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Agency and Distribution Agreements in Dominican Republic



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INTRODUCTION

1.1 Different Means of Selling Locally; Agents and Distributors

There are various means of selling foreign goods or services in the Dominican Republic. Dominican law does not require that foreign suppliers have an agent or distributor in the Dominican Republic. Such suppliers can either (1) make direct sales to Dominican purchasers, (2) establish a subsidiary, branch, or sales office, or (3) sell through Dominican agents or distributors.

The obvious advantage of direct sales is its simplicity and its low cost. There are no commissions to be paid to local agents or distributors. The downside is that the foreign suppliers would not have a local representative to promote the sale of the goods or services in question. Since Dominican income tax is applied on a territorial basis, the income generated by direct sales outside the Dominican Republic, would not be, in principle, subject to Dominican income tax.

The advantage of the second alternative is that by creating a subsidiary, branch, or sales office, the sale and marketing of the goods and services in question is improved. Establishing and maintaining such an entity, however, would require an investment in time and effort (and naturally some costs). The income generated by the entity would be subject to Dominican income tax.

The third alternative, which is to sell through local agents or distributors, has the advantage of establishing an effective sales apparatus at low cost. The downside is the strong protection afforded to agents and distributors by Dominican Law No. 173 of April 6, 1966, as amended (hereinafter "Law No. 173" or simply "the law"). After an agent or distributor is appointed, the foreign supplier may have very little flexibility in terminating the agent or distributor, even in the face of marginal performance.

The protection under Law No. 173 consists of the imposition of substantial sanctions for termination of agencies or distributorships made without "just cause". Law No. 173 makes no distinctions between agents or distributors. They are referred to as concessionaires, which is the term that will be used hereinafter. It is very broad in its application. It protects, inter alia:

Natural or juridical persons engaged in the promotion or negotiation of the importation, distribution, sale or lease of products or services, or any type of trade or exploitation of foreign merchandise or products and the services related thereto ... Whether act [ing] as agent, representative, importer, commission merchant, franchisee, or under any other designation.

Under this broad statutory language, both agents and distributors would be construed as subject to Law No. 173.



1.2.1 Legal System

The Dominican Republic is a civil law system. Its various codes (i.e., Civil Code, Commercial Code, and Penal Code) are, in fact, translations into Spanish of the corresponding French codes of the nineteenth century. Although Spanish is the official language because of the country's status as a Spanish colony until 1822, the French influence in the Dominican legal system is a direct result of the Haitian domination (an ex-French colony) from 1822 to 1844. The country attained its independence from Haiti on February 27, 1844. As a codified system, Dominican courts ordinarily pay significant respect to written agreements between contracting parties. However, Law No.173 is by its terms a "public order" statute and thus supersedes contrary provisions in agreements between private parties. Law No. 173 is applicable in the entire territory of the Dominican Republic, as there is no significant provincial law or municipal law.

1.2.2 Applicable Law

In addition to Law No.173, there are other laws and regulations that affect the foreign supplier's relationship with local concessionaires and the manner of conducting business.

There are changing import laws and regulations to contend with that affect the products that can be imported and sold in the Dominican Republic. Automobiles are an example of products whose importation periodically has been suspended. To minimize the outflow of hard currency, the importation of luxury items also has been suspended in the past. There are no significant government procurement regulations that would affect the sales of foreign products in the Dominican Republic.

If the foreign supplier decides to structure its operations through a subsidiary or a branch, Dominican labor legislation would affect the entity's relations with local employees. Concessionaires would be considered independent contractors under Dominican law and as such not covered by Dominican labor law.

There are provisions in the Dominican Penal Code that forbid the payment of bribes to any public employee. However, the foreign supplier would not be liable for the intermediary's violation of the bribery statutes.

1.2.3 Courts and Administrative Agencies

There are no special courts or tribunals for Law No.173 cases. The ordinary trial courts have jurisdiction over disputes between foreign suppliers and their local concessionaires. Before a concessionaire can file a claim for termination without "just cause", it first must attempt a conciliation procedure before the local chamber of commerce and production. Only when such conciliation is unsuccessful can the concessionaire file a claim with the competent trial court.

There are no governmental agencies or authorities that regulate the appointment, use, and termination of commercial intermediaries. A very important aspect of Law No.173 is that the local concessionaire must have registered the name of the foreign firm it represents and the terms of its agreement with the International Department of the Central Bank. While non-registration generally



bars a claim under Law No.173, there have been a few cases where unregistered local companies have been able to successfully claim that circumstances outside their control prevented proper compliance with the registration requirement. Since agents and distributors sometimes fail to register their agreements with the International Department of the Central Bank, in the past to avoid having to exchange their hard currency commissions, it is useful for foreign suppliers to submit a formal request to the Central Bank seeking to determine if the requisite registration was made before considering the termination of local concessionaires.

In general, although there is a limited amount of reported case law interpreting Law No.173, the courts in the Dominican Republic tend to interpret Law No. 173 in favor of the local concessionaires.

1.2.4 Choice of Law/Choice of Forum

Dominican law would apply to an agreement with local concessionaires notwithstanding a choice of law clause in their agreement because of the "public order" nature of Law No.173. Similarly, a choice of forum provision in an agreement would be rendered equally ineffective. The Dominican Supreme Court has interpreted Law No. 173 as precluding application of foreign law and jurisdiction. Hence, the choice of foreign law and submission to foreign courts or an arbitration panel will not prevent a Dominican court from applying Law 173. Nevertheless, it may be convenient for foreign manufacturers to include foreign Law as governing so as to strengthen its position in the event that its agents or distributors should attempt to seek enforcement of a Dominican Republic judgment in a foreign court. The imposition of Dominican Republic Law, substantially altering mutually agreed upon obligations of the parties in a situation where the parties previously have chosen a foreign law as governing, may be construed as repugnant to the public policy of the foreign court before which enforcement of the judgment is sought. Arbitration and other forms of alternative dispute resolution are not precluded under Law No.173, but there is no guarantee that a Dominican court would respect such a choice¹.

The recently approved Law No. 554-14 on international private law provides that the courts of the Dominican Republic are competent in the matters concerning patrimonial rights of contractual obligations that take place in the Dominican Republic.

The law does not require that concession agreements be entered into in Spanish. To register the agreement with the International Department of the Central Bank a translation into Spanish by a court-appointed interpreter however is required.

¹ Adding to this, recently a Dominican Courts of Appeals rendered a ruling, indicating in its motivation that Law 173 does not preclude the option of the parties to choose the forum, in specific declared valid a clause in an agency and distribution agreement where the parties chose the ICC as the forum to file their claims. The ruling, indicated that notwithstanding Law 173 'public order', the election of an arbitration forum its valid, applying to said arbitration process Law 173 as the applicable law, and that the public order that Law 173 seeks to insure is the indemnification that should be granted, according to article 3 of Law 173, whether the dispute is presented in an ordinary court or an arbitration forum. [See Ruling No. 633-2010; File No. 026-03-10-00100; Date: October 8th, 2010; Second Chamber of the Civil & Commercial Courts of Appeals of the National District]. Please note that this ruling is not necessarily binding to a different court or to a different case.



1.2.5 Law 173 and CAFTA-DR

As has been mentioned, Law No. 173 is a “public order” law whose provisions may not be superseded by private contract. Nevertheless, with the taking of effect of the Dominican Republic – Central American Free Trade Agreement (CAFTA-DR) on March 1st, 2007, the law is no longer considered to have a ‘public order’ nature with regards to agreements with United States companies, thus permitting the will of the contracting parties to prevail over the provisions of the law. According to Chapter 11, Annex 11.13, Section B, of the CAFTA-DR, a contract between a United States company and a local concessionaire can be governed by Law No. 173 or civil law, whichever the parties choose. In that vain parties are able to established if the local concessionaire will be protected by Law No. 173 provisions or not. In case Law No. 173 is not applicable the relationship will be ruled by the freedom of contract principle and the Dominican Civil Code rules.

1.3 Selection Local Intermediaries

One of the best ways for a foreign supplier to identify individuals or entities who may be interested in serving as local concessionaires is through the local chamber of commerce and production or the various bilateral chambers of Commerce (i.e., Dominican-British Chamber of Commerce, American Chamber of Commerce, etc.). Some embassies, including the United States Embassy, publish a commercial directory which is used frequently by foreign firms searching for interested commercial intermediaries.

2. CONCESSIONAIRES

Since the differences between agents and distributors are not substantial and both are subject to Law No.173, they both will be covered in this section.

2.1 Basic Concept

Agents are those who sell on account of others and generally are paid a commission on sales by the foreign supplier. Distributors buy and resell on their own account and the profit results from the differential, which is received directly from the final customer. There are not many practical variations to those generalized concepts in the Dominican Republic.

2.2 Limitations on Use

There are no applicable local laws or regulations prohibiting or limiting the use of agents or distributors under certain circumstances. Up until December 1995, concessionaires had to be of Dominican nationality. The Law was amended so that foreign persons or entities can freely operate as concessionaires in the Dominican Republic.

2.3 Obligation to Register

As indicated above, registration with the International Department of the Central Bank is a prerequisite for the concessionaire that wishes to file a claim for unjust termination against its foreign supplier. Failure to comply with this obligation may result in the concessionaire being barred from filing a Law No. 173 claim. With the application of the CAFTA-DR, in principle, the International



Department of the Central Bank should not register any contracts where the parties express that they are not going to govern their relationship under Law No. 173 provisions.

2.4 General Duties and Powers of Agents

The duties of the agents or concessionaire are those set forth in the agreement with the foreign supplier. There is no specific legal principle that defines the duties of agents or concessionaires in the absence of contractual understandings. Under Dominican law, agents do not have implied authority to act for their foreign principals. The parties may establish the general duties and powers of agents in their agreements.

2.5 General Powers and Duties of Principal

The general duty of the foreign principal is to accept orders from its local concessionaire. Failure to accept such orders may be considered as constructive termination of the agreement. Dominican law is not specific as to the powers of foreign principals over the local agents. As indicated above, the parties may stipulate in their agreement as to their respective powers and duties.

2.6 Maintenance of Inventory

There are no requirements under local law as to maintenance of an inventory by the concessionaire. The parties may establish in their agreements requirements to that effect. The parties also can agree on any appropriate security interest in inventory until it is sold (e.g., consignment, procedures for filing security interest in inventory, conditional sales, etc.).

2.7 Exclusivity

Law No. 173 is silent on the question of whether a foreign supplier can have several nonexclusive concessionaires. In only one section of the Law, Article 5, is there a provision concerning exclusive contracts. That section has been interpreted to mean that the Law does not exclude the existence of nonexclusive agreements². As a practical matter, International Department of the Central Bank registers exclusive as well as nonexclusive concession agreements. The parties therefore are free to negotiate on exclusivity. The Supreme Court has however determined that simple or reciprocal exclusivity is of the essence of a concession agreement and can only be limited by an express convention between the parties. It had also previously determined that a nonexclusive agreement could become exclusive through the course of dealings. In general, exclusivity is interpreted to mean that the foreign manufacturer or supplier is barred from appointing other concessionaires or from itself selling the product within the assigned territory. The appointment of nonexclusive concessionaires is one of the foreign suppliers' best options for limiting the protective effect of Law No.173. If a concessionaire performs marginally, the foreign supplier would then be free to appoint a new non-exclusive concessionaire. In this regard, it is vital to include in the wording of the agreement whether the intention is for the agreement to be on an exclusivity basis or not, as

² In this regard, the Supreme Court of Justice has ruled that "the provision [of Article 2 of Law 173] also applies to concession contracts in general, ie, whether exclusively or not" [See Ruling No. 115; Date: January 12th, 2011; First Chamber of the Supreme Court of Justice].



the Supreme Court of Justice that the exclusivity clause shall be interpreted in favor of the concessionaire³.

2.8 Remuneration

2.8 1 Basis

A common basis for remuneration in the Dominican Republic, especially for agents, is the payment of commissions based on sales price. Local law does not define the point when commissions are deemed earned. The parties may establish this in their agreement.

2.8.2 Limitations

There are no local laws or regulations that restrict or otherwise affect the amount of remuneration that may be paid to agents under any circumstances (e.g. government sales).

2.9 Term and Renewal

Term or expiration clauses in the agreements also will be rendered ineffective on account of the public order nature of law No. 173 Article 2 of Law No. 173 states as follows:

Notwithstanding that a contract contains a clause by which the parties reserve the rights of unilaterally terminating their commercial relations, the foreign.....[manufacturer] shall not terminate the relationship nor refuse to renew the contract upon its normal expiration, except for just cause.

While the term clause is ineffective under Dominican Law, its inclusion may be recommended nonetheless. It sometimes happens that the concessionaire whose performance is marginal will allow an agreement to expire on the termination date without claiming compensation.

2.10 Termination

2.10.1 With Cause

Law No.173 may provide sanctions against termination of concessionaires even if the concessionaire violates the terms of the agreements, unless failure to comply with these provisions are interpreted by Dominican courts as breaches of essential obligations, constituting "just cause" for termination. Here again, there are few reported decisions regarding what constitutes "just cause." It seems, however, that if the distributors' obligations are designated in the agreement as "essential elements" of the contract, there is a reasonable prospect that breach of such obligations would be recognized by a Dominican court as "just cause". Thus, for example, the inclusion of quotas or minimum sales, together with a stipulation that compliance with those provisions

³ Ruling No. 172, date: August 1st, 2011; First Chamber of the Supreme Court of Justice



constitutes an essential element of the agreement, may result in a finding of "just cause" by Dominican courts.

2.10.2 Without Cause

Contractual provisions whereby the principal is allowed to terminate the agreement without cause, such as upon a minimum notice, are ineffective under Law No.173.

2.10.3 Non-renewal

Pursuant to Article 2 of Law No.173, non-renewal of a concession agreement is deemed equivalent to termination.

2.11 Consequences of Termination

2.11.1 Right and Basis for Indemnification

Article 3 of Law No. 173 sets forth (1) the circumstances when a concessionaire is entitled to indemnification upon termination and (2) the basis for calculating such indemnification. Such Article literally reads as follows:

"Article 3. Every concessionaire shall have the right to institute a damage suit against the Licensor in case of his destitution, substitution or termination of the Concession Contract existing between them, or due to his refusal to renew said contract, unilaterally or without just cause on the part of the Licensor, for the complete and just indemnification of damages and losses caused by such reason, which amount shall be fixed based on the following formula:

a- All losses sustained by the concessionaire due to the personal efforts he has put in for the exclusive benefit of the business he is deprived of, including expenses for payment of the compensations established by the Labor Laws.

b- The present value of the investment in the acquisition or lease of the premises and its fitness, equipment, installations, furniture and fixtures, in case these were only used for the business of which he is deprived of.

c- (Amended by Law No. 263 of Dec. 31/71) - The promotion value of the services offered according to the commercial prestige of the agent, of the merchandise and products, parts, spare parts, accessories and fixtures that he has in stock and from whose sale, lease or exploitation he shall cease to benefit from; this value shall be determined by the acquisition and transportation cost to his warehouse or office, plus taxes, duties, inland freight charges and any other charges caused by the delivery of the merchandise to his warehouse or office; and

d- (Amended by Law No. 622⁴ of Dec. 28/71) - The amount of the gross profits obtained by the concessionaire from the sale of the merchandise, products or services during the last five years, or if commercial relationship has been for less than 5 years, five times the annual average gross

⁴ Law No. 622 dated December 28, 1973, G.O. No. 9325 of January 2nd., 1974.



profits obtained during the last years, irrespective of what they amount to. In case the concessionaire had represented the Licensor for more than 5 years, the latter shall pay, in addition, the amount resulting from multiplying the number of years in excess of five by one tenth of the average gross profits obtained during the last five years of representation.”

2.11.2 Waiver of Right

A concessionaire's waiver of his statutory right to indemnification in the agreement is ineffective on account of the "public order" nature of Law No 173.

2.11.3 Continuing Commissions

Law No. 173 does not deal specifically with the issue of whether a terminated concessionaire has a right to continuing commissions with respect to orders solicited prior to termination. The parties may negotiate this issue in their agreement.

2. 11.4 Termination of Registration

To cancel the concessionaire's registration with the International Department of the Central Bank, the agreement between the concessionaire and the principal must have been terminated. Such termination can be done amicably through a termination agreement, where the foreign supplier generally pays the concessionaire a substantial amount to accept the termination, or through a court order declaring the rescission of the agreement.

2.12 Competition Law Issues

There are no specific competition laws concerning agency arrangements. Notwithstanding, there is an Anti-trust Authority (Pro-Competencia) and an Anti-trust Law (Law No. 42-08). Pro-Competencia may, on an *ex-officio* basis or by request of a legitimate interested party, begin an investigation and procedure to determine whether a transaction is in accordance with the anti-trust regulations or not. In the event of wrongdoings, Pro-Competencia may issue fines of a range from 30 to 3,000 minimum wages in cases of antitrust violations. Law No. 42-08 was promulgated in the year 2008, and recently came into force with the appointment of its executive director on January 2017.

As a contract condition, the principal may prohibit the concessionaire from soliciting orders outside the assigned territory or from representing products that compete with those of the principal.

2.13 Tax Issues

The appointment and use of a local concessionaire by a foreign principal will not subject the principal to local income taxation. An agent-principal relationship could be regarded as an employee-employer relationship only if the legal characteristics of the employee-employer relationship are found, such as subordination of the employee to the employer, payment of salary, etc.



Other than those indicated above, there are no withholding or reporting requirements that would apply to commissions paid to the concessionaire.

2.14 Intellectual Property Issues

In order for the principal to protect its patents, trademarks, trade names, and other intellectual property rights when selling through a concessionaire, the principal should register its rights to such intellectual property with the Ministry of Industry and Trade of the Dominican Republic. There are no laws that specifically require the principal to indemnify the agent from infringement claims against the principal's products. Notwithstanding, violations of intellectual property rights dully protected are subject to sanctions, in accordance with Intellectual Property Law No. 20-00.

2.15 Consumer Protection

Law No. 358-05, for Consumer Protection, is also considered a public order statute. Said law creates and establishes *Pro-Consumidor*, a governmental agency for the protection of consumers with ability to order products recalls, establish fines and destroy harmful products.

Law No. 358-05 establishes the mandatory recall of any products that are deemed to be harmful to consumers. The cost and sanctions associated to a product recall shall be the responsibility of the local supplier (in this case local distributor), nonetheless Law No. 358-05 has a long reach and in recalls based on harm to the public health, it may reach the manufacturer, as the courts have ruled before⁵.

Supplier and distributor may delineate in the agreement the party responsible for carrying out and absorbing the cost of a recall. A supplier may limit the warranty provided to its distributor in an agreement between the parties. Nonetheless per Law No. 358-05, local distributor must grant the end-user a warranty for the same length as provided in the country of origin of the products.

2.16 Data Protection

Supplier and distributor may exchange information about customers and end-users, provided such data is not protected by the law. Personal and financial data are protected in the Dominican Republic by Law No. 172-13. Any information regarding racial or ethnic origin, religious, political and sexual preferences, union affiliation and health information, is protected and cannot be revealed or shared without the consent of the owner of such data.

⁵ First Instance District Court of the National District, date August 15th, 2002.



APPENDICES

Appendix A

**LAW No. 173 CONCERNING THE PROTECTION TO AGENTS,
IMPORTERS OF MERCHANDISE AND/OR PRODUCTS
(OFFICIAL GAZETTE No. 8979, DATED APRIL 6, 1966)**

**HECTOR GARCIA GODOY
TEMPORARY PRESIDENT OF THE DOMINICAN REPUBLIC**

In the name of the Republic

NUMBER 173⁶

WHEREAS the state cannot remain indifferent to the growing number of cases of natural or juridical persons from abroad who, without a just cause, eliminate their licensees or agents as soon as these have created a favorable market in the Dominican Republic, without taking into consideration their legitimate interests.

WHEREAS it is necessary to grant adequate protection to natural or juridical persons who dedicate themselves in the Dominican Republic to promote and negotiate the import, distribution sale, lease or any other type of exploitation of commodities or products coming from abroad or when these are manufactured in the Country, acting as agents or under any other denomination against detriments that could cause the unjust termination of the relationships by virtue of which they exercise these activities, by the unilateral action of persons or entities who they represent or on whose account or interest they act, for the purpose of obtaining the equitable or complete compensation of all the losses sustained by them, as well as the legitimate profits receivable of which they are being deprived of.

Art. 1.- DEFINITIONS: For the purpose of this Law the following terms shall have the meaning they express, except when its context clearly expresses a different meaning:

- a) (Amended by Law No. 263⁷ of Dec. 31/71) - LICENSEE: Natural or juridical person dedicated to promote or negotiate the import, distribution, sale of products or services, lease or any other form of trade, commercializing with foreign merchandise or products and the services related with such negotiations, or when same are manufactured in the Dominican Republic, whether he acts as agent, representative, importer, commission merchant, licensee, or under any other denomination.
- b) CONCESSION CONTRACT: Any form of established relations between a Licensee and a Licensor by virtue of which the first party dedicates himself in the Dominican Republic to the activities provided for in section a) of this Article.

⁶ Law 173 dated April 6, 1966, G.O. No. 8979, of April 6, 1966.

⁷ Law No. 263 dated December 31, 1971, G.O. No. 9252 of January 15, 1972.



- c) (Amended by Law No. 263 of Dec. 31/71) - LICENSOR: Natural or juridical persons represented by the Licensee or on his behalf or interest or of his merchandise, products, or services, performing the above mentioned activities, whether the Concession Contract has been directly granted by said natural or juridical persons or through any other persons or firms acting as his representatives or in his own name, but always on behalf of those persons or firms or of their merchandise, products or services.
- d) (Amended by Law No. 263 of Dec. 31/71) - JUST CAUSE: Breach or non compliance by any of the parties or any of the essential obligations of the Concession Contract, or any action or omission of such that could adversely affect in a substantial way the interest of the Licensor in the promotion or negotiation of the import, distribution, sale, lease, or any other form of trade of his merchandise, products or services.

Art. 2.- Even if in a Concession Contract there exists a clause by which the parties unilaterally reserve the right of terminating their commercial relations, the Licensor shall not denounce or dissolve said commercial relations nor refuse to renew the contract at its due date, unless a just cause exists.

Art. 3.- Every Licensee shall have the right to institute a damage suit against the Licensor in case of his destitution, substitution or termination of the Concession Contract existing between them, or due to his refusal to renew said contract, unilaterally or without a just cause on the part of the Licensor, the complete and just indemnization of the damages and losses caused by such reason, which amount shall be fixed based on the following formula:

- a) All losses sustained by the Licensee due to the personal efforts he has promoted for the exclusive benefit of the business he is part of, including expenses for payment of the compensation established by the Labor Laws.
- b) The present value of the investment in the acquisition or lease and the fitness of the premises, equipment, installations, furniture and fixtures, in case these were only used for the business of which he is part of.
- c) (Amended by Law No. 263 of Dec. 31/71) - The promotion value of the services offered according to the goodwill of the Agent, Merchandise and Products, parts, spare parts, accessories and fixtures that he has in stock and from which sale, lease or negotiation he shall not receive any benefit; this value shall be determined by the acquisition cost and transportation to his warehouse or office, plus taxes, duties, inland freight charges and any other charges caused by the delivery of the merchandise to his warehouse or office; and
- d) (Amended by Law No. 622⁸ of Dec. 28/71) - The amount of the gross profit obtained by Licensee from the sale of the merchandise, products or services during the last five years, and if commercial relations have been for less than 5 years, five times the annual average gross profit obtained during the last years, in case the Licensee had represented the Licensor for more than 5 years, the latter shall have to pay, besides the amount resulting from the multiplication of years in excess of five years by the a tenth of the average gross profit obtained by him during the last five years of representation.

⁸ Law No. 622 dated December 28, 1973, G.O. No. 9325 of January 2nd., 1974.



Art. 4.- (Amended by Law No. 263 of Dec. 31/71) - If Licensor decides to manufacture, elaborate, pack or bale the products to which the present Law refers, or to establish by himself offices for the sale of those services which compete with his agents in the Dominican Republic, Licensor shall be equally obligated to compensate Licensee in the form provided for by Art. 3 of this Law, in case the Concession Contract is terminated by one of the causes listed in said Article.

Art. 5.- (Amended by Law No. 263 of Dec. 31/71) - Every Concession Contract granting Licensee the exclusive representation of the Licensor, includes merchandise or products of foreign origin as well as those manufactured in the Dominican Republic, and foreign services bound for the Dominican Republic, or vice-versa, or services originating in the Dominican Republic for local distribution.

Art. 6.- All natural, juridical or foreign persons associated with the author of the destitution or substitution of the resolution or termination of the Concession Contract or who refuses to renew said contract, by unilateral action and without a just cause on the part of the Licensor, and who substitutes Licensee, shall be jointly responsible for the compensation payment agreed upon.

PARRAGRAPH: (Amended by Law No. 263 of Dec. 31/71) - The natural or juridical person, national or foreign, who has by any means obtained the rights over the merchandise products or services of Licensor, shall be jointly held responsible for such action, as well as the persons substituting Licensee on behalf of the new buyer.

Art. 7.- (Amended by Law No. 622 of Dec. 28/73) - Action taken according to this Law shall be governed by the provisions of the jus common concerning the jurisdiction, proceeding and prescription of the Law. Furthermore, such action shall be subject to the following provisions:

PARRAGRAPH I. (Created by Law No. 622 of Dec. 28/73) - To exercise this action, the Licensee or the Licensor shall previously request to the Official Chamber of Commerce, Agriculture and Trade under their jurisdiction their intervention to amicably reconcile the interests of the parties concerned. Within three days of the receipt of this request, the President of the Chamber shall designate a Reconciliation Commission of three of its members and this Commission in a three days term shall call the parties in conflict to attend the meeting at which the reconciliation shall take place. Such notice shall be delivered to the parties by a Court Officer and shall indicate the date and place of same, and the date, time and place of the meeting, as well as the purpose of the meeting. Between the day of the notice and the day of the meeting, and for no less than a term of eight clear days and no more than thirty days shall be given, which terms could be extended due to the distance in accordance with the provision established in the amended Article 73 of the Civil Code.

PARRAGRAPH II. (Created by Law No. 622 of Dec. 28/73) - The parties shall attend the meeting personally or represented by attorneys or proxies and they can be assisted by their lawyers and counsels. They shall furnish the documents and arguments they judge pertinent or those requested by the Commission to enforce the reconciliation and submit to the parties the recommendations and advise it considers pertinent. If the parties or one of the parties does not attend the meeting after having been duly notified, or they do not reach an agreement, a non-agreement or nonappearance certificate shall be executed, which copy shall head the lawsuit.

PARRAGRAPH III. (Created by Law No. 622 of Dec. 28/73) - If the parties reach an agreement, a document shall be drafted containing the names, personal identification card numbers and any



other personal data of Licensor and Licensee; the names, personal identification card numbers and the official status of the other persons attending the meeting and a detailed report including all the clauses of the agreement. This document shall be signed by all those present.

PARRAGRAPH IV. (Created by Law No. 622 of Dec. 28/73) - In case that in the provincial jurisdiction of the Licensee there is no Official Chamber of Commerce, Agriculture and Industry, the same procedure shall take place at the nearest Chamber of Commerce, Agriculture and Industry, *[exclusively for these reconciliation purposes]. It shall not be necessary that the Licensee be a member of same.

PARRAGRAPH V. (Created by Law No. 622 of Dec. 28/73) - The notice to attend the before mentioned reconciliation meeting shall be made at the request of the members of the Commission and it shall indicate the conditions of their procedures; the costs arising from said meeting shall be paid by the party requesting the service, who shall pay in advance at the time of making the request.

PARRAGRAPH VI. (Created by Law No. 622 of Dec. 28/73) - The judgements rendered by the Court of First Instance and the Court of Appeal and originating from Art. 3 of this Law, shall not be subject to opposition.

PARRAGRAPH VII. (Created by Law No. 622 of Dec. 28/73) - The terms for filing an appeal or for filing for cassation shall be the month from date of the notification of judgment.

PARRAGRAPH VIII. (Created by Law No. 622 of Dec. 28/73) - The Court of Appeal responsible for the actions generated by this Law, shall pronounce judgment no later than thirty (30) days after the case is in state, unless a justifiable cause impedes the solution of the litigation in the prescribed time limit, at which shall be reported in the record issued to that effect and shall be stated in the judgment sanctioning the Judge or Judges in charge of the case, in accordance with Art. 165 of the amended Law of the Judiciary Organization.

Art. 8.- The provisions of the present Law are of public order and therefore can not be derogated nor modified by private agreement.

Art. 9.- The present Law cancels and substitutes Law No. 6080 of October 22nd., 1962, amended by Law No. 646 of March 8th, 1965, as well as any other Law or provision contrary to it.

Art. 10.- (Created by Law No. 263 of Dec. 31/71) - *Natural or juridical persons to which Art. 1 of the present Law refers *[in order to exercise the rights conferred by the present Law] shall register with the International Department of the Central Bank the name of the foreign firms or enterprises on behalf of which they are acting as agent, representatives, importer, commission merchant, licensee or under any other denomination in the Dominican Republic.

PARRAGRAPH: (Created by Law No. 263 of Dec. 31/71) - For these purposes, they shall submit to the International Department of the Central Bank the documents containing their sum general information along with the name of the foreign firm or company, address, products they represent, the maximum commission rate they receive and the correct address of the interested party.

This registration should be made within 60 days after the present Law takes effect for the companies and lines of products they presently represent.



[Modified by Law No. 664 of Sept. 21/77] The new foreign firms or companies shall be registered in the above mentioned Department within 60 days after entering into an agreement and shall submit the same documents and data of the firms presently represented.

Art. 11.- (Created by Law No. 622 of Dec. 28/73) - In the cases provided in Art. 3 as well as in the cases provided for by Art. 4, Licensor cannot establish himself in the Dominican Republic, whether by establishing a domicile or by establishing a Dominican subsidiary or in any other way, in order to substitute the Licensee's activities, nor can he name a new national or foreign Licensee to substitute him if a friendly agreement has not been reached before within the provisions of this Law with his Licensee and pay to the Licensee the corresponding compensation of a single and total payment.

Art. 12.- (Modified by Law No. 16-95 of Nov. 8/95) - Foreign individuals and companies, just as national, individual and companies, can engage in the Dominican Republic in the promotion or handling of importation, the sale, rental or any other kind of marketing or operations of merchandise and products of foreign origin that may be produced abroad or in the country, whether acting as agent, representative, receiver of commissions, exclusive distributor, licensee or under any other denomination. However, if the foreign individual or company has had a commercial relationship with local licensees, he or it must agree to and deliver beforehand and in writing the fair and complete indemnities for the losses and damage produced by such cause, on the basis of the factors and in the manner described in article 3 of this law.

[End of Law]



CAFTA – DR
CHAPTER 11
ANNEX 11.13 - SECTION B

“Section B: The Dominican Republic

1. The Dominican Republic shall not apply Law No. 173 to any covered contract signed after the date of entry into force of this Agreement unless the contract explicitly provides for the application of Law No. 173 and in place of Law No. 173 shall:

- (a) apply principles of the Código Civil of the Dominican Republic to the covered contract;
- (b) treat the covered contract in a manner consistent with the obligations of this Agreement and the principle of freedom of contract;
- (c) treat the termination of the covered contract, either on its termination date or pursuant to subparagraph (d), as just cause for a goods or service supplier to terminate the contract or allow the contract to expire without renewal;
- (d) if the covered contract has no termination date, allow it to be terminated by any of the parties by giving six months advance termination notice;
- (e) provide that after the termination of the covered contract or the decision not to renew it:
 - (i) if the covered contract contains an indemnification provision, including a provision providing for no indemnification, the indemnification shall be based on such provision;
 - (ii) if the covered contract contains no such provision, any indemnification shall be based on actual economic damages and not on a statutory formula;
 - (iii) the principal shall honor any pending warranties; and
 - (iv) the principal shall compensate the distributor for the value of any inventory that the distributor is unable to sell by reason of the termination or decision not to renew the contract. The value of inventory shall include any customs duties, surcharges, freight expenses, internal movement costs, and inventory carrying costs paid by the distributor;
- (f) allow disputes arising from the covered contract to be resolved through binding arbitration; and
- (g) allow the parties to the covered contract to establish in the contract the mechanisms and forums that will be available in the case of disputes.



Nothing in subparagraph (c) shall prevent parties from demanding indemnification, when appropriate, in the form, type, and amount agreed in the contract.

2. If Law No. 173 applies to a covered contract, either because the contract was signed before the entry into force of this Agreement or the contract explicitly provides for the application of Law No. 173, and the contract is registered with the Banco Central in accordance with Article 10 of Law No. 173, the Dominican Republic shall provide, consistent with articles 46 and 47 of the Constitución de la República Dominicana, that:

(a) the amount of an indemnity for termination of a covered contract based on the factors listed in Article 3 of Law No. 173 shall be no greater than would be available to the claimant under the Código Civil of the Dominican Republic;

(b) during or after the conciliation process under Article 7 of Law No. 173, the parties to a contract may agree to resolve the dispute through binding arbitration; and,

(c) the Government of the Dominican Republic and the conciliation authorities shall take all appropriate steps to encourage the resolution of disputes arising under covered contracts through binding arbitration.

3. For all covered contracts,

(a) a goods or service supplier shall not be required to pay damages or an indemnity for terminating a covered contract for just cause or allowing such a contract to expire without renewal for just cause; and

(b) a contract shall be interpreted as establishing an exclusive distributorship only to the extent that the terms of the contract explicitly state that the distributor has exclusive rights to distribute a product or service.

4. The requirement that the parties to a contract seek a negotiated settlement of any dispute through conciliation, and all other provisions of Law No. 173, shall retain all their validity and force for all contractual relations not subject to paragraph 1.

5. For purposes of this Section:

a) **covered contract** means a concession contract, as defined in Law No. 173, to which a goods or service supplier of the United States or any enterprise controlled by such supplier is a party;

b) **Law No. 173** means Law No. 173, entitled “Ley sobre Protección a los Agentes Importadores de Mercancías y Productos,” dated April 6, 1966, and its modifications; and,

c) **termination date** means the date provided in the contract, or the end of a period of extension of a contract agreed upon by the parties to the contract.”

[End of Section B, Annex 11.13, Chapter 11 CAFTA-DR]



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