agent) may exert its trademark rights to prevent the deterioration, damage, alteration or modification of goods by unauthorised parties after they have entered the market, or for other legitimate reasons.

Law stated - 4 February 2026

Advertising

26 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 require them to share in its cost of advertising?

Suppliers and distributors are permitted to advertise the products they sell; however, they must adhere to the Fair Trade Act, which prohibits false or misleading representations or symbols in advertisements. Additionally, the Consumer Protection Act mandate that suppliers and distributors ensure the accuracy of their advertising content. Suppliers and distributors' obligations to consumers must align with, or exceed, the representations made in their advertisements.

In the event of a violation, the Fair Trade Commission may issue an order requiring the offending party to cease the misleading conduct, correct their actions, or implement necessary remedial measures within a specified time frame. Violators may face fines ranging from NT$50,000 to NT$25 million (around US$1,515 to US$757,575), with escalating fines of NT$100,000 to NT$50 million (around US$3,030 to US$1,515,151) for repeated non-compliance. Furthermore, consumers have the right to seek damages from suppliers, distributors and their advertisers under the Consumer Protection Act, including punitive damages of one to three times the actual damages based on the degree of fault attributed to the suppliers or distributors.

In line with the principle of freedom of contract, suppliers may allocate all or part of the advertising costs to distributors through contractual provisions, or they may require distributors to share in these advertising expenses.

Law stated - 4 February 2026

Intellectual property

27

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 register their patents and trademarks in Taiwan, thereby securing protection under the Patent Act and the Trademark Act, which safeguards their patents and trademarks from infringement by distributors and third parties. While copyrights and trade secrets associated with the products sold by suppliers cannot be protected through a formal registration system, they are nonetheless afforded protection under the Copyright Act and the Trade Secrets Act based on the principle of reciprocity. To further enhance the protection of supplier's intellectual property rights, suppliers may enter into confidentiality agreements, indemnification clauses and other intellectual property-related provisions with distributors. Additionally, technology transfer and licensing agreements are commonly used in practice.

Law stated - 4 February 2026

Consumer protection

28 | What consumer protection laws are relevant to a supplier or distributor?

According to the Taiwan Consumer Protection Act (CPA), businesses engaged in the importation of goods or services are considered designers, producers or manufacturers of such goods or providers of such services and bear the same liability as manufacturer under the CPA. Therefore, both suppliers and distributors, who are regarded as manufacturers under the CPA, must ensure that their products adhere to safety standards that are reasonably expected based on current technological and professional advancements. In cases where products may pose a risk to the life, health or property of consumers, it is essential that safety warnings and emergency response instructions are clearly marked or labelled on the goods or services provided. Failure to meet these obligations may result in joint and several liability for any damages incurred by affected consumers. Additionally, consumers who sustain damages have the right to seek compensation from suppliers, distributors and their advertisers for false or misleading advertising under the CPA. According to the CPA, consumers can also seek punitive damages ranging from one to three times the amount of actual damages, depending on the degree of fault attributable to the suppliers or distributors.

Furthermore, if the distributed products fall under the categories of regular food or health food, both the Act Governing Food Safety and Sanitation and the Health Food Governing Act strictly prohibit the manufacture, importation or sale of any food items – including finished products, raw materials and additives – that pose a risk to human health. Violators may be subject to civil liabilities, which can include punitive damages of up to three times the actual damages incurred, in addition to potential criminal and administrative penalties. In severe cases, these penalties may include the revocation of business registration and licenses.

Law stated - 4 February 2026

Product recalls

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

Under the CPA, suppliers and distributors must promptly recall products or cease services if there is evidence that they may endanger consumer safety and health. The provisions of the CPA empower authorities to order the recall, improvement or destruction of products within a specified time frame after an investigation, or even without one in emergencies. If necessary, the authority may also require suppliers and distributors to halt the design, production, manufacturing, processing, importation, distribution or provision of services related to the goods, or to implement other necessary measures.

Furthermore, while suppliers and distributors may stipulate in their distribution agreements which party is responsible for executing recalls and bearing associated costs, the CPA prohibits business operators from pre-emptively limiting or exempting their liability for damages to consumers. Consequently, in the event of a product recall, both suppliers and distributors remain jointly and severally liable for any damages incurred by consumers.

For food and health products, the Act Governing Food Safety and Sanitation and the Health Food Governing Act allow authorities to order recalls or confiscation of non-compliant items. In the automotive sector, the Highway Act and the Regulations for Motor Vehicle Safety Investigation, Recall/Correction, Supervision and Management require manufacturers or importers to recall and rectify any sold electric vehicles or automobiles if there is credible evidence indicating a significant risk to driving safety. The competent authority may also issue a recall and correction order within a specified time frame.

Law stated - 4 February 2026

Warranties

30 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?

In accordance with the Civil Code, suppliers and distributors, as sellers, must warrant that the products delivered to distributors and downstream customers are free from any defects that could diminish their value, impair their fitness for ordinary use, or affect their suitability for the purposes outlined in the sales contract. Furthermore, these products must conform to the quality standards guaranteed by the seller. However, it is important to note that while the Civil Code permits suppliers and distributors to exempt or limit their liability for defects in goods provided to distributors and downstream customers, any such exemption or limitation will be deemed null and void if the supplier or distributor intentionally conceals known defects in the products sold. Additionally, the Civil Code explicitly states that liability for intentional misconduct and gross negligence cannot be waived in advance. Therefore, if a supplier or distributor is unaware of defects in the supplied products due to gross

negligence, they will still be liable to compensate the distributor or downstream customer for any losses resulting from the defects.

Law stated - 4 February 2026

Data transfers

31 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?

Pursuant to the Taiwan Personal Data Protection Act (PDPA), any collection of personal data within the jurisdiction of Taiwan is governed by the stipulations set forth in the PDPA. If a supplier and its distributor need to exchange information about the customers and end users, the data collector must, in accordance with the PDPA, inform the data subject of the source of data and other information including the name of the receiving party, the purpose of the collection, the categories of the personal data to be collected, the time period, territory, recipients and methods of which the personal data is used and the data subject's rights under the PDPA and the methods for exercising these rights. Consent from the data subject must be obtained before exchanging this information.

If the aforementioned requirements are met, supplier and its distributor are allowed to exchange the given data but the ownership and rights still belong to the data subject.

Law stated - 4 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

A supplier and its distributor, as holder of personal data, must adopt appropriate security and maintenance measures to prevent personal data from being stolen, altered, damaged, destroyed or leaked, and must take technical and organisational measures to prevent the same, which may include:

- allocating management personnel and reasonable resources;
- defining the scope of personal data;
- establishing a mechanism of risk assessment and management of personal data;
- establishing a mechanism of preventing, giving notice of and responding to a data breach;
- establishing an internal control procedure for the collection, processing and use of personal data;
- managing data security and personnel;
- promoting awareness, education and training;
- managing facility security;

- establishing an audit mechanism of data security;
- keeping records, log files and relevant evidence; and
- implementing integrated and persistent improvements on the security and maintenance of personal data.

Law stated - 4 February 2026

Employment issues

33 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?

There is no explicit restriction under the Taiwan Civil Code. Since there is no employment relationship between a supplier and its distributor's personnel, the provisions concerning severance under the Labor Standards Act do not apply. However, the supplier and its distributor may contractually stipulate within the distribution agreement that the distributor must obtain the supplier's consent for assigning personnel to manage distribution business, and that the supplier's dissatisfaction with such management constitutes grounds for termination of the distribution agreement.

Law stated - 4 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

In general, there is no employment relationship between a supplier and it distributor. A distributor or agent, or its employees, would not be treated as an employee of the supplier, unless the distribution agreement between the supplier and the distributor include "dependency/subordination".

The Taiwan Supreme Court holds the view that "dependency/subordination" includes features of "personal subordination", "economic subordination" and "organizational subordination":

- personal dependency or subordination means that an employee submits to the employer's authority within the corporate organisation of the employer and is obligated to accept the employer's discipline or sanction;
- economic dependency or subordination means the employee, rather than working for their own business, works in subordination to other person for other person's purpose; and
- organisational dependency or subordination means the employee is incorporated into the employer's production system and works in cooperation with colleagues with a due division of labour. Such features are widely different from those of a mandate

contract, under which the mandatory handles matters for a specific purpose and has independent discretion over such matters.

To avoid the perceived dependency or subordination nature of the distribution agreement, a provision may be included specifying the distributor or agent as an "independent contractor". Additionally, to avoid liability for labour law violations, parties can include clauses in the distribution agreement requiring the distributor to warrant compliance with labour laws. If violated, the distributor must indemnify the distributor, its affiliates and its directors, officers and employees.

Law stated - 4 February 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

Under Taiwan law, there are no mandatory provisions regarding commissions. Pursuant to the principle of freedom of contract under the Civil Code, a suppliers and its agent may freely determine the amount, payment method and conditions of commissions in their distribution agreement. However, if the distributor's commissions, bonuses or other economic benefits are primarily derived from referring others to participate, rather than from the reasonable market value of the goods or services promoted or sold, these benefits fall under the Multi-Level Marketing Supervision Act and must be reported to the Fair Trade Commission in advance.

Law stated - 4 February 2026

Good faith and fair dealing

36 | What good faith and fair dealing requirements apply to distribution relationships?

Contractual conduct is primarily governed by civil contract law. Pursuant to the Civil Code, the exercise of rights and performance of obligations must be performed in accordance with the means of good faith.

Law stated - 4 February 2026

Registration of agreements

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

Under Taiwan law, distribution agreements do not require registration or governmental approval to be effective. However, if a trademark or patent licence is included, the intellectual property licence agreements, while effective upon execution by the parties,

must be registered with the Intellectual Property Office, Ministry of Economic Affairs to be enforceable against third parties.

Law stated - 4 February 2026

Anti-corruption rules

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

For private sectors, while there is no specialised law to regulate commercial bribery between businesses, such acts may fall under various criminal offences, including: offences of forging instruments (articles 210 and 215 of the Criminal Code); offences of criminal conversion (articles 335 and 336 of the Criminal Code); offences of fraud (article 339 of the Criminal Code); and offence of breach of trust (article 342 of the Criminal Code). Additionally, an offence of special breach of trust is stipulated under the Securities and Exchange Act, and an offence of improper book keeping is addressed under the Business Entity Accounting Act.

Law stated - 4 February 2026

Prohibited and mandatory contractual provisions

39 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?

In addition to the aforementioned regulations of the Fair Trade Act on "imposing resale restrictions" and "limitation of sales territories or targets", etc, the Civil Code stipulates that the liability for wilfulness or gross negligence is not exempted in advance by contract.

Outside of the above scope, a distributor and its supplier may arrange their own commercial terms of distribution in the spirit of the principle of freedom of contract. For matters not specifically provided for in the distribution agreement, the provisions of the contract of sale and purchase and other relevant chapters of the Civil Code (eg, warranty for defect of goods, rescind of contract, liability for damages for non-performance, etc) will apply.

Law stated - 4 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

Pursuant to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, the formation and validity of a juridical act that results in a legal relationship of obligation is determined by the intention of the parties. Hence, there are no specific restrictions on the choice of governing law for distribution agreements, allowing a supplier and its distributor to freely decide.

Law stated - 4 February 2026

Choice of forum

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

Regarding the choice of courts outside Taiwan, the Taiwan Supreme Court held that parties may contractually agree to the choice of court, provided that:

- the jurisdiction is not exclusive to Taiwanese courts (eg, in matters related to rights in rem, exclusive jurisdiction resides in court for the place where the real property is located);
- the foreign court acknowledges the parties' contractual choice of courts; and
- the foreign court's judgment is recognised by the Taiwan court.

As for the choice of arbitration tribunals, the Arbitration Law gives the parties the right to freely choose the seat of arbitration.

Law stated - 4 February 2026

Litigation

42 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?

In addition to civil and criminal litigation procedures, should a distribution relationship encompass disputes pertaining to intellectual property, such matters may be adjudicated in the Intellectual Property and Commercial Court pursuant to the Intellectual Property Case Adjudication Act. Furthermore, should there be any suspicion that a distribution agreement or the conduct of the contracting parties contravenes the Fair Trade Act, the parties involved may report such conduct to the Fair Trade Commission.

Pursuant to the Company Act, foreign companies, within the limits prescribed by laws and regulations, are entitled with the same legal capacity as a Taiwanese company. A foreign company can be a party to a lawsuit, acting as a plaintiff in its own name to initiate a civil lawsuit or press criminal charges as a victim. However, the protection of copyrights and trade secrets of the foreigner company is contingent on the principle of reciprocity, as

stipulated under the Copyright Act and the Trade Secrets Act. This means that if the foreign company's home country has a reciprocal protection treaty or agreement with Taiwan, or if its laws and regulations protect the copyright and trade secrets of Taiwanese nationals, the foreign company's copyright and trade secrets will be protected as well; otherwise, such protections may not be afforded.

Taiwan lacks a comprehensive "discovery" system such as that of the United States. In civil litigation, both the plaintiff and defendant bear the burden of proof for their respective claims and defences, while the court investigates evidence under its authority. According to the Code of Civil Procedure, if a party asserts that a documentary evidence is in the opposing party's possession, the party must move the court to order the opposing party to produce such document. If deemed appropriate, the court will issue an order compelling the production of the document; refusal to comply without giving a justifiable reason may result in the court accepting the movant's claimed facts as true or imposing a fine. In criminal proceedings, neither the prosecutor nor the defendant is required to disclose evidence obtained or possessed during the investigation; however, after initiation of prosecution, relevant documents are submitted to the court for the defendant and their defence to review. Additionally, in both civil and criminal proceedings, parties may motion for requesting the court to investigate evidence or testimony.

If a distribution relationship involves an intellectual property dispute, and the relevant documents involve trade secrets, the court may, in accordance with the Intellectual Property Case Adjudication Act, issue an order to maintain the secrecy of the trade secrets and the rights of the owners upon the request of the parties or interested parties. Conversely, if the dispute does not involve intellectual property rights in a distribution relationship, but the related documents involve the business secrets or privacy of a party or a third party, the court may, in accordance with the Code of Civil Procedure, restrict or prohibit access to the documents at the request of the parties or interested parties, or by virtue of the court's authority.

The advantage for a foreign business of resolving disputes in the Taiwan court is that, if the defendant's primary assets are located in Taiwan, there is a higher chance that a favourable judgment will be successfully enforced in Taiwan. The disadvantage is that Taiwan is not a signatory to the New York Convention, and whether such favourable judgment rendered by the Taiwan court can be enforced in other countries would depend on the specific jurisdiction's recognition of the Taiwan court's judgment.

Law stated - 4 February 2026

Alternative dispute resolution

43 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?

The parties' agreement to mediate or arbitrate will be enforced by the Taiwan court in accordance with the Code of Civil Procedure and the Arbitration Act, respectively.

Where mediation or arbitration is reached, a settlement transcript or arbitration agreement must be made in writing. In particular, according to the Arbitration Act, the arbitration agreement must contain the subject matter of arbitration (which must be based on a certain legal relationship and must be a settleable dispute) and the arbitration institution. Additionally, it is advisable to stipulate important factors such as the arbitral tribunal, the seat of arbitration or the language of arbitration in the arbitration agreement to avoid disputes, and if not stipulated, the arbitration institution may be allowed to make the decision.

The advantage for a foreign business of resolving disputes in the Taiwan arbitration is that, if the defendant's primary assets are located in Taiwan, there is a higher chance that a favourable arbitration award will be successfully enforced in Taiwan. The disadvantage is that Taiwan is not a signatory to the New York Convention, and whether such favourable Taiwanese arbitration award can be enforced in other countries would depend on the specific jurisdiction's recognition of Taiwanese arbitration awards.

Law stated - 4 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

Recent amendments related to distribution relationships include the following.

On 11 November 2025, President Lai signed the Amendments to the Taiwan Personal Data Protection Act (PDPA) (the Amendments). The effective date of the Amendments remains to be established by the Executive Yuan. The Amendments clarify and expand the powers and responsibilities of the Personal Data Protection Commission (PDPC), enhance oversight of government agencies by requiring them to appoint a data protection officer (a requirement not extended to the private sector), and introduce provisions empowering the PDPC to coordinate and cooperate with central competent authorities and local governments in regulating the private sector. From the perspective of private sector entities, the following changes are particularly noteworthy:

- Article 12 of the Amendments explicitly mandates that data breach incidents meeting specified criteria must be reported to the PDPC. Companies experiencing such breaches are required to implement immediate and effective contingency measures and maintain appropriate records. The specific requirements regarding the content, method, timing, and scope of these reports, as well as the standards for contingency measures and recordkeeping, will be further detailed in subordinate regulations to be promulgated by the PDPC.
- The Amendments maintain the obligation for companies to notify affected data subjects in the event of a data breach. However, companies will no longer be permitted to delay such notification on the basis that the incident is still under investigation or that the company itself did not violate the PDPA in connection

with the incident. Detailed procedures and requirements for notifying affected data subjects will also be established through future subordinate regulations issued by the PDPC.

Additionally, the Company Act was amended on 26 December 2025, to include article 387-1, which is set to take effect six months thereafter. This provision requires that, following the submission of an application for incorporation registration, a company must participate in labour rights seminars conducted either by government agencies at various levels or by non-profit organisations designated by such agencies.

Law stated - 4 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Yes. However, if the foreign entity intends on using the UK as its permanent place of business, it must register itself as an overseas entity with Companies House using form OS IN01 together with a copy of its constitutional documents and latest annual accounts (with a certified translation into English if necessary). Alternatively, the foreign entity supplier could incorporate a subsidiary in the United Kingdom.

Law stated - 1 February 2026

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

Yes. There are few restrictions on foreign ownership of companies in the UK. The National Security and Investment Act 2021 does however allow the government to scrutinise and potentially prevent foreign investment that may pose risks to national security.

Law stated - 1 February 2026

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?

A private limited company is the most common and best suited type of company.

A private limited company must be registered at Companies House (which can be done online) and must have at least one director and one shareholder. It is also required to have a memorandum of association and articles of association, and should be registered with HMRC (the tax authority).

Law stated - 1 February 2026

Restrictions

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, other than know-your-customer compliance obligations.

Law stated - 1 February 2026

Equity interests

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

Yes. The main risk to consider when doing so is whether this raises any competition issues.

Law stated - 1 February 2026

Tax considerations

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?

Corporation tax will apply to a UK company's profits. Interest or royalties paid to non-UK residents will be subject to withholding tax. Goods and services sold in the UK may be subject to value added tax. If a foreign owner holds UK property through a company, they will need to comply with the register of overseas entities.

Law stated - 1 February 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 | What alternative distribution relationships are available to a supplier?

The alternative distribution relations available to a supplier are as follows.

- Direct supply – where a manufacturer or producer delivers goods or services directly to the end customer without any intermediaries. This means the company handles all aspects of the distribution process, from inventory management to order fulfilment and delivery. This approach allows for greater control over the distribution process and can help build stronger customer relationships.
- Exclusive distribution – where the supplier appoints one distributor for the territory or a specific customer group and is restricted from appointing other distributors or making direct sales within that territory or specific customer group.
- Non-exclusive distribution – where the supplier can allocate distribution rights with respect to a territory or group of customers without any restrictions.
- Selective distribution – where the supplier controls how its products are sold by choosing specific distributors that meet certain criteria. This approach ensures that products are only sold through approved dealers who have the necessary knowledge, expertise or retail environment to maintain the brand's standards.

Law stated - 1 February 2026

Legislation and regulators

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?

The Commercial Agents (Council Directive) Regulations 1993 (CARS) continue to apply post Brexit and is the principal legislation in the UK that regulates commercial agency. Under CARS, commercial agents are defined as self-employed intermediaries who have a continuing authority to negotiate the sale or purchase of goods on behalf of another person (the principal), or to negotiate and conclude the sale or purchase of goods on behalf of and in the name of that principal.

A distribution agreement is at risk of infringing UK competition law if it has the object or effect of restricting competition and is capable of affecting trade within the UK. The Competition and Markets Authority is responsible for enforcing UK competition law. Post Brexit, the UK replaced the Retained Vertical Agreement Block Exemption with the Vertical Agreement Block Exemption Order 2022.

Law stated - 1 February 2026

Contract termination

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?

Generally, no. When no notice period is specified in the contract, courts will typically require that a reasonable notice period be given. What constitutes "reasonable" can depend on various factors, such as the length of the relationship, the nature of the business and the time needed for the distributor to find a new supplier.

Further, in the absence of a specified notice period, the principle of good faith and fair dealing may require that termination is carried out in a manner that is fair and not arbitrary.

Law stated - 1 February 2026

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

Yes. Commercial agents have a right to compensation for damages suffered as a result of termination of a contract where the agent is deprived of the commission or has not enabled the agent to pay off the costs incurred when winding down the contract (the commercial agent has one year to pursue their entitlement).

Law stated - 1 February 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

UK courts tend to not interfere with the contractual freedom of the parties. Therefore, a clause prohibiting or restricting the transfer of the distribution rights to the supplier's products to a third party would most likely be enforced. It is worth nothing that in practice, the latter is more common. It is less common to include a clause that outright bans changes in ownership of the distributor or the transfer of its business to a third party. More typically, the supplier retains the right to terminate the agreement if there is a change of control or business transfer of the distributor that occurs without the supplier's consent.

Law stated - 1 February 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Generally, there are no specific restrictions. However, to avoid being considered unreasonable, the scope and duration of confidentiality obligations should be evaluated in relation to the length, geographical area, and nature of the distribution agreement.

Law stated - 1 February 2026

Competing products

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

During the term of the relationship, non-compete clauses are generally enforceable provided they comply with the 'safe harbour' rules of the UK Vertical Agreement Block Exemption Order 2022 (VABEO).

Law stated - 1 February 2026

Prices

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

No. This would be deemed to be pricing fixing and a breach of UK competition rules. The Competition and Markets Authority (CMA) is the regulatory body responsible for issuing infringement decisions and has fined suppliers for this conduct in the past.

Law stated - 1 February 2026

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?

Recommending prices is common, but any practice that has the indirect effect of fixing prices will be likely deemed to a breach UK competition law.

Law stated - 1 February 2026

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?

It is acceptable to require that a distributor does not charge "excessive prices" and pegging prices may be acceptable, provided that the outcome is to keep prices low for customers.

Law stated - 1 February 2026

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, this is acceptable, but must there must be objective criteria (eg, not rewarding distributor 1 with lower prices because it follows the recommended retail price (RRP), and distributor 2 does not).

Law stated - 1 February 2026

Geographic and customer restrictions

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

The agreement may specify particular territories and customer categories (ie, in exclusive distribution systems). However, it is crucial to differentiate between active sales (eg, placing ads aimed at customers outside the designated territory) and passive sales (eg, accepting orders from customers outside the designated territory). A supplier can only restrict active sales. Consequently, even in exclusive distribution systems suppliers cannot guarantee absolute protection. A common issue for suppliers lies in the fact that most online activities

are deemed "passive", and outright bans on internet use breach UK competition law. These issues require careful consideration.

Law stated - 1 February 2026

19 | If geographic and customer restrictions are prohibited, how is this enforced?

The CMA is responsible for investigating and enforcing competition law. If a distribution agreement includes prohibited restrictions, the CMA can take action, which may include fines and orders to cease the anti-competitive practices.

Law stated - 1 February 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Outright bans on the use of internet sales are a breach of UK competition law. However, it is possible to exert various controls and restrictions on the use of the internet, particularly from a brand perspective.

Law stated - 1 February 2026

21 | May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

Yes. If a distributor has been granted exclusivity to a territory, they can restrict the supplier from making any active sales through e-commerce intermediaries in within this exclusive territory. However, the distributor must be careful not to fall out of the VABEO safe harbour protection or impose any hardcore restrictions, as these are not generally allowed under competition law.

The distributor may require the supplier to provide reports of such sales by territory if the supplier agrees. Whether a payment of 'invasion fees' will be permissible is fact-specific. If the invasion fees are classified as a penalty on passive sales, this will typically not be permitted under VABEO.

Law stated - 1 February 2026

Refusal to deal

22 | 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?

Subject to any existing contractual obligations, a supplier is generally free to choose which customers they deal with. The main limits to this are anti-discrimination laws and abuse of a dominant position.

A supplier may restrict a distributor's ability to deal with particular customers. In selective distribution systems, the supplier will maintain a greater degree of control over the resale of its products by ensuring that their distributors only supply to approved customers and distributors.

Law stated - 1 February 2026

Competition concerns

23 Under what 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?

CMA clearance is generally not required for distribution and agency agreements as it applies principally to company acquisitions and joint ventures.

However, given the broad definitions of "enterprise" and "common ownership or control" used in UK competition law, when parties (especially affiliated parties) involved in a distribution or agency agreement have a turnover of over £10 million and supply at least 25% of the same goods in the UK, it may be worth seeking specialist advice.

Law stated - 1 February 2026

24 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?

Parties considering selective distribution agreements should ensure that their criteria for approved distributors are necessary, non-discriminatory and proportionate.

The CMA is responsible for enforcing UK competition law. If a private party has suffered a loss due to the infringement of UK competition law and the CMA has already established there has been a breach based on the same infringement, they can participate in a "follow-on action". If the CMA has not yet intervened or an investigation is ongoing, private parties can initiate a 'stand-alone action' in the Competition and Appeals Tribunal or the High Court. Parties can also participate in collective proceedings for both types of actions mentioned above.

Parties may ask for damages for loss caused by the infringement, injunctions to stop the anti-competitive behaviour and that the agreement be declared invalid in its entirety or in part.

Law stated - 1 February 2026

Parallel imports

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

The first way in which a distributor or agent can prevent parallel or 'grey market' imports is by negotiating an exclusive territory.

If products are imported into an exclusive territory without the consent of the distributor/agent and supplier, the sale of these products can be stopped through the enforcement of intellectual property (IP) rights. Under the Trade Mark Act 1994, it is a criminal offence to sell goods bearing a registered trade mark without the trade mark owner's consent. In this scenario the distributor/agent would, however, be reliant on the supplier enforcing their IP rights as they are not themselves the registered owner of the marks, as well as the obligation on the trademark owner to take action against unauthorised importers.

There are also several non-legal methods that brands can employ to mitigate the risks of parallel or grey market imports.

Law stated - 1 February 2026

Advertising

26 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 require them to share in its cost of advertising?

The content of marketing communications is regulated by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

Moreover, all marketing and advertising content must follow the Advertising Standards Agency's UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) or the UK Code of Broadcast Advertising (BCAP Code). In summary, the CAP and BCAP Codes require that all advertisements are accurate, truthful, honest and not misleading.

There are also product-specific regulations that may apply, for example, for alcohol, medicines and cosmetics.

The parties are free to agree advertising cost arrangements.

Law stated - 1 February 2026

Intellectual property

27

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

A supplier may safeguard its IP by registering its patents, trademarks and designs in the territory where the products shall be distributed now or in the future.

The supplier could further protect its IP in the distribution or agency agreement itself.

Technology transfer agreements (including IP licences) are common in the UK.

Law stated - 1 February 2026

Consumer protection

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

In the UK, there is a range of laws that aim to protect consumers from unsafe/unsuitable products, unfair practices and misleading information. These include the Consumer Protection Act 1987, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts Regulations 2013, the Consumer Rights Act 2015, the General Product Safety Regulations 2005 and the Digital Markets, Competition and Consumers Act 2024.

Law stated - 1 February 2026

Product recalls

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

If a product is found to be unsafe, the product importer is under a duty notify the Office for Product Safety and Standards or the local Trading Standards and take corrective actions. If due to the level of risk caused by the unsafe product, a full product recall is required, then the importer may have to give customers a free replacement, repair or refund.

If the distributor is the first person to bring products from outside the UK into the UK market, they will be considered the importer and liable for defective products. Suppliers can also be held liable for defective products even if the distributor is the importer. Identifying who is the importer can be a nuanced exercise and should be evaluated on a case-by-case basis.

The distribution agreement should address who is responsible for carrying out and bearing the cost of a recall.

Law stated - 1 February 2026

Warranties

30 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?

Suppliers may limit the extent of express warranties as they wish and implied warranties, such as those implied under the Sale of Goods Act 1979, the Unfair Contract Terms Act 1977, and the Misrepresentation Act 1967 to the extent permissible by law. If a business-to-business contract is based on standard terms, limitations or exclusions of liability must pass a reasonable test under the Unfair Contract Terms Act 1977 (UCTA). The effect of UCTA on non-standard terms is more limited.

Contracts with consumers include some additional protections that benefit them. Notably, implied terms relating to the quality of the goods or services provided cannot be excluded.

Law stated - 1 February 2026

Data transfers

31 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?

Under the VABEO, as long as neither party's individual market share exceeds 30% and the agreement does not contain hardcore restrictions, suppliers and their distribution partners will be able to freely exchange information (meaning, for example, that a supplier can collect sales information about its products from its distributors).

Law stated - 1 February 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Both suppliers and distributors must comply with the UK General Data Protection Regulation and the Data Protection Act 2018. The basis on which data is collected and processed must be lawful, any data sharing arrangements should be documented and attention to general principles such as data minimisation and ensuring adequate data security should be considered at all stages of a supply chain.

Moreover, the supplier and distributor should be aware of their duties to report data breaches to the Information Commissioner's Office.

Law stated - 1 February 2026

Employment issues

33

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?

This will depend on the terms of the agreement – if the supplier wants such termination rights, they should be clearly set out in the agreement.

Law stated - 1 February 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

This is generally unlikely to be the case; however, it will depend on the relationship between the parties in practice. Factors such as the degree of control exercised by the supplier over the distributor or agent, the extent to which obligations between the parties are mutual and personal performance of the work may be taken into account by the courts in determining the existence of an employer/employee relationship.

If a distributor or agent are found to be employees of the supplier, the supplier becomes liable for all the usual UK employment rights.

The risk of this arising is typically the highest when a supplier chooses to bring services previously provided by a distributor or agent in-house as this may trigger a transfer of employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

To protect themselves, suppliers should negotiate an indemnity from the distributor or agent against any employment related liabilities in the agreement.

Law stated - 1 February 2026

Commission payments

35 Is the payment of commission to a commercial agent regulated?

Yes. This is regulated by the Agency Regulations.

Law stated - 1 February 2026

Good faith and fair dealing

36 What good faith and fair dealing requirements apply to distribution relationships?

There is no statutory duty of good faith. However, distribution agreements are seen by the courts as "relational" and where there is a need, the courts imply a term of good faith to

deal with a contractual lacuna. There is a common law duty called the Branganza Duty, which regulates the exercise of contractual discretion.

Law stated - 1 February 2026

Registration of agreements

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

No. However, it is considered best practice to register any agreement that includes a licence of a registered trade mark, registered design or patent with the UK Intellectual Property Office.

Law stated - 1 February 2026

Anti-corruption rules

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

UK legislators are paying increasing attention to ensuring compliance with legal obligations throughout supply chains. Generally speaking, the risk of the supplier being in breach of the Bribery Act 2010 due to its relationship with their distributor is low.

Law stated - 1 February 2026

Prohibited and mandatory contractual provisions

39 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?

The most significant restrictions on distribution contracts are implied terms.

If a party breaches an obligation that goes to the very core of the contract, a party will always have the right to terminate the contract under common law. If a contract of indefinite duration does not specify a notice period, a reasonable notice period is implied. What is deemed reasonable will vary from contract to contract and will be influenced by factors such as the relationship between the parties and the nature of the contract.

Law stated - 1 February 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

No. There are no restrictions in the UK on the parties' contractual choice of governing law.

Law stated - 1 February 2026

Choice of forum

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

No. In the UK, parties are generally free to choose their preferred courts or arbitration tribunals to resolve contractual disputes.

Law stated - 1 February 2026

Litigation

42 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 parties are free to decide the dispute resolution process in the agreement. This could include a combination of internal escalation processes, various forms of alternative dispute resolution (ADR) such as mediation and arbitration, and ultimately leaving any dispute to the courts of England and Wales.

Depending on the quantum of the claim, proceedings will commence either in a county court or the High Court. Parties should pay careful attention to the applicable civil procedure rules in the court dealing with their dispute as failure to adhere to due process can be sanctioned by the court.

Foreign businesses can (and often do) choose England and Wales as the governing jurisdiction and can expect to be treated in the same way as UK-based businesses when going through the court system. The English court system is held in high regard internationally due to its long legacy of transparency, impartiality and judicial expertise.

The rules on disclosure are set out in the Civil Procedure Rules. Standard disclosure will involve all documents/evidence that is either relied upon by any party or is adverse to the case of either party. If this is insufficient, the court can require a party to provide specific disclosure of certain information. There are, however, exceptions to disclosure, such as the protection of certain privileged documents.

Law stated - 1 February 2026

Alternative dispute resolution

43 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?

An agreement to arbitrate disputes will usually be enforced in England and Wales and recognised under the Arbitration Act 1996. The main limitations on the terms of an agreement to arbitrate are that the subject matter must be one capable of being solved through arbitration and agreement to arbitrate is evidenced in writing.

Arbitration is seen as more cost effective, quick and private than the court system. However, arbitration can be costly and generally very limited scope for appeal.

Law stated - 1 February 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

On 16 May 2024 (before the new Labour government was elected to power), the Department for Business and Trade published an open consultation for deregulating the Commercial Agents (Council Directive) Regulations 1993 (CARs). Within the body of the consultation, the UK government stated that it hoped that deregulation would "simplify the law" and "free businesses to work with each other".

On 13 February 2025, the Department for Business and Trade published its response to its consultation on the deregulation of the CARs. It confirms that the CARs will remain in force without amendment.

Law stated - 1 February 2026

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Summary

GOVERNING LAW AND CHOICE OF FORUM

UPDATE AND TRENDS

DIRECT DISTRIBUTION

Ownership structures

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

Generally, yes, unless the supplier's country, the supplier itself or its principal is the subject of a trade embargo or sanctions. As at December 2025, the countries on the embargo list are the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria. In addition, there are sanctions affecting specified entities, persons and categories of persons relating to the following countries or areas: Afghanistan, the Balkans, Belarus, Burundi, the Central African Republic, the Democratic Republic of the Congo, Iraq, Lebanon, Libya, Mali, Nicaragua, Russia (including some persons in Ukraine and the Crimea region of Ukraine), Somalia, South Sudan, Venezuela, Yemen and Zimbabwe. Russia is also subject to import bans on certain products. The lists of embargoed countries and sanctioned individuals and entities are maintained by the Office of Foreign Assets Control (OFAC) of the US Department of Treasury. For details, see the OFAC sanctions page. There are also certain industries in which foreign ownership is restricted or regulated, either nationally or by certain states, such as defence contracting, banking and alcoholic beverages.

Law stated - 22 January 2026

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

Generally yes, subject to embargoes, sanctions and certain industries. As at December 2025, the countries on the embargo list are the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria. In addition, there are sanctions affecting specified entities, persons and categories of persons relating to the following countries or areas: Afghanistan, the Balkans, Belarus, Burundi, the Central African Republic, the Democratic Republic of the Congo, Iraq, Lebanon, Libya, Mali, Nicaragua, Russia (including some persons in Ukraine and the Crimea region of Ukraine), Somalia, South Sudan, Venezuela, Yemen and Zimbabwe. Russia is also subject to import bans on certain products. The lists of embargoed countries and sanctioned individuals and entities are maintained by the OFAC of the US Department of Treasury. For details, see the OFAC sanctions page. There are also certain industries in which foreign ownership is restricted or regulated, either nationally or by certain states, such as defence contracting, banking and alcoholic beverages.

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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?

Any importer, whether foreign-owned or not, should operate through a form of entity whose liability is limited to the assets of the entity to minimise the risk of the owners' assets being available to satisfy claims for the activities of the business. The most common of these are

the corporation and the limited liability company (LLC). These are formed under state law by filing documents with the chosen US state, and that state's laws will govern the entity as to its internal governance and the relationships among the owners and the entity.

While LLCs are generally more flexible with respect to governance, economic structure and corporate formalities, for a foreign parent a corporation will often be preferable from a tax perspective, depending on the applicable tax treaties between the United States and the foreign parent's home jurisdiction, as well as the tax laws of that jurisdiction, as the corporate subsidiary will effectively "block" the foreign parent from a direct connection to the US tax reporting system and the Internal Revenue Service. If an entity treated as a corporation for US tax purposes is preferred, the entity can be formed either as a corporation, or as a limited partnership or LLC that files an election with the US Internal Revenue Service to be classified as a corporation for US tax purposes, regardless of the actual entity type utilised.

It is worth noting that the federal Corporate Transparency Act (CTA) imposed significant reporting requirements on most US companies, including corporations, partnerships and LLCs, to the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) for each individual beneficial owner of the entity, including the owner's full legal name, date of birth, current residential or business address, and a unique identifying number and issuing jurisdiction from a valid identification document (along with an image of the document), like a passport or driver's licence. A "beneficial owner" is defined as an individual who, either directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25% of the ownership interests of the reporting company. After several back-and-forth court decisions, the US Treasury Department in March 2025 suspended enforcement against US citizens and domestic reporting companies. The rules remain in effect, however, for foreign reporting companies, defined as entities formed under the laws of another country and registered to do business in a US state. Several states are enacting their own versions of the CTA, primarily targeting LLCs, and may have slightly different reporting requirements. For example, New York has beneficial ownership reporting rules for foreign-owned LLCs, the District of Columbia has its own disclosure requirements, South Dakota has reporting requirements for holdings of agricultural land, and other states are considering their own beneficial ownership reporting legislation.

Law stated - 22 January 2026

Restrictions

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

Generally, there are no restrictions, subject to embargoes and sanctions. The lists of embargoed countries and sanctioned individuals and entities are maintained by the OFAC of the US Department of Treasury. For details, see the OFAC sanctions page. There are also certain industries in which foreign ownership is restricted or regulated, either nationally or by certain states, such as defence contracting, airlines, banking and alcoholic beverages.

US states generally do require, if an entity is doing business in the state, that it "qualify" to do business, which involves filing with the state, agreeing to be subject to the jurisdiction of the state, paying certain franchise or other taxes and appointing an agent for service of legal process in the state. The definition of doing business varies somewhat by state and is extremely fact-based, but generally includes the operation of a business facility in the state. Typically, a company that fails to qualify when it is required to do so will not only be subject to ongoing fines and penalties, but will not be entitled to maintain any action or proceeding in the courts of the state. Of course, there are likely to be tax consequences for a foreign business that operates directly in the United States.

Law stated - 22 January 2026

Equity interests

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

Yes, unless the supplier’s country, the supplier itself or the supplier's principal is the subject of a trade embargo or sanctions. The lists of embargoed countries and sanctioned individuals and entities are maintained by the OFAC of the US Department of Treasury. For details, see the OFAC sanctions page.

There are also certain industries in which foreign ownership is restricted or regulated, either nationally or by certain states, such as defence contracting, banking, and alcoholic beverages.

Law stated - 22 January 2026

Tax considerations

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 businesses and individuals are generally subject to federal (national US) income tax on their taxable income that is deemed to be "effectively connected" with a US trade or business (effectively connected income (ECI)) at the normal rates applicable to US persons. Non-US persons must file a US income tax return to report this income and may deduct the expenses of the US business. A foreign corporation that has ECI is subject to an additional 30% US branch profits tax on its after-tax net income. A foreign person is also subject to a 30% US withholding tax on US-source "fixed or determinable annual or periodic" income, which generally includes dividend income. Such tax rates may be reduced by an applicable income tax treaty between the US and the foreign person’s home country.

If a foreign entity provides services in the US, and those services are performed by employees of the foreign entity, the foreign entity will be engaged in a US business. This

means that the foreign entity will have to file a US tax return and report and pay tax on its ECI from those services. Also, if the foreign entity invested in a US operating business treated as a partnership for US tax purposes, either directly or through another entity treated as a partnership for US tax purposes, the foreign entity itself would be required to file a US tax return and pay taxes on its share of any ECI generated by the operating business. In addition, on a sale of the partnership interests in such an operating business by the foreign entity, the purchaser would be required to withhold 10% of the amount realised on the sale or exchange by the foreign entity under US tax law.

To alleviate both the implications of having to file a tax return in the US and the payment of the branch profits tax, the foreign entity could establish a US subsidiary corporation (or LLC, which elects to be classified as a corporation for US tax purposes) to employ the individuals who will perform services in the US or to hold the foreign parent's investment in a US operating business. The US subsidiary would file a US tax return and would be subject to US tax at regular US corporate income tax rates on the income generated by the US business, less its business expenses. If the US subsidiary makes any distributions to the foreign parent out of its earnings and profits during the time that it was operating or holding an investment in a business in the US, the distributions would be subject to a US dividend withholding tax at a rate of 30% (or any lesser rate provided in an applicable income tax treaty between the US and the foreign entity's home country). When the US subsidiary sells its US business or its investment in a US business, the US subsidiary would be subject to US tax on any net gain realised on the sale. However, it could then fully liquidate and distribute the proceeds from its business or its investment to its foreign parent, and that liquidating distribution would not be subject to US withholding taxes. Accordingly, a foreign business or individual can avoid a second level of US tax (ie, branch profits tax or dividend withholding tax) on its US business or its investment in a US business if it makes its investment through a wholly owned US corporation (or LLC, which elects to be classified as a corporation for US tax purposes), and the US corporation does not make any distributions to the foreign parent until it fully liquidates.

However, depending on the tax rules of the jurisdiction where the foreign business is located and the structure of the foreign company, it may be preferable to structure the US subsidiary as a US partnership that elects to be treated as a corporation for US tax purposes. This structure will have the same US tax benefits of investment through a US corporation as discussed above and may also allow the investing company or its equity owners to receive a tax credit in its local jurisdiction for the US corporate taxes paid by the US subsidiary. Often, income tax treaties between the US and other countries can affect the preferred structure and offer opportunities to reduce the total tax burden from a foreign business's US operations.

Law stated - 22 January 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships

7 | What alternative distribution relationships are available to a supplier?

The options for distribution, for the most part, are limited only by the creativity of the business people structuring the relationship. The most common are discussed below.

Direct distribution

Distribution by the foreign supplier using its own employees or through a subsidiary.

Commercial agents and sales representatives

The agent does not purchase or take title to the goods, but rather sells them on behalf of the foreign supplier and receives a commission. Matters such as who actually delivers the product, who generates the invoice, how risk of non-payment is shared and other logistical matters may be addressed by contract, together with a definition of each party's duties and how the relationship may be terminated.

Independent distributors

The supplier contracts with an independent distributor that buys goods from the supplier, taking title to those goods, and resells them at a profit to its own customers. The details of the relationship, including the responsibilities of each side and the parties' rights to terminate, are defined by contract.

Franchising

Franchising, under the typical definition, amounts to the use of independent distributors who: (1) are licensed to use the supplier's trademarks, either in the business name or in the products sold; (2) are required to follow a prescribed marketing plan or method of operation; and (3) pay a franchise fee to the supplier. (Under New York law, a franchise exists when either of the first two elements is present, and a franchise fee is paid.) The specific definition and the consequences of being deemed a franchise vary from state to state. In many US states, franchises are regulated in one, or both, of two ways. First, many states and the Federal Trade Commission (FTC) require disclosure documents in a prescribed format to be provided to the prospective franchisee and, in some states, to be registered with the state. Second, some states regulate the substance of the relationship between the franchisor and the franchisee in various ways, most notably by restricting the franchisor's right to terminate or not renew the relationship except for statutorily defined good cause, often requiring a specified period in which the franchisee may cure any default. States that regulate franchising often require franchisors to submit to jurisdiction and appoint an agent for service of process in the franchisee's state.

Joint ventures

A joint venture can be established by a foreign supplier with its distribution partner in the US, whether the partner is an agent, distributor or franchisee, by having the local distribution entity owned in part by the supplier, directly or through a subsidiary, or through another form of sharing of profits and expenses. An ownership interest can provide greater

control through ownership rights and representation on a board of directors or management committee.

Licensing of manufacturing rights

A foreign supplier may license a US manufacturer to use its intellectual property – patent, copyright, trademark or trade secrets – to make its products locally and sell them. While all the implications of licensing intellectual property are beyond the scope of this chapter, care must be taken by the licensor to maintain quality control over the finished product and the use of the intellectual property. Failure to provide for adequate licensor quality control, called a "naked licence", can not only put the brand equity at risk, but it also risks the loss of trademark protection.

Private label

Distribution of products under a private label amounts to a reverse licensing arrangement where a US distributor or retailer distributes the foreign supplier's products under the US business's own trademark. In essence, the supplier gives up its own brand name in exchange for the distribution strength of its US partner, with the supplier reaping no enhanced brand value. Control over sales, distribution, marketing and advertising are in the hands of the local brand owner, resulting in negligible distribution costs to the supplier and virtually no control, save perhaps for sales and performance benchmarks in the contract, with benefits to the supplier limited to its profits on sales of the product.

Law stated - 22 January 2026

Legislation and regulators

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?

By and large, the relationship between the supplier and its distribution partner is governed by contract, which the parties are free to structure as they wish. Notable exceptions are: (1) business franchises, which are regulated by federal disclosure requirements and by various state disclosure, registration and relationship laws; and (2) federal and state laws governing certain industries, which can regulate the right of a supplier to terminate a distribution relationship, among other aspects of the relationship. There are federal laws governing automobile dealers and petroleum products retailers (petrol stations). Many states have similar laws for those industries, and there are state laws governing beer, wine, and spirits, farm equipment and occasionally other industries. (Understanding the laws and regulations governing businesses and individuals in the US is complicated by the fact that there is regulation at the national, federal level, and at the state level by each of the 50 US states, Washington, DC, and US territories and possessions, such as Puerto Rico, the US Virgin Islands and Guam.)

Many industries have adopted codes of conduct applicable to companies in the industry, which suppliers often incorporate into their distribution agreements so they become part

of the contract. (Some companies incorporate similar codes of conduct that they have adopted individually.) Such codes of conduct that have been incorporated into contracts by reference are enforceable just like any other contract provision.

Law stated - 22 January 2026

Contract termination

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 parties' freedom to contract generally governs the distribution relationship, including the parties' right to terminate or not to renew the relationship without cause or for specified reasons. However, some states' laws restrict the ability of franchisors, and of suppliers in certain industries, to end a relationship. Where a statutory restriction exists, it often prohibits termination without good cause, just cause or a similar formulation. This cause is often narrowly defined and typically does not include poor performance, but often does include a material failure to comply with reasonable contractual requirements, which makes clearly drafted and substantively reasonable contractual performance standards important. Moreover, many states require that, before termination occurs, the franchisee or distributor be given a specified period of time – often 60 or 90 days – in which to cure any deficiency or breach. The statutory "good cause" requirements typically, but not universally, apply equally to a failure to renew a contract on expiration.

In the absence of such a statute, however, there is generally no restriction on the parties' ability to agree on the conditions for termination with or without cause. Where there is no applicable statute and no agreement, or no contractual provision regarding termination, state law may imply requirements for reasonable notice or a reasonable time to recoup investments made by a distributor before permitting a termination without cause.

Law stated - 22 January 2026

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

When an applicable statute restricts termination without good cause or where a termination violates a contract's terms, the wrongfully terminated distributor may recover damages and, in some cases, may be able to obtain injunctive relief preventing termination. (The requirements for injunctive relief vary from state to state, but typically require irreparable harm that is not adequately compensable with money damages. This is often interpreted to mean a likely inability for the business to survive in its current form.) Where damages are to be awarded, the amount will vary from state to state and usually is not defined by any specific formula or multiple of profits or sales, although such formulas or multiples are sometimes included in contracts as a form of liquidated damages. Often the damages will be defined as the fair market value of the distributor's business in the terminated product lines (ie, what a willing buyer and a willing seller, neither under compulsion to deal, would

agree on for the price of the business). Damages may also be calculated as the net present value of the profits that would be earned by the distributor in the absence of termination. In the absence of an applicable statute, damages will not be assessed for a proper termination that conforms to the contract.

Law stated - 22 January 2026

Transfer of rights or ownership

11 Will your jurisdiction enforce a distribution contract provision prohibiting or restricting 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?

In general, yes. However, there may be specific federal and state laws applicable to certain industries (such as alcoholic beverages and motor vehicle fuel) that limit a supplier's ability to prevent transfers of ownership, or otherwise affect the enforceability of such provisions. For example, while the federal Petroleum Marketing Practices Act (PMPA) restricts the ability of a supplier of motor vehicle fuel to terminate or fail to renew a retail dealer's franchise, it does not restrict supplier limitations on the transfer of the franchise. Many states have enacted laws that supplement the PMPA by regulating how a transfer of franchise rights may be restricted. For example, Maryland law prohibits unreasonably withholding consent to any transfer of a motor fuel marketing agreement.

Law stated - 22 January 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

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

Confidentiality agreements are generally enforced as written, subject to normal contract defences, such as fraud or unconscionability, and subject to the obligation to disclose information in legal proceedings and government investigations. US courts have broad disclosure requirements, and the presence of a confidentiality provision will not shield information from discovery if it is material and necessary in the prosecution or defence of an action. While courts disfavour protective orders to maintain the confidentiality of information filed with the court, they can be obtained where necessary to protect competitively valuable information or in other cases where good cause can be shown, particularly where the parties to a litigation can agree. Confidentiality agreements between litigating parties are not unusual as a means of protecting sensitive information provided in discovery.

Information disclosed to government agencies may be subject to public disclosure under federal or state freedom of information laws, although there are exceptions, and protection of sensitive information should be discussed with the government prior to disclosure. Parties often want to include in confidentiality agreements a provision calling for advance

notice and cooperation from the party being compelled to disclose, to the extent permitted, prior to making a disclosure required by law, so that the party whose sensitive information may be disclosed can seek appropriate protection. Parties should recognise, however, that the Securities and Exchange Commission has taken the position that agreements restricting disclosure or requiring notice to other parties either before or after disclosure are unlawful. It has required in settlement orders an affirmative disclaimer of any limitations on disclosures to government agencies of possible misconduct or in response to any government investigation. Other government agencies may similarly view advance notice as inappropriate, even if not actually prohibited, and the giving of such notice may prejudice a party's position vis-à-vis the agency. It thus may be prudent to exclude government requests for information and responses to such requests from the restriction on disclosure and the advance notice requirement.

Confidentiality agreements in the US typically exclude from protection information that the receiving party can demonstrate:

- was already known to the receiving party at the time of disclosure;
- became public without fault of the receiving party;
- was developed independently by the receiving party without reference to confidential information of the disclosing party; or
- was learned by the receiving party from a third party not owing any obligation of confidentiality to the disclosing party.

Where the information to be protected is not in fact confidential, as in these situations, a court may not enforce the agreement.

Trade secrets (ie, information that is not generally known and provides a competitive advantage to the owner) will be protected from disclosure or misappropriation where the owner has taken appropriate steps to maintain confidentiality, including obtaining written confidentiality agreements from all employees and others to whom the information is disclosed.

Law stated - 22 January 2026

Competing products

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

In the absence of market power, a supplier generally is free to restrict a distributor's sales of competing products, although some state laws limit this ability. Where exclusive dealing requirements are so broad as to foreclose a substantial portion of the market, they may be found unlawful as an unreasonable restraint of trade under the antitrust (competition) laws. Restrictions that extend beyond the term of a distribution agreement are disfavoured in some states and generally must be ancillary to the contract and in furtherance of its lawful purposes, as well as reasonable as to the products restricted, the geographical scope of the restriction and the duration. Where a supplier provides a turnkey operation, as in a classic franchise, and discloses all the details of how to operate the business, such post-term

restrictions may be more broadly permitted, particularly if they are short in duration and cover a limited geographical area.

In 2024, the Federal Trade Commission (FTC) adopted a broad prohibition on non-competition restrictive covenants. Litigation ensued, and the FTC ban was enjoined from enforcement. Under the Trump administration, the FTC has shifted to a policy of targeted enforcement of non-compete agreements on a case-by-case basis, particularly in industries like healthcare. Some states have adopted restrictions on when non-competition covenants may be enforced, particularly in the employment context. Businesses should seek advice as to the enforceability of such restrictive covenants in each state where they wish to impose them.

Law stated - 22 January 2026

Prices

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

In general, US antitrust laws, such as section 1 of the Sherman Act, in the absence of monopoly power, address concerted action, not unilateral conduct. Thus, if the supplier itself is making the sale, as is the case with owned outlets, a controlled subsidiary or, in most jurisdictions, through a true agent who arranges sales but never takes title to the product, the pricing is unilateral and usually not problematic. However, an agreement between independent entities in which the supplier regulates the resale prices of a distributor, franchisee or licensee raises antitrust concerns. Even in the case of a purported unilateral policy (eg, an announced supplier policy to deal only with retailers that maintain the manufacturer's suggested resale price), care must be taken to enforce the policy strictly. Lax enforcement together with ultimate compliance by the customer can be construed as evidence of a resale price maintenance (RPM) agreement rather than mere establishment of a unilateral policy.

In 2007, the US Supreme Court held, in *Leegin Creative Leather Products, Inc v PSKS, Inc*, that all vertical agreements (ie, agreements between the buyer and seller), even with respect to resale prices, are judged under federal law by the rule of reason, under which the court must determine whether the anticompetitive harm from the conduct is outweighed by the potential competitive benefits, rather than by the per se rule, which makes conduct unlawful without regard to any claimed justifications. In*Leegin*, the Supreme Court noted a variety of situations in which such RPM may be anticompetitive, and suggested several factors relevant to the rule of reason inquiry, including the number of suppliers using RPM in the industry (the more manufacturers using RPM, the more likely it could facilitate a supplier or dealer cartel), the source of the restraint (if dealers are the impetus for a vertical price restraint, it is more likely to facilitate a dealer cartel or support a dominant, inefficient dealer) and where either the supplier or dealer involved has market power.

Importantly, the states do not always follow federal precedent in enforcing their own antitrust laws and so may not follow *Leegin*. Indeed, some states have antitrust statutes that explicitly bar RPM programmes. Thus, some state authorities will apply the per se rule to RPM under state law and deem it unlawful regardless of claimed procompetitive effects. The

result is a patchwork of states accepting or rejecting the *Leegin* approach in enforcing state antitrust laws. Consequently, before implementing any RPM programme, counsel must carefully examine each relevant state's treatment of RPM, especially as state law continues to develop, review all the facts and determine whether any of the factors described by the Supreme Court in *Leegin* are present or whether there are other indications that the proposed programme will have anticompetitive effects rather than enhancing interbrand competition.

Law stated - 22 January 2026

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?

It is lawful in the US for a supplier to suggest resale prices so long as there is no enforcement mechanism and the customer remains truly free to set its own prices. In addition, under the rule announced in 1919 by the US Supreme Court in *United States v Colgate & Co*, a supplier may establish a unilateral policy against sales below the supplier's stated resale price levels and unilaterally choose not to do business with those that do not follow that policy, because only *agreements* on resale pricing may be unlawful, at least in the absence of market power. But care must be taken not to take steps that would convert such a unilateral policy into an agreement. When a supplier's actions go beyond mere announcement of a policy, and it employs other means to obtain adherence to its resale prices, an RPM agreement can be created. Colgate policies can be notoriously difficult to administer in practice because salespeople often try to persuade a customer to adhere to the policy instead of simply terminating sales upon a violation (with the resulting loss of sales to the salesperson), and such efforts can be enough to take the seller out of the Colgate safe harbour and into a potentially unlawful RPM situation.

Minimum advertised price (MAP) policies that control the prices a supplier advertises, but not the actual sales price, are also generally permitted, although the issue of what constitutes an advertised price for online sales can have almost metaphysical dimensions. To avoid classification as RPM, the MAP policy must not control the actual resale price but only the advertised price. The closer to the point of sale that advertising is controlled, the greater the risk. Thus, in the bricks-and-mortar world, policies restricting advertising in broadcast and print media are more likely to be permitted; restrictions on in-store signage would be riskier, and restrictions on actual price tags on merchandise most likely would be deemed a restriction on actual, rather than advertised, price. Online, sellers have most often restricted banner ads and the price shown when an item is displayed. Restrictions on the price shown once a consumer places an item in his or her shopping cart carry a greater risk, which explains why some items are displayed with the legend "Place item in cart for lower price". Where the supplier does not prohibit an advertised price inconsistent with the supplier's policy, but instead, as part of a cooperative advertising programme, conditions reimbursement of all or a portion of the cost of an advertisement on compliance with a supplier's MAP policy, the risk is reduced, although not eliminated.

Law stated - 22 January 2026

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?

In general, yes. Most favoured customer clauses are widespread, and courts generally have applied the rule of reason and found that they do not unreasonably restrain trade.

In 2010, however, the US Department of Justice filed an action in federal court in Michigan against health insurer Blue Cross Blue Shield (BCBS), claiming its use of these clauses thwarted competition, in violation of antitrust laws. The Department asserted that, because of its market power, BCBS harmed competition by requiring hospitals to agree to charge other insurers as much as 40% more than they charged BCBS. (The case was voluntarily dismissed by the Department of Justice after the state of Michigan passed a law prohibiting health insurers from using most favoured customer clauses.) In the *Apple e-books* case, a federal district court found that a most favoured customer provision in Apple's contracts with publishers that required the publishers to lower the price at which they sold e-books in Apple's store if the books were sold for less elsewhere – notably by Amazon.com – violated the antitrust laws. The decision was affirmed on appeal by the US Court of Appeals for the Second Circuit. Apple sought Supreme Court review; however, the Court declined to review the decision.

The presence of most favoured customer clauses may also lead a supplier to reject an otherwise attractive offer from a customer to take surplus inventory at a lower price, because the discounted price would have to be offered to all customers with a most favoured customer clause. Other perceived potential anticompetitive consequences of most favoured customer clauses may include a tendency to foster price uniformity or to disfavour smaller businesses. Contract drafters should therefore examine whether a most favoured customer clause raises antitrust risks in the context of their client's particular market share and pricing practices, with particular caution advisable where market power is present.

Law stated - 22 January 2026

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?

Yes. The federal Robinson–Patman Act (RPA) prohibits, with certain exceptions, price differences (as well as discrimination in related services or facilities) in contemporaneous interstate sales of commodities of like grade and quality for use or resale within the US that causes antitrust injury. The basic principle is that big purchasers may not be favoured over small ones. The RPA also requires promotional programmes to be available to customers on a proportionally equal basis. The Act does not apply to services, leases or export sales.

The statute is often criticised, and in the past has been honoured more in the breach than the observance, as quantity discounts are commonplace and government enforcement actions were rare. Some critics – including the congressionally created Antitrust Modernization Commission – have recommended repeal of the RPA, arguing that the law discourages price discounts and harms consumers. Others have advocated narrower reforms intended to harmonise the RPA with the pro-consumer goals of the other antitrust laws.

In July 2021, however, President Biden issued an Executive Order on Promoting Competition in the American Economy directing the FTC to rely more heavily on the RPA as a mechanism to police discriminatory supplier pricing practices in retail markets by local and regional food enterprises. In 2022, the FTC showed renewed interest in the RPA in a policy statement highlighting the RPA as a tool for addressing high pharmaceutical prices. And recently, on 12 December 2024, the FTC filed its first RPA enforcement action in almost 20 years when it sued Southern Glazer's Wine & Spirits, the largest distributor of wine and spirits in the US for RPA violations in the retail sale of wine and spirits. Soon after that, on 17 January 2025, the FTC brought a similar action against PepsiCo, Inc., asserting that PepsiCo, the second largest food company in the world, illegally engaged in price discrimination by providing Walmart with unfair pricing advantages, while raising prices for competing retailers and customers. In May 2025, The FTC dismissed the lawsuit against PepsiCo without prejudice. However, a federal district court denied a defence motion – which the FTC opposed – to dismiss the Southern Glazer's action in April 2025. The FTC's continued prosecution of the Southern Glazer's action may signal a willingness by the new administration to pursue RPA enforcement.

Regardless of what may happen with government RPA enforcement, private damage actions are still brought with some frequency, although the requirement of showing antitrust injury is often an obstacle to success. To prevail under the statute, a plaintiff must show that the price difference had a reasonable possibility of causing injury to competition or competitors in the same market or in the downstream market where favoured and disfavoured customers compete. The risk of private actions was highlighted by the filing in December 2025 of a federal class action based in large part on the FTC's dismissed action, against PepsiCo and Walmart. While not brought under the RPA, the suit charges them with a vertical price-fixing agreement to provide preferential pricing to Walmart at the expense of other retailers, elevating costs to consumers who bought PepsiCo products from other sellers.

There are two principal defences to an RPA claim. The first requires a showing that the price difference was justified by cost differences. This defence, however, is notoriously difficult to establish, requiring detailed data as to the cost differences applicable to the different sales at different prices. Second, under the "meeting competition" defence, prices may be lowered to meet (but not beat) a competitor's price, where there is a good faith basis for believing the competitor actually made a lower offer. If a copy of the competitor's invoice or price quotation cannot be obtained, the company should gather as much information as possible to support the belief that the competitor offered the lower price. The lower price must not, however, be confirmed with the competitor, which could provide evidence supporting a horizontal price-fixing conspiracy by the suppliers. Rather, the supplier should obtain that information through other sources, such as customer documentation or market surveys.

There also are state laws that restrict price discrimination. Some are generally applicable and modelled on the RPA, but apply to intrastate sales instead of or in addition to interstate sales. Others restrict locality discrimination (ie, charging different prices in different parts of a state). Some states, such as California, have unfair competition laws that prohibit below-cost pricing (which in certain circumstances may also violate federal law) and the provision of secret and unearned rebates to only some competing buyers. Other state laws

apply to specific industries, such as motor vehicles or alcoholic beverages, and prohibit discrimination in pricing to dealers.

Law stated - 22 January 2026

Geographic and customer restrictions

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

As a general rule, yes. Non-price vertical restraints are judged by the rule of reason in the United States and are generally permitted, in the absence of market power. Customer and territory restrictions, such as exclusive territories, pursuant to which a distributor is allocated a specific territory outside of which it may not sell and within which no other distributor may sell the supplier's goods, thus are governed by the rule of reason. Exclusive territories necessarily reduce intrabrand competition between distributors of the same products. But by eliminating a competing distributor that could 'free-ride' on the promotional and service efforts of another and undercut its price, and thus making it feasible for the remaining distributor to sustain those efforts, exclusive territories can enhance interbrand competition between suppliers of competing products, and so are generally viewed as pro-competitive on balance.

The distinction between active and passive selling applicable in Europe is not generally relevant under US antitrust law. Another distinction from the European approach is that restrictions on online sales are viewed as a non-price vertical restraint and so are judged by the rule of reason and generally permitted, in the absence of market power. Courts have upheld prohibitions on mail order and telephone sales under the rule of reason, and restrictions on internet sales – even an absolute prohibition – should be judged no differently.

However, customer allocation by competitors is a horizontal arrangement rather than a vertical one and is per se illegal. It is thus critical that the impetus for exclusive territories come from the supplier in a vertical arrangement and not from dealers or distributors making a horizontal allocation of territories.

Many US cases apply a 'market power screen' in rule of reason cases, and uphold non-price vertical restraints whenever the defendant lacks market power. These restraints, including exclusive territories, will be viewed more sceptically if market power exists.

Law stated - 22 January 2026

19 If geographic and customer restrictions are prohibited, how is this enforced?

Like most competition laws in the US, the geographic and customer restrictions, to the extent they may violate the law in some circumstances, may be enforced by federal or state antitrust authorities or challenged by a private party claiming to have suffered harm

as a result. While horizontal antitrust violations may be the subject of criminal enforcement actions in some circumstances, it would be highly unusual for non-price vertical restraints to be the subject of criminal proceedings.

Law stated - 22 January 2026

Online sales

20 | May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Restrictions on online sales are a non-price vertical restraint, judged by the rule of reason and generally permitted, in the absence of market power. Courts have upheld prohibitions on mail order and telephone sales under the rule of reason, and restrictions on internet sales – even an absolute prohibition – should be judged no differently.

Law stated - 22 January 2026

21 | May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

The inherently borderless nature of e-commerce means that e-commerce sales, if permitted or secondarily sourced, may well adversely affect distributors into whose exclusive territories e-commerce sales are made, and may benefit distributors who have distribution centres of e-commerce intermediaries located in their territories from which sales are made to the territories of other distributors. These disproportionate effects may be dealt with in the contract by having the distributor that benefits from out-of-territory sales by an intermediary in its territory pay an "invasion fee" or similar payment to the distributor into whose territory the sales are made, or by having the supplier make the payment to the infringed distributor. Of course, this requires a determination of the number of "transferred" sales made by the intermediary. If reporting of those sales can be obtained, then the determination is easy. There is no legal prohibition on requiring such reports, but not all e-commerce intermediaries may be willing to provide them. In the absence of such reports, some kind of estimate is needed, perhaps based on relative non-e-commerce sales volumes in the territories. Again, the fundamental freedom to contract applies, and such determinations are permitted and becoming more common.

Law stated - 22 January 2026

Refusal to deal

22 | 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?

In general, a business that does not have market power is free to choose its customers and do or not do business with whomever it wishes. This can include restricting a distributor's ability to do business with particular customers or classes of customers, a vertical restraint that will be judged by the rule of reason. A supplier with market power will be more limited in its ability to engage in such practices if an adverse effect on competition can be shown. In certain circumstances, courts have found that a monopolist may have an obligation to deal, or to continue dealing, with its competitors.

An agreement among competitors at the same level of distribution not to deal with certain customers, or to restrict with whom customers may deal, will be treated as a horizontal and per se illegal restraint rather than as a vertical restraint governed by the rule of reason. Thus, where a restriction on dealing with certain customers originates with a group of competing distributors, a supplier may be at risk of being found to be an illegal participant in that horizontal conspiracy, even though the same restraint might well be lawful if originated by the supplier.

There may be some industries in some states where a supplier is required to deal with all customers. For example, in many states, alcoholic beverage wholesalers must sell to all licensed retailers.

Law stated - 22 January 2026

Competition concerns

23 Under what 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?

Acquisitions of businesses or interests in businesses, including a supplier's purchase of an ownership interest in a distributor, may be subject to filing requirements and federal antitrust agency review if certain thresholds are met as to the size of the transaction (more than US$133.9 million) and the size of the parties. Regarding the latter, if the value of the proposed transaction is more than US$535.5 million, it is reportable; however, if the value is more than US$133.9 million but less than US$535.5 million, it is reportable if one party to the transaction has total assets or net sales of US$267.8 million or more and the other has total assets or net sales of US$26.8 million or more. These dollar amounts are adjusted annually for inflation. New dollar thresholds are expected to be announced in the first quarter of 2027. In the absence of an ownership interest, however, distribution relationships are not generally subject to antitrust reporting requirements or agency clearance procedures.

In addition to revised dollar thresholds, new rules (the New Rules) governing filings for pre-merger review took effect on 10 February 2025. The New Rules significantly expand the information reporting parties must submit to the FTC and Department of Justice and make the preparation of pre-merger review filings considerably more onerous, expensive and time consuming. Among other changes, the New Rules require expanded document and data submissions and impose new narrative requirements. The expanded document and data requirements include:

- submission of transaction-related documents from the individual with primary responsibility for supervising the strategic assessment of the transaction (the "Supervisory Deal Team Lead"), in addition to documents from officers and directors;
- submission of any draft document shared with even a single board member (unless received solely in such person's role as a deal team member) if it meets the relevance criteria, whether or not the document was ever finalised;
- provision of the full transaction agreement, including all exhibits, schedules and side letters;
- reporting of additional details concerning prior acquisitions within the last five years in products or services that overlap with the other party's business;
- disclosure of details of certain contracts valued at $100million or more that involve vertical supply relationships or horizontal overlaps;
- identification of the acquiring entity of officers or directors who also serve as officers or directors of another business that has a horizontal or vertical competitive relationship with the acquired entity; and
- disclosure on the new reporting form of certain financial subsidies received from foreign countries or entities designated as "of concern", China and Russia in particular.

The new narrative requirements include:

- submission by both parties of a brief narrative description of the strategic rationale or rationales for the transaction;
- self-identification of competitive overlaps in each party's businesses and provision of more detailed descriptions of such overlaps using NAICS codes and sales data, extending well beyond the prior data-only reporting;
- provision of a diagram of the deal structure; and
- identification of minority holders of more than 5% in the acquiring entity's corporate chain.

Law stated - 22 January 2026

24 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?

Vertical agreements between suppliers and distributors are generally governed by the rule of reason, under which the anticompetitive effects of the restraint are weighed against any possible pro-competitive effects, and in the absence of market power, will usually be found lawful. In contrast, horizontal agreements among competitors at the same level of distribution relating to matters such as pricing, allocation of customers or territories, or production levels, are prohibited by the per se rule, without regard to purported procompetitive justifications.

Accordingly, it is important for suppliers and distributors not only to avoid such agreements with their competitors, but also to avoid putting themselves or their distribution partners into a position where they might be deemed participants in a horizontal conspiracy at either distribution partner's level of distribution. Thus, suppliers should not: exchange current or future pricing or production information with their competitors; use their common distributors to facilitate such information exchanges; share one distributor's pricing information with other distributors; or agree to territorial allocations initiated by their distributors rather than imposed by the supplier. Distributors should not share with one supplier pricing or production information received from another. Similarly, suppliers should not share information with each other about their common distributors as such exchanges could support a claim of a concerted refusal to deal should both suppliers then decide to terminate their relationships with the distributor.

Returning to purely vertical relationships, a supplier may not require its customers to purchase one product (the "tied product") in order to purchase another product (the "tying product") if the supplier has substantial economic power in the tying product market, and a "not insubstantial" amount of interstate or international commerce in the tied product is affected. One of the difficult questions in a tying analysis is whether there are in fact two distinct products, one of which is forced on customers who would not otherwise purchase it as a result of market power with respect to the other.

The antitrust laws are enforced both by government action and by private party litigation. At the federal level, both the US Department of Justice and the FTC enforce the antitrust laws. They may seek criminal or civil enforcement penalties. Jail terms are not uncommon for horizontal antitrust violations. The Sherman Act, which outlaws "every contract, combination, or conspiracy in restraint of trade", and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize", imposes a criminal penalties of up to US$1 million and 10 years in prison for individuals, and US$100 million for corporations, for each violation. These penalties may be increased to twice the amount gained from the illegal acts or twice the money lost by the victims of the crime if either of those amounts is over US$100 million. In addition, both federal agencies can bring civil actions to enjoin violations of the antitrust laws, disgorge profits, impose structural remedies and recover substantial civil penalties. The federal agencies often cooperate with foreign antitrust and competition authorities in investigating violations.

State attorneys general also actively prosecute antitrust cases and have similar authority to the federal agencies within their own states. State antitrust laws also provide civil and criminal penalties, and the states frequently cooperate with each other and with the federal agencies in multistate investigations and prosecutions.

Last, but certainly not least, private plaintiffs may bring civil actions under the antitrust laws and recover treble damages – that is, three times the actual damages caused by the violation – and attorneys' fees (not the usual rule in the US, where each party generally pays its own legal fees, regardless of who prevails). The exposure in an antitrust action can thus be extremely high, as can the costs of litigation.

Law stated - 22 January 2026

Parallel imports

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

Importation of goods bearing a registered trademark, even if genuine, can be blocked through the US Customs and Border Protection Service (CBP), provided the non-US manufacturer is not affiliated with the US trademark owner, under the Tariff Act, which prohibits the importation of a product manufactured abroad "that bears a trademark owned by a citizen of . . . the United States". The CBP can also block genuine trademarked goods not intended for the US market, even if the non-US manufacturer is affiliated, if the goods are physically and materially different from the goods intended for sale in the US. However, the grey importer can bring in the products if a disclaimer is affixed stating that the goods are materially and physically different from the authorised US goods. In addition, where parallel imported goods are materially different from the US goods in quality, features, warranty or the like, a trademark infringement claim is possible where customer confusion is likely.

There is no current ability to restrict grey market importation under a copyright theory. The Supreme Court held in 2013, in *Kirtsaeng v John Wiley & Sons Inc*, that a copyright owner cannot exercise control over a copyrighted work after its first sale, even if that first sale occurs outside the US. Moreover, reliance on an insubstantial element of a product protected by copyright to attempt to block parallel imports may be held to be copyright misuse, which prevents enforcement of the copyright.

At one time, grey market importation of products protected by a US patent infringed the patent even if the products were lawfully sold abroad with the authority of the patent holder. However, in 2017, the Supreme Court held in *Impression Prods, Inc v Lexmark Int'l, Inc* that an authorised sale abroad of a product protected by a US patent exhausted the patentee's right to prevent importation into the United States. Accordingly, patent law has been changed to conform to copyright law, as discussed above.

Law stated - 22 January 2026

Advertising

26 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 require them to share in its cost of advertising?

Advertising is regulated by both federal and state laws that prohibit false, misleading or deceptive advertising. Where advertising makes statements that could reasonably be interpreted as an objective factual claim (in contrast to statements such as "world's best water", that are more likely to be regarded as marketing puffery), the advertiser must have reasonable substantiating documentation to support the claim before the advertising is disseminated.

Federally, advertising is regulated principally by the FTC. The FTC has broad authority under the FTC Act to prevent "unfair or deceptive acts or practices" and more specific authority to prohibit misleading claims for food, drugs, devices, services and cosmetics. The

FTC can sue in the federal courts, and often will enter into consent orders with defendants in advance of litigation that may incorporate a variety of remedies.

The FTC considers advertising deceptive if it contains misrepresentations or omissions likely to mislead consumers acting reasonably to their detriment. While the FTC must show the deception was material to consumers' purchasing decisions – that is, it would likely affect the consumer's conduct or decisions with regard to a product or service – it does not have to show actual injury to consumers. Similarly, the FTC deems advertising to be unfair if it causes or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

The most common remedy in advertising cases is an order to enjoin the conduct complained of and prevent future violations. Where such an order is not enough to correct misunderstandings caused by misleading advertising, the FTC may order corrective advertising. In addition, the FTC may seek other consumer redress or disgorgement of profits, and, in the case of violations of prior orders or trade regulation rules, civil penalties.

The states regulate advertising in similar ways under a variety of state unfair competition and unfair trade practice statutes. These are enforced by the state attorneys general in a manner similar to the FTC's enforcement of federal law.

Private parties – often competitors – can bring actions in the state and federal courts to enjoin or seek damages for false or deceptive advertising that causes harm to competitors or consumers.

There are additional restrictions on specific types of advertising. Sweepstakes, in which prizes are awarded by chance to consumers who have made a purchase or provided some other consideration, are regulated by many states, some of which require prior registration and alternative means of entry to a purchase. Endorsements are regulated, most notably by the FTC Endorsement Guides, which are intended to ensure that statements of third-party endorsers reflect an honest statement of the endorser's opinion and are substantiated to the same extent as required for the advertiser's own statements. These Guidelines require, among other things, disclosure of any relationship between the endorser and the supplier of the product, including requiring the supplier to ensure that those who review a product disclose when the supplier provided a free sample for evaluation and that employees who comment on their employer's products or services on social media or websites disclose that relationship. For example, when a social media personality or influencer endorses a particular brand, product or service, the influencer must make it clear if the influencer has a material connection – ie, a personal, family, employment or financial relationship – with the endorsed products.

Finally, there are specific regulations governing certain claims, such as those asserting health benefits, or claiming "green" products, and many industries have adopted self-regulatory advertising codes that also should be followed.

There are no restrictions on suppliers requiring reimbursement or contributions for advertising costs from distribution partners, or on distribution partners agreeing to share in advertising expenses. Freedom of contract governs, and it is commonplace to include provisions governing the sharing of advertising costs or the contribution from each party to advertising funds to support the products being distributed.

Law stated - 22 January 2026

Intellectual property

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

Trademarks

Trademarks receive some protection by virtue of use in the US under the federal Lanham Act and under the common law of the states where they are used. The preferable, more effective way to protect trademarks in the US is to obtain trademark registrations through the US Patent and Trademark Office. US trademark registrations can be based on a supplier's home country trademark registration or on use in interstate or foreign commerce in the US. Applications can also be based on an intent to use the trademark in the US, but the registration will not be issued until the supplier has submitted proof of actual use in the US. US federal trademark registration can also be obtained under the Madrid Protocol if the supplier's home country is a signatory to the treaty.

Only the owner of a trademark may obtain a US registration. Accordingly, in general the supplier, not the local distributor, will be the applicant. Contracts typically forbid the distributor from registering the trademark to protect the supplier from infringement by its distribution partner.

Patents

In general, patent protection in the US must be secured even if patent protection has been secured in the supplier's home country or other countries. To obtain a United States patent, the applicant must show that the invention is useful (ie, the invention works and is not just theoretical), novel (ie, not done before) and non-obvious over existing inventions. In addition, an invention cannot be patented in the US if it has been "on sale" for more than a year prior to filing the patent application. What constitutes "on sale" involves a complex body of law. Both actual sales and offers to sell constitute "on sale". Licensing may or may not constitute "on sale" depending on the circumstances. Guidance from competent US patent counsel should be obtained. If a US patent application has not been filed within a specified period of time – usually one year – after the home country filing, a US patent will also not be available. A longer period may apply under the Patent Cooperation Treaty if the home country is a signatory.

Assuming there is US patent protection, the supplier may enforce the patent through private lawsuits in US courts against infringers. Both injunctive relief and damages are available remedies. Where the infringing goods are imported into the US, an exclusion order from the International Trade Commission may also be sought. While this procedure is faster, no damage remedy is available. Unauthorised sale of patented products by the distribution partner is usually regulated by contract but can also be remedied through an infringement suit.

Copyright

Under the US Copyright Act, the copyright in a work of authorship, including textual, artistic, musical and audiovisual works, is protected from the moment the work is fixed in a tangible medium of expression. Publication with a copyright notice is no longer necessary to retain US copyright protection. However, a supplier's ability to protect its copyrights in the US is significantly enhanced by registration with the US Copyright Office. First, registration is required before a copyright can be enforced in the US courts. Second, where a copyright has been registered before an infringer's activities began, the remedies available for infringement are enhanced: the plaintiff need not prove actual damages from the infringement, but may elect to recover statutory damages in an amount, to be set by the court or jury, of up to US$150,000 per infringed work in the case of wilful infringement. In addition, where the copyright is registered, the plaintiff may recover, at the court's discretion, the costs of the suit, including attorneys' fees, which are not otherwise generally recoverable in the US.

Trade secrets and know-how

Trade secrets (ie, information that is not generally known and provides a competitive advantage to the owner) will be protected from disclosure or misappropriation where the owner has taken appropriate steps to maintain confidentiality, including obtaining written confidentiality agreements from all employees and others to whom the information is disclosed. Third parties who steal trade secrets (eg, by industrial espionage or hiring of key employees) may be sued for theft of trade secrets under applicable state or federal law, including the Defend Trade Secrets Act, provides for civil claims in federal courts under consistent national standards. For employees, mere knowledge in a particular field acquired through long experience with one employer is not a protectable trade secret that will prevent a key employee from changing jobs. In such circumstances, non-compete agreements may give suppliers some protection, but there are limits on the time frame and geographical scope, and in recent years, several states have enacted laws restricting or prohibiting non-compete agreements for employees.

Technology transfer agreements

Technology transfer agreements are typically used to transfer technology from development organisations, such as universities or government, to commercial organisations for monetisation. They are not commonly used to structure the relationships between commercial suppliers and their distribution partners. In those cases, licence agreements are more common.

Law stated - 22 January 2026

Consumer protection

28 | What consumer protection laws are relevant to a supplier or distributor?

There are many federal and state consumer protection laws that are important to suppliers and distributors, well beyond what can be addressed in any detail here. At the federal level, these include a number of laws relating to consumer credit, including the Fair Credit Reporting Act, the Truth in Lending Act, the Fair Credit Billing Act, the Fair Debt Collection Practices Act, the Identity Theft and Assumption Deterrence Act of 1998 and the Credit Accountability, Responsibility, and Disclosure Act. Other federal consumer protection laws and regulations include the CAN-SPAM Act (regulating the use of unsolicited commercial email), the FTC Used Car Rule, the FTC Mail or Telephone Order Merchandise Rule (which covers internet and fax sales as well as telephone and mail order sales and regulates shipment times and related statements and cancellation rights), the FTC Telemarketing Sales Rule under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and various labelling and packaging requirements for food and beverages, textiles and wool, appliances, alcoholic beverages and other industries. To gain a sense of the range of regulations and to review FTC guidance on the subject, visit the FTC website.

In addition, most states have very broad consumer protection laws governing unfair or deceptive trade practices and specific laws governing industries such as mobile homes, health clubs, household storage, gasoline stations and others. Often these provide a consumer right, within a defined period, to rescind contracts made in certain circumstances. For example, in New York, there is a 72-hour right to cancel for door-to-door sales, dating services, health clubs and home improvement contracts. Contracts for such transactions must clearly state the right to cancel.

Law stated - 22 January 2026

Product recalls

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

Recalls of products are regulated by a number of federal and state agencies, including the Food and Drug Administration, the US Department of Agriculture and the Consumer Product Safety Commission. In addition, manufacturers, importers and distributors often initiate voluntary recalls to remove a defective or dangerous product from the marketplace before it can cause harm, to avoid the potential liability and reputational harm that can come from damage, injuries or deaths.

It is prudent to define in the distribution contract the parties' respective responsibilities in the event of a recall, including who may decide to initiate a recall, how it will be implemented and who will pay the costs, including credits that direct and indirect customers may require for recalled products.

Law stated - 22 January 2026

Warranties

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> 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?

There are both federal and state laws regulating warranties. The main federal law is the Magnuson–Moss Warranty Act, which applies to consumer products with a written warranty. While there is no requirement that a warranty be offered, if a written warranty is provided, then the Act requires certain disclosure of warranty terms, imposes certain requirements, and mandates certain remedies for consumers.

The Act and the FTC Rules promulgated under it require that a written warranty be stated to be either "full" or "limited" for any consumer product that costs more than US$10, and that written warranties on consumer products costing more than $15 must be available to consumers before they buy the products. Specified information about the coverage of the warranty must be set forth in a single document in simple, readily understood language, and the warranties must be available where the products are sold so that consumers can read them before deciding to purchase.

A warranty is "full" only if:

- it does not limit the duration of implied warranties;
- warranty service is provided to anyone who owns the product during the warranty period, not just the first purchaser;
- warranty service is provided free, including costs of returning, removing and reinstalling the product;
- the consumer may choose either a replacement or a full refund if the product cannot be repaired after a reasonable number of attempts; and
- consumers are not required to do anything as a condition to obtain warranty service (including returning a warranty card), other than to give notice that the product needs service, unless the requirement is reasonable.

If any of the above conditions are not met, then the warranty is "limited" rather than "full".

The FTC requires disclosure of certain elements in every warranty, including precisely what is and is not covered by the warranty, when the warranty begins and ends, how covered problems will be resolved and, if necessary for clarity, what will not be done or covered (eg, shipping, removal or reinstallation costs, consequential damage caused by a defect, incidental costs incurred), and a statement that the warranty "gives you specific legal rights, and you may also have other rights which vary from state to state". Any additional requirements or restrictions, such as acts that will void the warranty, must be disclosed.

The Magnuson–Moss Act prohibits a written warranty from disclaiming or modifying any warranties that are implied under applicable law, although a limited warranty may limit the duration of implied warranties to the duration of the limited warranty, subject to contrary state law.

A written warranty cannot be conditioned on the consumer product being used only with specific other products or services, such as particular accessories, but it may provide that it is voided by the use of inappropriate replacement parts or improper repairs or maintenance. A waiver can be obtained from the FTC if it can be shown that a product will not work

properly unless specified parts, accessories or service are used. The Act also contains an “anti-tying provision” that prohibits tying a warranty to the use of a specific service provider. Recently, the FTC has acted against businesses for restricting consumers’ right to repair their purchased products in violation of this “anti-tying” provision. For instance, in 2022, the FTCannounced that it had obtained court orders requiring Harley-Davidson Motor Company Group, grill maker Weber-Stephen Products, and the manufacturer of Westinghouse outdoor power equipment to revise their warranties and notify customers of their right to seek repairs from independent service providers without voiding their warranties. In July 2024, the FTC announced that it had sent warning letters to eight companies that their warranty practices may violate their consumers’ right to repair.

The FTC, the US Department of Justice and consumers can sue to enforce the Act, and consumers can recover their court costs and reasonable attorneys’ fees if successful. The Act also encourages businesses to establish informal dispute resolution procedures to settle warranty disputes. Such procedures must meet certain requirements and must not be binding on the consumer.

In addition, other federal laws and regulations govern topics such as warranties for consumer leases, used cars and emissions control systems, as well as advertising of warranties.

In almost all states, warranties are governed by the Uniform Commercial Code, which provides for an express warranty, an implied warranty of merchantability and an implied warranty of fitness for a particular purpose. The implied warranty of merchantability is an implied promise, whenever the product is sold by a merchant, that the goods will function properly for the ordinary purposes for which they are used, would pass without objection in the trade, are adequately packaged and labelled, and conform to any promises made in labelling or packaging. The implied warranty of fitness for a particular use exists only when the seller has reason to know the purpose for which the buyer intends to use the product at the time it is sold, and the buyer relies on the greater knowledge and recommendation of the seller in selecting the product.

The extent to which implied warranties may be disclaimed varies by state. Where permitted, disclaimers usually must be conspicuous, usually interpreted as boldface capital letters. Similarly, state law may permit sellers to limit the damages and other remedies available in case of a breach of warranty. Notice of such disclaimers also generally must be conspicuous.

Many states also have specific "lemon laws" governing motor vehicles.

Law stated - 22 January 2026

Data transfers

31 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?

In contrast to many other countries, federal privacy regulation in the United States is limited to a few specific areas, such as children's information, healthcare, financial services and telecommunications. The primary federal regulatory focus is on matters such as transparency to the consumer with respect to the manner in which information will be used and shared and the reasonableness of the data security protections in place. The FTC and other federal agencies have adopted rules in these areas, generally requiring notice to consumers about the collection and use of information; consumer choice with respect to the use and dissemination of information collected from or about them; consumer access to information about them; and appropriate steps to maintain the security and integrity of any information collected. The FTC and state regulatory authorities have also been active in regulating behavioural advertising, mobile apps and information security, and businesses gathering customer information should familiarise themselves with the FTC's guidance in these areas.

In a departure from the issue-specific federal privacy regulations, however, the United States recently enacted a federal regulation that is specific to certain transferee nations. Issued under Executive Order 14117, the US Department of Justice Data Security Program (DSP) went into effect on 8 April 2025. The DSP prohibits or restricts certain categories of transactions with "countries of concern" (and covered persons subject to their jurisdiction, ownership, control, or direction) if those transactions provide access to US government-related data or Americans' bulk genomic, geolocation, biometric, health, financial, or other sensitive personal data. The "countries of concern" are China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, and Venezuela. Transfers of US sensitive personal data to these countries will require careful review of the DSP to ensure compliance.

In addition, the sharing of personal information between US distribution partners and their suppliers located in the EU, the UK and the increasing number of other countries that have strict data protection requirements continues to be a difficult area to navigate. The EU's General Data Protection Regulation (GDPR), applies to parties in the United States that offer goods or services (even for free) to individuals in the European Economic Area and process personal data of individuals in the European Economic Area in connection with that activity. The GDPR's definition of "personal data" is very expansive, and provides that a wide range of personal identifiers (eg, IP addresses) constitutes personal data. The GDPR gives individuals in the EU greater control over their personal data and imposes many obligations on organisations that collect, handle and otherwise process personal data. It also gives national data protection authorities the power to impose significant fines on organisations that fail to comply.

The *Schrems I* and*II* decisions have invalidated prior arrangements such as the Safe Harbour principles agreed to between the FTC and the EU (in effect until 2015), and the EU-US Privacy Shield (in effect from 2016 to July 2020). After *Schrems II,* work began on a replacement regime that would meet the requirements of EU privacy protection, resulting in the EU-US Data Privacy Framework (EU-US DPF). The EU has determined that the additional safeguards included in the EU-US DPF and an Executive Order issued by US President Biden provide an adequate level of protection for personal data transferred from the European Union. The adequacy decision allows the EU-US DPF to facilitate the transfer of data from Europe to the United States. To participate in the EU-US DPF, companies must self-certify and publicly commit to comply with the EU-US DPF Principles, which are enforceable under US law. They can also self-certify their compliance with the UK extension

to the EU-US DPF. Also, as of 15 September 2024, they are able to certify compliance with the Swiss-US DPF Principles, owing to the fact that during 2024 Switzerland completed its legal process to deem data transfers to and from the US to have adequate protection and has concluded that the protections are adequate. As an alternative to the EU-US DPF, parties to EU–US distribution relationships may rely on binding corporate rules (which are expressly permitted under the GDPR) or on standard contractual clauses that have been approved by the European Commission (which remain a permitted mechanism to transfer personal data outside the EU, at least for now). Typically, a lengthy, detailed Data Processing Addendum, which details each party's responsibilities, requires compliance with the GDPR and/or other relevant countries' data processing requirements and adopts the standard contractual clauses, is included in the distributorship agreement or other supplier-distributor agreement. The agreement should, either in the body or the Data Processing Addendum, clearly define who controls the customer information that has been collected (ie, who has the right to determine the purposes and means of processing of that information), who has access to it, and the applicable confidentiality obligations (which must conform to the parties' respective stated privacy policies, which in turn must be consistent with each other). In the absence of such a definition, customer data is likely to belong to the party that collected it, but the sharing of such information without a statement of the recipient's obligations may result in the recipient's ability to do as it wishes with the information. Suppliers and their distribution partners should also cooperate in planning to prevent security breaches and to respond to them in accordance with applicable law when they occur. The United Kingdom has largely mirrored the EU approach as it relates to transfers of personal information between a supplier and distributor.

It remains entirely possible that Mr Schrems or others may launch further challenges to the transfer of personal information between other countries and the US that could affect the above alternatives. In fact, Mr Schrems has indicated that his concerns are not resolved by the DPF, and suggested that the current US administration's removal of Democratic members of the FTC and the Privacy and Civil Liberties Oversight Board raises questions as to the independence of the agencies charged with enforcement of the DPF.

In addition to federal law, all US states and most US territories have also adopted legislation governing consumer information, with data breach legislation imposing notification obligations and remedial action in the event of a security breach being the most common. These state requirements sometimes conflict, which can create compliance problems. Increasingly, states also are imposing broader data privacy requirements legislation on businesses that collect consumer information. The first such statute, the California Consumer Privacy Act of 2018, is a comprehensive data privacy law that affects businesses around the world that obtain, use, store or otherwise process the personal information of California residents (including California residents who are temporarily located in other places). Among other things, this law provides California residents the right to know what personal information is being collected about them, the right to know whether their personal information is sold or disclosed and to whom, and the right to say no to the sale of personal information. Other states have followed California's lead with their own legislation, which, for the most part, is not as stringent as the California Act but often incorporates elements of it, and the list of states enacting such laws is constantly growing, reaching 20 as at January 2026. The International Association of Privacy Professionals (IAPP) keeps track of such legislation at IAPP State Privacy Legislation.

Law stated - 22 January 2026

32 What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Federal laws generally require the use of "reasonable" and "appropriate" measures to protect covered data. Many US states also require businesses that own, license or maintain personal information about the residents of their states to implement and maintain 'reasonable security procedures and practices', and to protect personal information from unauthorised access, destruction, use, modification or disclosure. However, many of these laws and regulations do not specify what exactly constitutes reasonable security procedures.

However, some states are more specific in their requirements. For example, the states of New York and Massachusetts both require businesses that own or license the personal information of the state's residents to develop, implement and maintain comprehensive written information security programs that contain specific administrative, technical and physical safeguards for the protection of personal information. Under New York State's Stop Hacks and Improve Electronic Data Security (SHIELD) Act, businesses that own or license computerised data that include private information of the state's residents must implement a data security programme that includes the following elements:

- administrative safeguards in which the business:
    - designates one or more employees to coordinate the security programme;
    - identifies reasonably foreseeable internal and external risks;
    - assesses the sufficiency of the safeguards in place to control the identified risks;
    - trains and manages employees in the security programme practices and procedures;
    - selects service providers capable of maintaining appropriate safeguards and requires those safeguards by contract; and
    - adjusts the security programme in light of business changes or new circumstances;
- technical safeguards in which the business:
    - assesses risks in network and software design;
    - assesses risks in information processing, transmission and storage;
    - detects, prevents and responds to attacks or system failures; and
    - regularly tests and monitors the effectiveness of key controls, systems and procedures; and
- physical safeguards in which the business:
- assesses risks of information storage and disposal;
- detects, prevents and responds to intrusions;

- protects against unauthorised access to or use of private information during or after the collection, transportation and disposal of the information; and
- disposes of private information within a reasonable amount of time after it is no longer needed for business purposes by erasing electronic media so that the information cannot be read or reconstructed.

In addition to statutory and regulatory requirements, parties may contractually agree with each other to maintain security measures that are specified in that contract. If one party fails to abide by its commitments in the contract, it may be liable to the other party for breach of contract.

Law stated - 22 January 2026

Employment issues

33 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?

Under the general principle of freedom of contract, the parties generally may provide as they wish with respect to supplier control over the persons who manage the distributor. Thus, the contract can grant authority to a supplier to approve or reject the individuals who manage the distribution partner's business generally, or the distribution of the supplier's products specifically, for any lawful reason, as well as to terminate the agreement if not satisfied. However, this general principle is subject to specific franchise or industry regulation. Particularly for alcoholic beverages, many states have laws designed to protect the independence of wholesale distributors; in such states, provisions giving suppliers control over distributor management may be problematic and unenforceable. Where termination is limited to statutorily defined good cause, a right to terminate for dissatisfaction with management may be unenforceable.

Law stated - 22 January 2026

34 Are there circumstances under which a distributor or agent, or its employees, 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?

There is a risk that distributors – especially those that are single-employee companies or sole proprietorships – may be deemed employees of the supplier. To prevent this, it is in the supplier's interest to ensure an independent contractor relationship between itself and the distributor.

Some states, such as California, have passed or are in the process of adopting legislation establishing a presumption that individuals performing services are employees and outlining baseline factors that must be satisfied for an individual to be considered an independent contractor.

Under federal regulations, the determination of whether there is an employee or independent contractor relationship is based on whether the totality of the circumstances demonstrates economic dependence. The US Department of Labor maintains that "economic dependence" is the ultimate inquiry, and that an employee is someone who, as a matter of economic reality, is economically dependent on an employer for work, as opposed to being in business for themself.

The Department has identified six factors to be considered as a guide to determining the economic reality of the relationship: (1) opportunity for profit or loss depending on managerial skill; (2) investments by the worker and the potential employer; (3) the degree of permanence of the relationship; (4) the nature and degree of control exercised; (5) the extent to which the work performed is an integral part of the potential employer's business and operations; and (6) skill and initiative. The factors do not each have a predetermined weight and are considered in view of the economic reality of the situation as a whole. Additional factors may also be considered if they are relevant to the overall question of economic dependence.

While tests for distinguishing bona fide independent contractors from employees vary among states, agencies and statutes, in the context of a supplier-distributor relationship relevant questions include.

- Does the distributor perform similar work for other clients and market similar services to the general public, or does it work exclusively for the supplier?
- Has the distributor made substantial investments in its own vehicles or other equipment or does the distributor rely on equipment of the supplier?
- Does the distributor hire its own employees to perform services for the supplier?
- Does the distributor control its schedule and how it accomplishes its work or is it subject to the supplier's direction?
- Is the parties' relationship limited in duration or open-ended?
- Does the distributor have substantial skills, experience and training, or is supplier training required?
- Are the distributor's services similar to those of direct employees of the supplier?
- Does the distributor earn a profit or risk a loss on resales or receive a sales commission or other compensation for its results, or is it compensated for its time (eg, on an hourly or salary basis)?
- Does the distributor receive employee-type benefits from the supplier (eg, paid time off and health insurance)?

Although no single factor is dispositive, the written distribution agreement should clearly state the parties' intent and highlight those factors that support the classification agreed upon and intended by the parties.

Misclassification may result in substantial employment and tax liabilities for the supplier, including retroactive pay and benefits, other damages and substantial fines and penalties. Employees are generally entitled, among other benefits, to minimum wage and overtime compensation, discrimination and workplace safety protections, unemployment benefits, workers' compensation and disability insurance, protected family, medical and military

leaves of absence, and a right to participate in the employer's retirement and health plans and other benefits. While federal law provides certain employee rights, other mandated benefits, such as paid sick leave, vary from state to state.

There is also a risk that a supplier could be deemed a joint employer of an individual employed by a distributor, rendering the supplier liable for compliance with statutory obligations to the employee, such as minimum wage or overtime, paid sick leave, other employee benefits and protection against harassment. Factors looked at to determine whether a supplier is the joint employer of a distributor's employee include (1) whether the supplier regularly controls the employee's schedule or workload, benefits from the employee's services, supervises the employee, or has any overlapping owners, officers or managers with the distributor, and (2) whether the employee is economically dependent on both the supplier and the distributor (eg, whether the supplier has the power to hire, fire or discipline the employee, or to change any of the employee's terms of employment), and how long the distributor's employee has performed the services for the benefit of the supplier.

Whether a joint employer relationship exists under the National Labor Relations Act currently turns on whether the supplier exercises *substantial direct and immediate control* over essential terms and conditions of employment of its distributor's employee.

Such terms and conditions may include wages, hours of work, discipline, hiring, and firing. This is a business-friendly standard, but will have limited direct impact on non-unionised workforces.

Suppliers should engage experienced employment counsel to analyse the relevant facts and determine and then document the proper classification of individuals as either employees or independent contractors, as well as to advise on best practices to avoid a joint employer relationship being established with respect to the distributor's employees.

Law stated - 22 January 2026

Commission payments

35 | Is the payment of commission to a commercial agent regulated?

About half the US states have laws regulating commission sales representatives. These laws typically require written agreements setting forth how commission is calculated and require payment within a specified period after termination. Some laws provide for double or treble damages for violations. A few, such as Puerto Rico and Minnesota, restrict a supplier's right to terminate a sales representative without statutory good or just cause. In some states, sales representatives may also be protected by franchise laws in certain circumstances.

Law stated - 22 January 2026

Good faith and fair dealing

36 ' What good faith and fair dealing requirements apply to distribution relationships?

A covenant of good faith and fair dealing is implied by the laws of most states in all commercial contracts, including distribution agreements. This requires the parties to deal with each other in good faith, but generally does not supersede express contractual provisions. Thus, a complaint that a supplier terminated a distribution contract in bad faith, in violation of the covenant of good faith and fair dealing, will generally not succeed in the face of a contractual provision allowing the supplier to terminate without cause. Indeed, cases in a number of states hold that a claim cannot be based solely on a breach of the implied covenant of good faith without some breach of an express provision as well.

In contrast, other courts have found a violation of the implied covenant of good faith where suppliers have acted to the disadvantage of their dealers, notwithstanding an express provision permitting the conduct at issue. For example, a federal district court found that sales by the Carvel ice cream company to supermarkets might violate its duty of good faith to its franchisees, notwithstanding its contractually reserved right, in its "sole and absolute discretion", to sell in the franchisees' territory via the same or different distribution channels.

Similarly, some courts have found a violation of the implied covenant of good faith where the manner in which a supplier exercised its contractual rights demonstrated bad faith, such as disparagement of the distributor or misappropriation of confidential customer information in connection with an otherwise permitted termination.

Moreover, some specific industry laws impose an explicit obligation of good faith on suppliers and distributors that may be independently enforceable.

Law stated - 22 January 2026

Registration of agreements

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

With the exception of those state franchise laws that require registration of disclosure documents and some state laws governing specific industries, such as alcoholic beverages, there generally are no such requirements.

Law stated - 22 January 2026

Anti-corruption rules

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

foreign distributors and agents under the Foreign Corrupt Practices Act (FCPA). The FCPA, a criminal statute, prohibits bribery of foreign officials, political parties and candidates for public office. Under the FCPA, a company or individual can be held directly responsible for bribes paid by a third party if the company or individual has knowledge of the third party's misconduct. For example, the FCPA prohibits the giving of anything of value to "any person" while knowing that all or a portion of the money or thing will be given, "directly or

indirectly", to bribe any foreign official, foreign political party or official, or any candidate for foreign political office. Moreover, constructive knowledge of the misconduct, including wilful blindness or deliberate ignorance, is enough to impose liability. A defendant may be convicted under the FCPA based upon the defendant's "conscious avoidance" of learning about a third party's illegal business practices. Accordingly, it is critically important to take steps to prevent such misconduct by those acting on a business's behalf, including distributors, agents, brokers, sales representatives, consultants, advisers and other local business partners. A business with foreign business partners must exercise appropriate due diligence in selecting its partners and adequately supervise their activities. It is important to consider FCPA compliance (1) before entering into an agreement with a foreign partner through due diligence, (2) in the agreement through provisions requiring FCPA compliance and reporting, and (3) after entering into the agreement through ongoing training, monitoring and audits.

The Trump administration had paused enforcement of the FCPA in February 2025. However, on 9 June 2025, the US Department of Justice released updated guidelines (the Guidelines) for investigations and enforcement under the FCPA, ending the freeze on enforcement. The updated guidelines set forth four main criteria for enforcement:

- Safeguarding Fair Opportunities for American Companies Abroad. The Guidelines encourage prosecutors to consider whether the alleged misconduct deprived specific and identifiable US entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals.
- Elimination of Cartels and Transnational Criminal Organizations (TCOs). The Guidelines reference a memorandum issued by Attorney General Pamela Bondi, on 5 February 2025, which directed the FCPA to prioritise investigations related to facilitation of Cartels and TCOs. Similarly, the Guidelines call for prosecutors to consider whether the alleged misconduct: (1) is associated with the criminal operations of a Cartel or TCO; (2) utilises money launderers or shell companies that engage in money laundering for Cartels or TCOs; or (3) is linked to employees of state-owned entities or other foreign officials who have received bribes from Cartels or TCOs.
- Prioritising Industries with a National Security Interest. The Guidelines identify certain industries which overlap with significant national security interests, such as defence, intelligence and critical infrastructure. The Guidelines direct the FPCA to focus on any alleged bribery that affects these sectors.
- Prioritising Investigations of Serious Misconduct. The Guidelines urge prosecutors to focus on matters involving more serious conduct, such as whether the alleged misconduct "bears strong indicia of corrupt intent tied to particular individuals," including matters involving "substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice," rather than penalising companies for conducting "routine business practices". Prosecutors are also directed to consider whether it is likely that "appropriate foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct" in determining whether alleged violations rise to the level of serious misconduct.

The Guidelines reflect the Trump administration's business-friendly and protectionist approach to FCPA enforcement. In practical terms, suppliers and distributors should expect enforcement to focus on serious misconduct, such as large bribe payments or efforts to conceal improper transactions, rather than routine business practices. At the same time, they must recognise that a change in administration could result in a reversion to prior enforcement approaches.

Law stated - 22 January 2026

Prohibited and mandatory contractual provisions

39 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?

Except for specific industry regulation, franchises and antitrust restrictions, the parties are generally free to structure their relationship as they wish. Of course, distribution contracts are subject to the usual contract enforceability defences, such as fraud, unconscionability and lack of consideration, among others. There are certain warranties and a covenant of good faith and fair dealing that are implied by law. Laws governing specific industries and franchises may impute or require other provisions.

In addition, if the contract gives a supplier effective control over the distributor's operations, it may be held vicariously liable to third parties for the distributor's negligence or other misconduct. Similarly, a supplier may be liable for conduct of a distributor if the conduct is required by the supplier or the distributor is represented to third parties as being part of the supplier's operations.

Law stated - 22 January 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

40 Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

A choice of law provision in the distribution contract selecting the law of a specific state or country may be enforced if the jurisdiction chosen bears a reasonable relationship to the transaction (eg, the supplier's or distributor's home jurisdiction). Such contractual choice of law provisions, though generally enforced, are sometimes disregarded by courts in deference to the public policy of states with business franchise or protective industry laws, or because the validity of the contract containing the clause was questioned. Courts have also refused to enforce choice of law provisions that bear no reasonable relation to the parties or contract.

Selecting a particular state's law may result in the application of either a more or less restrictive state franchise law than might otherwise be the case.

Combining a choice of favourable law with an arbitration clause will enhance the likelihood of the choice of law being enforced. The strong federal policy in favour of arbitration, embodied in the Federal Arbitration Act, generally has been held to support the parties' choice of law to be applied in arbitrations, even in the face of explicit state law to the contrary.

Unless the parties explicitly disclaim its applicability, the United Nations Convention on Contracts for the International Sales of Goods will govern contracts for sales of goods between parties that have their places of business in different contracting states, of which the US is one.

Law stated - 22 January 2026

Choice of forum

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

The parties can provide in the distribution contract for all litigation to be brought in a court located in a particular state or country and can waive their right to seek a transfer. These clauses are sometimes enforced and sometimes not. The Supreme Court, in *Burger King Corp v Rudzewicz*, has held that a franchisor can constitutionally enforce a forum-selection clause against its franchisees in an action commenced by the franchisor in its home state. Courts in the distributor's home state, however, may refuse to enforce a forum-selection clause on the ground that the public policy interests of the distributor's state outweigh the parties' choice. State franchise laws may expressly prohibit the choice of another state as a forum. Federal courts, however, will apply federal law to determine whether to enforce such a clause, notwithstanding any such state view. The forum clause is not dispositive, but should be considered together with the other factors normally weighed in a transfer motion, at least where the choice is between two federal districts.

A showing of state policy sufficient to outweigh a forum clause may be difficult to make. For example, Maryland courts have held that a forum selection clause favouring the franchisor's home state was enforceable despite being incorporated into a form contract where the franchisor had superior bargaining power, reasoning that there was no fraud involved, and a federal district court in New York upheld a one-sided forum clause that restricted venue in actions by a franchisee, but not in actions by the franchisor. In contrast, the District of Puerto Rico declined to transfer a dispute to California courts as required by a contractual forum clause, as Puerto Rico was more convenient for witnesses, and there was no evidence justifying transfer other than the contract clause.

Arbitration clauses specifying a particular forum are likely to be enforced under the Federal Arbitration Act. The Seventh Circuit US Court of Appeals reversed a district court decision and ordered arbitration in Poland pursuant to contract in a case under the Illinois Beer Industry Fair Dealing Act, holding that the state's public policy expressed in that statute required Illinois law to apply notwithstanding the contract's choice of Polish law, but that this public policy could not overcome the Federal Arbitration Act policy in favour of arbitration.

Law stated - 22 January 2026

Litigation

42 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?

Suppliers and their distribution partners have access to both state and federal courts to resolve their disputes, although a company that fails to file its qualification to do business in a state in which it meets the definition of "doing business" usually will not be entitled to maintain any action or proceeding in the courts of the state. This rule applies to both US companies formed in other states and non-US companies, and in general foreign businesses have equal access to the courts. By and large, foreign companies can expect fair treatment in US courts, especially in the federal courts and courts of the larger commercial states. Some states, such as New York, have a well-established body of commercial law and have created specialised commercial courts with judges experienced in commercial disputes, making these courts a desirable forum for dispute resolution.

Discovery in US courts is very broad, typically requiring disclosure of documents and electronic materials, responses to written interrogatories and deposition testimony of witnesses whenever material and necessary in the prosecution or defence of an action. This substantially increases the cost of litigation in US courts. In response, subject to showing a need for greater discovery, some courts have enacted rules that place limits on the length of depositions, the number of witnesses that may be deposed and the number of interrogatories that may be propounded. Electronic discovery of documents and email is also generally quite broad and can be a significant cost, although some courts may shift that cost to the party seeking the discovery in certain circumstances. In addition, federal and state courts have implemented rules to permit parties to seek to limit discovery so that it is proportionate to the value of the material sought and the value of the case.

Certain industry regulations and industry self-regulatory codes may provide or require certain disputes, such as a claim of wrongful termination, to be resolved before government agencies or industry boards.

Law stated - 22 January 2026

Alternative dispute resolution

43 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?

A provision for binding arbitration of disputes in place of the courts will generally be enforced under the Federal Arbitration Act (FAA), which favours arbitration agreements, even in the face of state law to the contrary. However, where state law requires – as some state business franchise laws do – a disclosure that a choice of law or choice of forum

provision, including an arbitration clause, may not be enforceable in that state, a question arises as to whether the parties really agreed to the provision. The Ninth Circuit US Court of Appeals has held that a contractual choice of forum for arbitration was unenforceable because of such a mandated disclaimer, finding that the franchisee had no reasonable expectation that it had agreed to arbitrate out-of-state.

Provisions limiting the relief arbitrators may award to actual compensatory damages, or expressly precluding punitive damages, injunctive relief or specific performance, will also generally be enforceable. The US Supreme Court has held that the FAA's central purpose is to ensure "that private agreements to arbitrate are enforced according to their terms", so that the parties' decision as to whether arbitrators may award punitive damages will supersede contrary state law. Similarly, courts generally will also enforce a provision for a particular arbitration forum.

However, care should be taken in drafting arbitration clauses not to overreach, because even under the FAA, arbitration agreements may be set aside on the same grounds as any other contract, such as fraud or unconscionability. For example, the Ninth Circuit held an arbitration clause unconscionable, and so unenforceable, where franchisees were required to arbitrate but the franchisor could proceed in court. A district court in California rejected an arbitration clause as unconscionable where the arbitration clause blocked class adjudication (requiring each case to be resolved individually) and proved unfavourable for plaintiffs on a cost-benefit analysis. It is thus prudent to adopt a more balanced approach in drafting arbitration provisions.

Arbitration is private, in contrast to the courts, and, depending on the court, can sometimes be faster and cheaper. It may afford less discovery and can present problems requiring testimony of non-parties, to the disadvantage of a party who needs them. There is generally no appeal from a legally incorrect or factually unfounded decision and arbitrators often seek a compromise result.

While there is no similar statutory underpinning for provisions requiring non-binding mediation before parties may proceed to court or binding arbitration, such a provision generally will be enforced under principles of freedom of contract.

Law stated - 22 January 2026

UPDATE AND TRENDS

Key developments

44 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

A clear legislative trend in the US is the adoption by states of laws governing data privacy and security. All 50 states have now adopted breach notification laws. Increasingly, states are adopting broader consumer privacy laws. Since the 2018 enactment of the California Consumer Privacy Act, another nineteen states have adopted consumer privacy protection laws The provisions governing applicability and scope of each state's law differ. Whether a given state's law applies to a particular supplier-distributor relationship needs to be

individually evaluated. The International Association of Privacy Professionals (IAPP) keeps track of such state privacy legislation at IAPP State Privacy Legislation.

Security of consumer data is also becoming regulated by state laws, such as the New York Stop Hacks and Improve Electronic Data Security Act (SHIELD Act) and Massachusetts's amendments to its data breach law addressing data security programmes.

The increasing number of different state data privacy laws has resulted in a patchwork of differing and sometimes inconsistent state laws regulating data privacy, breach and security programmes, creating a compliance morass for businesses doing business nationally. There is a clear need for uniform federal legislation in these areas and industry is increasingly supporting federal legislation beyond the existing legislation governing healthcare, financial services, telecommunications and data gathered from children. Although efforts to develop such federal legislation are ongoing, enactment of any such legislation in the near future is unlikely. Thus, states can be expected to continue to legislate individually, and the compliance challenges of dealing with the maze of state laws will continue to grow in the near term.

In addition, the first year of the current US administration has seen significant revisions to US enforcement approaches in numerous areas, including competition law, FCPA enforcement and non-competition restrictions, as well as the elimination of bipartisan representation on the governing boards of various enforcement agencies, such as the FTC and the NLRB. The President's authority to make such changes, which could alter the perception of these agencies as independent and fair, is under consideration by the US Supreme Court at this writing. Whether changes in enforcement accelerate in the coming years or are constrained by the Supreme Court or by the results of midterm Congressional elections, remains to be seen.

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Law stated - 22 January 2026

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