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AGENCY, DISTRIBUTION AND REPRESENTATION CONTRACTS IN CENTRAL AMERICA AND PANAMA

SALVADOR JUNCADELLA*

In Central America and Panama, agency, distribution and representation contracts are regulated by recently enacted legislation, protective in nature. The importance of this protectionism rests on its impact, particularly in the economic area, on foreign enterprises or those exporting their products to Central America and Panama. This study reviews the essential provisions of the pertinent legislation of Panama, Honduras, Costa Rica, El Salvador, Guatemala and Nicaragua. The statutes or decrees are taken up chronologically, according to their respective dates of implementation.

The first protective legislation for agents, distributors and representatives was promulgated in Panama, with Honduras, Costa Rica, El Salvador, Guatemala and Nicaragua following. The legislation of El Salvador has recently been amended. Although in some aspects the different laws vary, basically, they coincide in the following points:

1. There must exist just legal reasons for the termination of an agency, distribution or representation contract;
2. Such reasons must be substantiated before the competent entities;
3. If such reasons do not exist, the principal or licensor must indemnify the representative or agent in the amount prescribed by law;
4. If manufactured abroad, merchandise may not be imported while payment of such indemnification is pending;

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5. Upon termination of a contract without just cause, the principal or licensor shall take over the receivables and the stock of the licensee or agent, under the conditions set forth in the law;
6. In case of a legal action or claim, the principal or licensor shall not appoint another agent or distributor until he has paid or deposited with the competent entity, the amount of the indemnification;
7. The rights granted by such laws may not be waived, although a settlement may be agreed upon before the competent entity.

Based on the foregoing, an analysis of the legislation of each country follows.

PANAMA

Ministry Decree No. 344 of October 31, 1969 regulated the representation, agency, and/or distribution of products or services of foreign or domestic manufacturers or enterprises in the Republic of Panama. In turn, Executive Decree No. 9 of February 7, 1970, which complemented that Decree, established certain special provisions.

According to Art. 1 of Ministry Decree No. 344, an authorized representative, agent and/or distributor is a person or persons, natural or juridical, who by means of a written document have been so designated by manufacturers or enterprises for the representation, agency and/or distribution of certain products or services (whether or not protected by trademarks) in the territory of the Republic and for which activity they are legally registered with the competent authority. According to said Art. 1, the representation, agency and/or distribution may be in the form of an exclusive representation, agency and/or distribution contract, or of any other type of contract agreed upon by the parties concerned.

Art. 5 of Decree No. 344 provides that an existing national or foreign company's agency and representation, and/or distribution contract shall not be terminated, rescinded, amended or refused renewal unless the representative, agent and/or distributor has incurred in one of the violations set forth in Art. 6 of the decree. Otherwise, the authorized representative, agent and/or distributor must be indemnified.

As provided in Art. 5, the total indemnification shall be paid in cash within a period that shall not exceed three months, as follows:

- a) Whenever the representation, agency or distributorship of the product or service subject to termination, revocation, modification or which has been refused renewal shall have been in existence for less than five years, indemnification shall be equivalent to the total of the average annual gross profits obtained by the representative, agent or distributor during such period, relative to the product sold or the service rendered;
- b) Whenever the representation, agency or distributorship of the product subject to termination, revocation, modification or which has been refused renewal shall have been in existence for more than five years but less than ten, indemnification shall be equivalent to twice the total of the average annual gross profits obtained by the representative, agent or distributor during the last five years.
- c) Whenever the representation, agency or distributorship of the product or service subject to termination, revocation, modification or which has been refused renewal shall have been in existence for more than ten years but less than fifteen, indemnification shall be equivalent to three times the total of the average annual gross profits obtained by the representative agent or distributor during the last five years;
- d) Whenever the representation, agency or distributorship of the product or service subject to termination, revocation, modification or which has been refused renewal shall have been in existence for more than fifteen years but less than twenty, indemnification shall be equivalent to four times the total of the average annual gross profits obtained by the representative, agent or distributor during the last five years;
- e) Whenever the representation, agency or distributorship of the product or service subject to termination, revocation, modification or which has been refused renewal shall have been in existence for twenty years or more, indemnification shall be equivalent to five times the total of the average gross profits obtained by the representative, agent or distributor during the last five years.

It is further provided that the firm represented must acquire the representative's and/or distributor's stock, at warehouse cost price, and absorb any other expenses which may have been incurred during the time such merchandise remained in his warehouse.

In accordance with Art. 6, the just reasons which may be invoked to terminate, revoke, amend, or refuse to renew the agency, representation and/or distributorship, are as follows:

- a) Non-compliance with the provisions of the contract by virtue of which the agency or distributorship was granted to the representative;
- b) Fraud and breach of trust in the transactions delegated to the agent, representative or distributor, aside from the penal sanction and indemnity for damages which may be in order;
- c) Incompetence or negligence of the representative, agent and/or distributor;
- d) Systematic reduction in the sale or distribution of the products, attributable to the representative, agent and/or distributor. The agent shall not be liable for a reduction in sales whenever import quotas or restrictions are established which inevitably affect such sales;
- e) Disclosure of confidential information relating to the industry or trade concerned, aside from any penal sanction and indemnification for damages which may be in order;
- f) Any act committed by the agent, representative or distributor prejudicial to the normal introduction, sale or distribution of the products on the basis of which, the agency, distributorship or representation is granted.

Initial hearings arising from the implementation of Ministry Decree No. 344 shall be held at the Ministry of Commerce and Industry (Art. 7); appellate hearings, before the Executive authority.

If removal of a representative, agent and/or distributor in violation of the provisions of Decree No. 344 is confirmed, importation into the country of the product or products of the manufacturer or firm incurring in such violation, shall be discontinued until such time as the representative, agent and/or distributor unjustly removed shall have been reinstated or the manufacturer shall have paid the indemnification in full (Art. 10).

Art. 11 of Ministry Decree 344 provides that the rights set forth in the law shall not be waived, unless waiver arises from a settlement duly approved by the Ministry of Commerce and Industry. Nonetheless, the parties may settle their differences or leave the decision to a third party or parties, in which case, the settlement must be approved by the Ministry of Commerce and Industry, if it is to be valid.

HONDURAS

The Law on Representatives and Distributors of commercial firms is contained in Decree No. 50 of October 13, 1970. The Law is divided into four chapters, referring to the following subjects:

First: Representatives

Second: Distributors

Third: Just reasons in representation and distribution contracts, and

Fourth: Final and transitory provisions

Art. 1 of the law defines representatives as follows: "Representatives of commercial or foreign firms, whatever the type of contract involved, are persons or firms domiciled in the country who, on a permanent basis, act as buyers or sales representatives of such firms, by placing orders of purchase or sale directly with local import or export firms on the basis of a commission or percentage."

Commercial firms' representatives shall be nationals of Honduras and shall have a license issued by the Office of Economy and Treasury of the Department of State (Art. 2).

It is well to point out that the representative of commercial firms shall always act in the name of the firm which he represents and that he shall be liable in cases of non-compliance by such firms. The representative may demand that the commercial firm comply with the obligation contracted for (Art. 4).

As stated previously, Chapter II of the law deals with distributors. The distributor is defined in Art. 5; the distributorship contract in Art. 6, and the principal or licensor in Art. 7.

Art. 5 — A distributor is any natural or juridical person who is in charge of the distribution, concession or representation of a given product or service in the country.

Art. 6 — A distributorship contract is the relation established between a distributor and a principal or licensor, through which, and regardless of the manner in which the parties may have designated, characterized or legalized such relation, the distributor assumes the real and effective distribution of a product, or the rendering of a service, by means of a concession or franchise in the Honduran market.

Art. 7 — A principal or licensor is the person who offers a distributorship contract, such contract to be considered executed by means of an informal letter of concession.

Art. 8 — No principal or licensor shall be able to terminate the contractual relation with his distributor, nor terminate, amend or refuse to renew his contract without just cause.

The just causes mentioned in Art. 8 are set forth in Art. 9, as follows:

- a) Non-compliance with the contract provisions by virtue of which the representation or distributorship was granted;
- b) Fraud or breach of trust in the transactions delegated to the representative or distributor;
- c) Disclosure of confidential information relating to the industry or business concerned; and
- d) Any act imputed to the representative or distributor prejudicial to the normal introduction or sale of the products represented or distributed.

Should no legal cause for termination of the distributorship contract exist, the licensor shall indemnify the distributor according to the damages resulting to the latter, in an amount to be determined on the basis of the following factors (Art. 10):

- a) The amount invested by the distributor in the acquisition of adequate premises, equipment, facilities, furniture and furnishings, in the proportion in which they cannot be conveniently and reasonably utilized in any other activity in which the distributor may be normally engaged in;
- b) The cost of the merchandise, parts, equipment, and furnishings which he may have on hand and from the sale or exploitation of which he cannot derive any benefit;
- c) That portion of the increased value of the distributor's business attributable to the sale of the merchandise or services, subject of the distributorship contract. This shall be determined on the basis of the following factors:
 1. Number of years the distributor has been in charge of the distribution;

2. Volume of sales of the merchandise or services, in proportion to what those sales represent in the distributor's business;
 3. Ratio of that volume in the Honduran market;
 4. Any other factor which may be helpful in equitably establishing the total amount of that increased value.
- d) The total profits obtained by the distributor from the sale of the merchandise or services, during the last five years or if less than five, five times the annual average of the total profits obtained during the last years, whatever these may be.

Any legal action resulting from this law shall prescribe three years from the date of final termination of the representation or distribution contract (Art. 15); in the cases not covered by the law, the provisions of the Commercial Code shall apply, and, in their absence, the Civil Code (Art. 16).

COSTA RICA

Law No. 4684 of November 30, 1970, granted protection to distributors or representatives of foreign firms or their branches, affiliates and subsidiaries. Distributors or representatives of national firms were excluded from the benefits of the law.

According to Art. 1, distributors or representatives of foreign firms or their branches, affiliates and subsidiaries are those national or juridical persons—in addition to those defined as such in the Code—who, continuously and autonomously, with or without legal representation, prepare, promote, expedite or improve the sale of goods or services sold or rendered by another foreign distributor or manufacturer.

Moreover, according to Art. 2 of the law, a representative is an "agent" or "distributor;" the Parent Company or *Casa Principal* includes an Exporting House, Manufacturing House or any other similar title having the same connotation.

When the distribution or representation contract is terminated for reasons contrary to the will of the representative, the parent company shall indemnify him in an amount equivalent to two months' gross profits for each year, or fraction thereof of not less than six months' service, with an eight-year maximum (Art. 3). The monthly gross profit shall

be determined on the basis of the monthly average of the preceding year, or the lowest fraction of the duration of the contract. Moreover, Art. 4 provides that when a representation, agency or distribution is cancelled, the firm represented shall acquire from its representative or distributor, at warehouse cost price, any stock on hand.

Renewal of a term contract upon expiration is mandatory; otherwise, there must be indemnification as prescribed by Art. 3 and 4. According to Art. 6, the only just causes which may be claimed for termination of a commercial contract, without the parent company being liable, follow:

- a) Offenses against the property or good name of the parent company;
- b) Incompetence or negligence of the representative in legal proceedings as established by one of the civil judges of the representative's domicile, as well as prolonged and substantial reduction or the stagnation of sales for reasons attributable to the representative. Save when proof to the contrary is furnished, the establishment of official quotas or restrictions on the importation of the product or service raises a presumption in favor of the representative.
- c) Breach by the representative, of his duty of secrecy and loyalty to the parent company, by revealing facts, information or techniques regarding the organization, products and operation of the parent company, which he shall have acquired as a result of his commercial relations with the latter; and
- d) Any other serious offenses committed by the representative in connection with his contractual or legal duties and obligations with the parent company.

Any unilateral amendment made to the contract by the parent company which may affect adversely the rights or interests of the representative, shall be considered just cause for the termination of the contract by the representative, with the parent company being liable.

By virtue of Law 4684, the rights of the representative cannot be waived (Art. 9). The rights and obligations emanating from the law, shall prescribe six months from the date of the occurrence which motivated the claim.

In accordance with Art. 11, the indemnification prescribed by the law shall be paid to the representative in one lump sum, immediately after termination of the contract, and, where applicable, when final judgment is rendered in the case.

EL SALVADOR

Section B — Representative Agents — Chapter III, Title III of the Commercial Code, was substituted by Legislative Decree No. 247 of January 16, 1973. Since that Section does not establish a distinction between Representative-Agents and Distributors of foreign or domestic firms, its provisions are applicable to both.

According to Art. 392, an agent, representative or distributor is any natural or juridical person who, on a permanent basis and with or without legal representation and through a contract, is appointed by a principal to discharge the agency, representation or distribution of certain products or services in the country. The agency, representation or distribution may be either exclusive or of any other type agreed upon by the parties.

In cases where there is no special contract (Art. 395), the representative-agent or distributor shall receive a commission proportionate to the volume of business obtained through his activities, in accordance with local practice. This same article in paragraph three states: "Should the representative-agent or distributor be assigned a certain area on an exclusive basis, he shall be entitled to a commission on any business normally assigned to him, and carried out in the area by the licensor or his designees, regardless of the role he (the representative or distributor) has played in such a business activity."

The representation, agency or distribution contract shall not be deemed terminated, amended nor the principal refuse renewal thereof, except for the causes set forth in Art. 398; otherwise, the representative-agent or distributor is entitled to indemnification for damages (Art. 397).

According to Art. 397, indemnification covers:

1. Expenses incurred by the representative-agent or distributor in connection with the activity of which he is being deprived, provided such expenses cannot be recovered as a result of the unilateral expiration of the contract.
2. The amount of the investment in the premises, equipment, installations, furniture and furnishings in the degree that such

investments can be used solely in connection with the activity of which he is being deprived.

3. The value of the stock on hand, in merchandise and accessories, which, because of the expiration of the contract the representative-agent or distributor cannot continue to sell or whose sale becomes particularly difficult. Such value shall be determined on the basis of purchase costs, plus freight costs to the representative-agent's or distributor's place of business, and whatever taxes or charges he may have paid by virtue of having the merchandise in his possession. Once the value of the stock is paid, the principal has the right to the stock.
4. The total gross profits obtained by the representative-agent or distributor during the last three years in the exercise of the representation or distribution, or during a shorter period in which he may have performed such duties.
5. The amount of credit which the representative-agent or distributor may have granted to third parties, for payment of the merchandise distributed. Once the total credits have been cancelled, the principal shall be subrogated to the rights of the representative-agent or distributor.

The just causes covering the termination of an agency, representation or distribution contract, or amendment thereof, or refusal to renew, are specifically set forth in Art. 398, as follows:

- a) Nonfulfillment of the agency, representation or distribution contract;
- b) Fraud by the representative or distribution agent, without prejudice to the applicable criminal sanctions;
- c) Gross incompetence or negligence of the representative-agent or distributor;
- d) Systematic reduction in the sales or distribution of the products for reasons attributable to the representative-agent or distributor;
- e) Disclosure of confidential information, without prejudice to the applicable criminal sanctions and indemnifications;

- f) Acts attributable to the representative-agent or distributor prejudicial to the introduction, sale or distribution of the products entrusted to him.

In addition to the causes specifically mentioned in Art. 398, Art. 399 of the Code considers as a just cause for the cancellation of the representative-agent's or distributor's contract with the principal, with the latter being liable in accordance with the provisions of Art. 397, any amendment thereto made unilaterally by the principal, detrimental to the rights or interests of the representative-agent or distributor.

Conflicts arising from the application of Section B of the Code shall be heard in summary proceedings in the competent courts of the representative-agent's or distributor's domicile. Moreover, in cases where the principal is a foreign national whose conviction is final, he cannot continue importing the products, brands or offering services until he complies with the terms of the sentence. As provided by Art. 399-B, such a restriction shall cease if the principal deposits in the court the amount corresponding to the penalty imposed by the court, or if the beneficiary declares that the sentence has been complied with.

GUATEMALA

Congressional Decree No. 78 of September 29, 1971 sets forth the legal standards regulating agency, distribution or representation contracts, entered into with national or foreign firms. Subparagraph (a) of Art. 1 defines an agency, distribution or representation contract as "that through which a natural or juridical person, national or foreign, known as the principal, appoints another natural or juridical person known as agent, representative or distributor, exclusively for the sale, distribution, promotion or introduction in the territory of the Republic, of certain products, merchandise or goods elaborated, constructed or manufactured within or without the country, or, for the same purpose, for the rendering of services."

An agent, distributor or representative is a natural or juridical person domiciled in the country, with whom it is agreed to engage in the activities referred to in the preceding paragraph, as long as he acts independently of the principal, through his own firm and with permanency. Thus, the present law is not applicable to commercial agents, wholesale middlemen nor to those considered by the law non-independent distributors bound by a regular labor contract."

According to Art. 2, the contract regulated by the law is, in nature, principal, bilateral, consensual, onerous, commutative and for an indefinite term, except when there shall be express agreement to the contrary solely as to the term of the contract. The contract may be executed by means of a public document or of a duly authenticated private document.

According to Art. 3, the agency, distribution or representation contract shall only be terminated or renewed, by:

- a) Mutual written consent between the parties;
- b) Expiration of the term, if any;
- c) Just cause;
- d) Decision of the agent, distributor or representative, provided he gives the employer three months' notice, in which case he is obliged to render accounts from the time he assumes the obligation to do so, and to return, at warehouse cost price, whatever pertinent merchandise he may have on hand under the terms of the contract. Should the principal refuse to pay for such merchandise, he shall be liable for whatever damages may result from his action;
- e) Decision of the employer, at any time, provided he complies with the payment of damages as specified in the law.

Art. 4 of Decree No. 78 sets forth the just causes covering the termination of a contract, as they apply to both contracting parties, to the principal, and to the agent, distributor or representative.

Applicable to both contracting parties:

- a) Non-compliance or breach by the other part, of any of the obligations or restrictions imposed by the contract;
- b) Commission of a crime by one of the parts, against the property or person of the other;
- c) Unfounded refusal by the other part to render reports or accounts or to carry out pertinent financial accounting in connection with the business, at the time and in the manner agreed upon.

Applicable to the principal:

- a) Disclosing or giving information to third parties without the proper authorization from the agent, distributor or representa-

tive, of all facts, data, codes or formulas given to him in confidence, under the terms of the respective contract;

- b) A decrease in the average sales or distribution of the products or services, as compared with similar products sold or services rendered during the preceding year, resulting from negligence or incompetence of the agent, representative or distributor, as determined in a court of law.

Applicable to the agent, distributor or representative:

- a) Whenever the principal acts in such a way as to directly or indirectly prevent or tend to prevent the agent, representative or distributor from carrying out the contract.

Should the principal cancel or rescind the contract for any other causes than those specified in Art. 4, or, should he, with this end in view, engage in acts which directly or indirectly prevent or tend to prevent the agent, representative or distributor from carrying out his duties, or should he benefit from the rights emanating from the contractual relation, such principal shall, in accordance with Art. 5, indemnify the party of the other part, for any damages resulting from the causes already mentioned. According to Art. 6, the indemnification referred to in Art. 5, covers the following:

1. Reimbursement of direct expenses or expenses incurred by the agent, representative or distributor during the preceding year, for promotional or publicity purposes in connection with the contract;
2. Investments made because of the contract which cannot be recovered or used for other purposes;
3. Payment of the merchandise in stock at warehouse cost price, which cannot be sold because of the termination or cancellation of the contract, provided such merchandise is in good condition. On the other hand, merchandise whose spoilage cannot be attributed to the agent, distributor or representative or their sales personnel, shall be considered to be in good condition;
4. Fifty per cent of the gross profits which could have been received through the sale of the merchandise referred to in the preceding paragraph, had the contractual relation continued;
5. An amount equivalent to the total gross profits which the agent, distributor or representative may have obtained during the last

three years or during the time he may have exercised the representation, should that period be less than the three-year period previously mentioned;

6. Indemnification to which, according to the law, employees or laborers are entitled to and whose termination results from the cancellation of the contract by the employer, without just cause.

In cases where it is necessary to resort to the courts, the total indemnification shall be determined by experts in summary proceedings, as set forth in Decree No. 78, Art. 7.

In order for the principal who has been sued in compliance with the provisions of Art. 5 of the law, to enter into an agency, distribution or representation contract with another party, or to engage, under any other guise in the activities mentioned therein, he must present proof of payment of the indemnification levied against him by the law, or honor his obligation by posting a bond in a sufficient amount to guarantee payment of the sum assessed.

NICARAGUA

Law No. 287 on Agents, Representatives or Distributors of Foreign Firms was promulgated on February 2, 1972. The title of the Law refers to foreign firms exclusively, without mentioning agents, representatives or distributors of national firms. The text of the law conforms with the title in the sense that it makes reference to foreign firms only. However, the terms agents, representatives or distributors of such firms do not appear in the text of the law, but rather that of *licensees*. Agents, representatives or distributors of foreign firms are grouped under that term; foreign firms are referred to as licensors or principals. Art. 2 of the law reads as follows:

The foreign licensor or principal shall not cancel or alter the relationship with his licensee, unless such action is based on some of the causes set forth in Art. 9; otherwise, he shall indemnify the licensee or licensees, as the case may be.

In accordance with Art. 9, the just causes which may be claimed for terminating or refusing to renew an agency, representation or distribution contract, follow:

1. Any crime committed by the licensee against the property or interests of the licensor or principal, mentioned in the Penal Code;
2. Systematic reduction in the sale or distribution of the products, due to negligence of the licensee. The licensee shall not be liable for such reduction, when it is the result of the establishment of import quotas or restrictions, acts of God or *force majeure*;
3. Acts attributable to the licensee which are prejudicial to the introduction, sale or distribution of the products in question;
4. Bankruptcy of the licensee.

It should be pointed out that, according to Art. 9 and unless it is specifically mentioned therein, breach of any agency, representation or distribution contract does not constitute just cause for the cancellation of the contract.

If no just cause for the termination or refusal to renew a contract exists, and should there be no agreement between the parties, the pertinent indemnification is covered by Art. 3 of the law, as follows:

- I. Amount of the investment made for the benefit of the licensor, in accordance with the percentage shown in the machinery and other chattels depreciation table which may be in force for income tax purposes.
- II. Indemnification for the duration of the contractual relation, to be determined on the basis of the following table:
 1. From 3 to 12 months, 25% of his likely gross profits during a three-year period;
 2. From 12 to 24 months, 50% of his likely gross profits during a three-year period;
 3. From 24 to 36 months, 75% of his likely gross profits during a three-year period;
 4. From 36 months on, 100% of the gross profits earned during a three-year period.

When the contractual relation exceeds three months but is under thirty-six, the gross profit upon which indemnification shall be based shall be determined by

multiplying the average monthly gross profit for that period by 36. In all instances, the licensee's books of accounting shall be considered the source.

III. Any other factor which may be considered pertinent in equitably determining the indemnification.

Art. 4 of the law provides that each time the licensor increases the number of licensees, he shall pay, individually, to each of the former licensees, 80% of the indemnification to which they are entitled in accordance with Art. 3.

The licensor is likewise obliged—except when there exists just cause for the cancellation of the contract or refusal to renew—to buy from the licensee the merchandise he may have in stock within a period not to exceed six months (Art. 5). In turn, in cases where the licensee has granted credit to third parties for payment of the merchandise which he distributes and which was purchased from the licensor, the latter shall pay off such credits and shall be subrogated to the rights of the licensee (Art. 6). This rule, however, has one exception: whenever the credits have been outstanding over a period of twelve months, the licensor shall not be liable to the licensee for payment thereof.

Should the licensor default, or should he not post sufficient guarantee for payment of the licensee's indemnification, the Ministry of Economy, Industry and Commerce can suspend the importation or distribution of the licensor's or principal's products (Art. 7).

Art. 11 of the law establishes a two-year statute of limitation within which to claim the rights emanating from the rescission or non-renewal of a representation, agency or distribution contract. The term shall start running from the expiration of the non-renewed contract, or from the date of written notification terminating the contract. Legal proceedings between licensors and licensees relative to disputed rights will be carried out in civil courts in summary proceedings of *mayor cuantía*. The contracts shall be subject to Nicaraguan laws, even if the contrary should be specified therein (Art. 12).

CONCLUSION

From the above analysis it is concluded that before entering into one of the contracts discussed in this study, a foreign company or one exporting its products to Central America and Panama should thoroughly

examine the contractual and legal obligations it will assume as a result of such a contract. It should also be pointed out that since at present the multinational company does not exist in Central America from a juridical standpoint, a businessman or national enterprise of one of the area countries is not a "national" but a foreign firm or principal, in the other Central American countries and Panama. Thus, a Nicaraguan company exporting its products to the other countries of Central America and Panama, shall be considered a foreign firm or principal in the countries outside of Nicaragua.

It is also well to clarify that the fact that a contract fixes a time limit for its duration has no juridical relevance whatever (except in the case of Guatemala), inasmuch as the contract must be renewed at expiration, unless the parent company or licensor pays the corresponding indemnification. The rule does not apply to cases where the licensee, representative or distributor chooses not to renew the contract at expiration.