

**CONTRACTE DE DISTRIBUȚIE ȘI DEALER: PROBLEME DE CALIFICARE  
ȘI INDIVIDUALIZARE****Igor ARSENI**

Doctor în drept, conferențiar universitar, Universitatea de Stat din Comrat,

or. Comrat, Republica Moldova

e-mail: [igorarseni1987@gmail.com](mailto:igorarseni1987@gmail.com)<https://orcid.org/0000-0002-9560-0011>

*În articol autorul dezvăluie caracteristicile contractelor independente - distribuție și dealer. Separat, s-a ajuns la concluzia că aceste contracte în știința juridică sunt adesea identificate, dar în cadrul studiului au fost dovedite și evidențiate principalele trăsături distinctive ale acestor structuri contractuale, ceea ce a făcut posibilă eliminarea tuturor contradicțiilor existente anterior pe această problemă. De remarcat mai ales că aceste contracte diferă semnificativ unele de altele, însă în știința de astăzi nu există un consens cu privire la natura juridică a acestor structuri contractuale, ceea ce duce la calificarea și individualizarea incorectă a acestor două contracte. În sprijinul poziției științifice, autorii furnizează trăsături distinctive specifice ale unui acord de distribuție de un acord de dealer, ceea ce a permis autorilor să dovedească independența și individualitatea acestor acorduri, ceea ce indică subiectul, conținutul și domeniul de aplicare al acestora.*

**Cuvinte-cheie:** distribuitor, dealer, furnizor, publicitate, marketing, pret, intermediar.

**DISTRIBUTOR AND DEALER CONTRACTS: PROBLEMS OF QUALIFICATION AND  
INDIVIDUALIZATION**

*In the article, the author reveals the features of independent contracts - distribution and dealer. Separately, it was concluded that these contracts in legal science are often identified, but within the framework of the study, the main distinguishing features of these contractual structures were proved and highlighted, which made it possible to eliminate all previously existing contradictions on this issue. It should be especially noted that these contracts differ significantly from each other, but in science today there is no consensus on the legal nature of these contractual structures, which leads to incorrect qualification and individualization of these two contracts. In support of the scientific position, the authors provide specific distinguishing features of a distribution agreement from a dealer agreement, which allowed the authors to prove the independence and individuality of these agreements, which indicates their subject, content and scope.*

**Keywords:** distributor, dealer, supplier, advertising, marketing, price, intermediary.

**CONTRATS DE DISTRIBUTEUR ET DE CONCESSIONNAIRE: PROBLÈMES DE  
QUALIFICATION ET D'INDIVIDUALISATION**

*Dans l'article, l'auteur révèle les caractéristiques des contrats indépendants - distribution et revendeur. Séparément, il a été conclu que ces contrats en science juridique sont souvent identifiés, mais dans le cadre de l'étude, les principales caractéristiques distinctives de ces structures contractuelles ont été prouvées et mises en évidence, ce qui a permis d'éliminer toutes les contradictions existantes sur cette question. Il faut surtout noter que ces contrats diffèrent sensiblement les uns des autres, mais il n'existe pas aujourd'hui en science de consensus sur la nature juridique de ces structures contractuelles, ce qui conduit à une qualification et une individualisation erronées de ces deux contrats. A l'appui de la position scientifique, les auteurs fournissent des spécificités distinctives d'un contrat de distribution*

*par rapport à un contrat de concessionnaire, ce qui a permis aux auteurs de prouver l'indépendance et l'individualité de ces contrats, ce qui indique leur objet, leur contenu et leur portée.*

**Mots-clés:** distributeur, revendeur, fournisseur, publicité, commercialisation, prix, intermédiaire.

## ДИСТРИБЬЮТОРСКИЙ И ДИЛЕРСКИЙ ДОГОВОРА: ПРОБЛЕМЫ КВАЛИФИКАЦИИ И ИНДИВИДУАЛИЗАЦИИ

*В статье автором раскрываются особенности самостоятельных договоров - дистрибьюторского и дилерского. Отдельно сделан вывод, что данные договора в правовой науке часто отождествляют, но в рамках исследования доказаны и выделены основные отличительные черты данных договорных конструкций, что позволило исключить все ранее существующие противоречия по данному вопросу. Следует особо отметить, что данные договора существенно отличаются от друг друга, но в науке на сегодняшний день нет единого мнения относительно правовой природы данных договорных конструкции, что приводит к неправильной квалификации и индивидуализации этих двух договоров. В поддержку научной позиции, авторами приводятся конкретные отличительные черты дистрибьюторского договора и дилерского, что позволило авторам доказать самостоятельность и индивидуальность данных договоров, что свидетельствует их предмет, содержание и сфера применения.*

**Ключевые слова:** дистрибьютор, дилер, поставщик, реклама, маркетинг, цена, посредник.

### Introduction

There are two types of companies in the international trading market: distributor companies and dealer companies. Many people don't know the difference between a distributor and a dealer. What is the difference between a dealer agreement and a distribution agreement? Many articles have been devoted to finding the answer to this question. This issue is also discussed at conferences and forums, and at the same time there are a lot of contradictions in opinions and conclusions. In this regard, in this article we will exhaustively disclose all aspects that allow us to distinguish a distribution agreement from a dealer agreement in order to exclude all contradictions existing in legal science.

### Presentation of the main ideas

In accordance with paragraph 2 of Art. 4:101 Principles of European contract law: commercial agency, franchise and distribution (hereinafter - PAFD) [6, p. 176 - 198 ] *a distribution agreement* is an agreement according to which one party (supplier) undertakes to supply the other party (distributor) with products on an ongoing basis, and the distributor undertakes to buy them out and

then sell them on his own behalf and in his own interests .

A supplier can be not only a manufacturer of products, but also an exporter or seller. The distributor is not a consumer of the goods, since he buys the goods not to satisfy personal needs, but to resell them within the agreed territory (market). The peculiarity of distribution companies is that they are participants in foreign trade turnover. Distributors perform *distributors of goods purchased by import in the territory of their country*. For them, the long-term nature of relations with a foreign supplier is indicative. Distributors create their own sales network, form stocks of goods, study demand and advertise. Large manufacturers and sales firms often sell their products in other countries by looking for distributors and entering into a distribution contract with them.

PAFD provide for the possibility of concluding *three main types of distribution agreement* :

1) *exclusive distribution agreement* - this is an agreement according to which the supplier undertakes to supply goods (products) to only one distributor within the same territory (paragraph 3 of article 4:101 of the PAFD). The

peculiarity of the exclusive distribution agreement lies in the formation of conditions for the monopoly activity of the distributor in the market of a certain product and in a certain territory. In this case, a model of violating healthy competition in the market for this product is formed;

2) *selective distribution agreement* is a distribution agreement, according to which the supplier undertakes to supply products, directly or indirectly, only to distributors selected on the basis of certain criteria (paragraph 4 of article 4:101 of PAFD). The selective distribution agreement creates the prerequisites for the dominance of a group of persons practically under the single control of the supplier, which also entails the formation of an anti-competitive environment in the market for a certain product and in a certain territory;

3) *exclusive sale agreement* - this is a distribution agreement, according to which the distributor undertakes to purchase goods (products) exclusively from the supplier or the party appointed by the supplier (clause 5 of article 4:101 of the PAFD). In this version of the contract, the saturation of the market with goods is controlled not by the distributor, but by the supplier of the goods, determining the possibility of purchasing a certain product only from him personally, while the interests of other suppliers can also be significantly infringed if the number of contracts for exclusive sale with one supplier exceeds the market share occupied by distributor is cumulatively higher as defined by the rules of competition law. In this case, there is also a threat to the favorable state of competitive environment in the market for a particular product.

Usually, the subject of the contract includes the obligations of the distributor to purchase and resell certain goods on his own behalf and at his own expense in a certain territory, and also not to create obligations for the supplier in connection with such resale. M.N. Ilyushina

points out that the subject of the distribution agreement is the actions of the distributor for the sale of goods transferred to him by the manufacturer. In this case, the distributor acts *as an actual, and not as a legal intermediary*. He acquires and sells goods on his own behalf, at his own expense and independently concludes contracts. "The subject of the distribution agreement includes the actions of the distributor, which are of a purely specific nature, affecting the achievement of the goal: the obligation to comply with the number of sales, not to sell goods from other manufacturers, to sell using the trading technologies provided for in the agreement, to comply with the agreed methods of sale [4, p. 36].

Thus, in the subject of the contract, in addition to the general focus on the provision of sales services, there are other elements of mediation, the provision of other services, elements of concession agreements. All this allows us to talk not about the mechanical connection of the elements of individual agreements (mixed agreement), but about the formation of a single, indivisible nature of the distribution agreement [5, p. 75].

In *supplier responsibilities* Regardless of the type of distribution agreement, there are obligations for:

1) *delivery* products ordered by the distributor, to the extent possible, provided that the order is reasonable;

2) *informing* distributor regarding: a) properties of goods; b) prices and conditions for the sale of goods; c) recommended prices and conditions for the resale of goods; d) any meaningful relationship between supplier and customers; e) any advertising campaigns that are relevant to the business.

3) *warning* the distributor within a reasonable time that the supplier foresees or should foresee that the volumes of its deliveries will be substantially less than the distributor had reason to expect;

4) *providing* distributor for a reasonable price of all available promotional materials, necessary for the proper distribution and promotion of the product;

5) making every possible effort to *do not harm the reputation of goods and brand*.

According to the Guidelines for drafting international distribution agreements of the International Chamber of Commerce in any type of distribution agreement *the distributor must*: 1) purchase and resell the goods on his own behalf and at his own expense; 2) take over the organization of sales in a certain territory; 3) not create obligations for the manufacturer [7].

In exclusive and selective distribution agreements, PAFD provides that distributor besides that, *you must*:

1) as far as possible, make every possible effort, to increase sales of goods;

2) give information regarding: a) any claims made or threatened by third parties in relation to the supplier's intellectual property rights; b) any infringement of the supplier's intellectual property by third parties;

3) notify the supplier within a reasonable time if he foresees or should foresee that his requirements will be substantially less than the supplier has reason to expect;

4) follow the supplier's instructions, designed to ensure proper distribution of goods or to maintain the reputation or distinctiveness of goods;

5) provide access to the premises of the distributor, in order to verification of the distributor's compliance with standards, instructions agreed in the contract;

6) make reasonable efforts not to harm the reputation of the goods (product) and brand [2, c. 56].

The International Chamber of Commerce approved the ICC Model Distribution Contract. Monopoly importer-distributor”, which contains uniform rules for concluding distribution agreements, according to which the

distribution agreement has the following features:

1) as a wholesaler, the distributor promotes and (or) organizes the placement of goods in the territory allocated to him;

2) the supplier provides the distributor with a privileged position in the given territory - usually this is the exclusive right to purchase goods from this supplier;

3) such relationships must exist for a certain period, as this creates conditions for cooperation, which cannot be episodic;

4) the distributor refrains from placing competitor's goods;

5) the distributor almost always places labeled goods” [8, p. 8, 12].

The sale of finished products is usually accompanied by a restriction on the freedom of action of the distributor, in particular the obligation to refrain from competition. It is the responsibility of the supplier of goods to provide the distributor with an agreed position in the relevant territory (exclusive, preferential or otherwise). Naturally, the necessary conditions for cooperation can be developed in the presence of long-term contractual ties between the parties, since such relations cannot be episodic. The rules on non-competition are also important. A distinctive feature of this form of contractual relationship is the placement of goods bearing trademarks [3, p. 389].

Despite the fact that under the distribution agreement the goods become the property of the distributor, the condition on the alienation of goods is only one of the components in the distribution agreement. This treaty is more like a mixed treaty, which includes elements of supply contracts, agency contracts and an organizational contract.

A distribution contract cannot be concluded on the territory of the state where the distributor is registered as an entrepreneur. The distribution contract model in the domestic market of the country is used in the form of contracts

for the exclusive sale of goods . Since the distributor actually acts as a seller, he is also responsible for the proper quality of the goods. Thus, all claims of buyers will be presented to the distributor, and not to the manufacturer of the goods. Distributors usually work in the field of network marketing. Network marketing involves a special pay for the distributor. The essence lies in the fact that the distributor receives money not only for those goods that he managed to sell. He also receives money from the sales made by the people he recruited; from the sales that were carried out by the people recruited by the latter; and so on. Thus, there is a long chain. At the same time, the distributor is focused not so much on sales as on attracting new people who will recruit even more people, and so on.

Thus, the essential terms of the distribution agreement are the condition about subject, condition about the price of the goods, the condition of distributor remuneration, condition about territory of distribution of goods and compliance condition logistical conditions for the distribution of goods .

*Close in legal nature to a distribution agreement, the type of agreement is dealer agreement.* Its main difference from the distribution agreement is the specifics of its subject composition. The subjects of a distribution agreement, as a rule, are a supplier - a manufacturer of goods and a professional distributor with appropriate logistics capabilities, well-established distribution channels, a distribution network, etc. That's why distribution contract should be distinguished from dealer agreements, despite the fact that dealer activities, as well as distribution activities, involve transactions by an intermediary on their own behalf and at their own expense for the purpose of subsequent resale of goods. Large distributors, organizing a distribution channel, enter into direct contracts with retailers, wholesalers, as well as with dealers who, like retailers, are participants in

the final link of the distribution channel, and in fact the penultimate trading owners of the goods before its final consumer. In the vast majority of cases, dealer agreements are concluded between distributors and dealers. If the distribution channel does not include a link of distributors, the manufacturer (supplier) can conclude a dealer agreement directly with the dealer. Then the most commonly used model of a distribution agreement is an exclusive sale agreement, which is due to the dealer's lack of sufficient trading and organizational capacities to fulfill the terms of exclusive and selective distribution agreements.

The basis of the dealer's activity is independent trade, in which he himself becomes the owner of the purchased goods and acts as a party to the transactions. In this sense, dealer activity cannot be attributed to forms of intermediary activity. This is an independent activity of participants in commercial turnover associated with the acquisition of goods in their ownership for the purpose of their further resale. Related to this features of the trading activities of dealers:

- 1) dealers always act in their own interests, and not in the interests of clients;
- 2) the purpose of their activities is resale goods;
- 3) their actions are always speculative - the profit is made up of the difference between the sale and purchase price of the goods, and not from the remuneration of clients, as with brokers;
- 4) the dealer acts in the trade turnover as merchant, not as an intermediary.

Dealer-supplier relations, in addition to distribution agreements, can be drawn up "agreement on granting the right to sell". In accordance with this agreement, the parties enter into contracts for the supply of goods. This name of the agreement is not well-established, and in practice you can also find other names when the seller grants the buyer the right or

exclusive right to sell: agreement on the right of exclusive sale and purchase (in the USA), commercial concession agreement (in France, Belgium, Switzerland), an agreement on the exclusive right to market (in the UK) [1, p. 64].

Under such an agreement, the supplier (seller-exporter) grants the importer (dealer) the right to sell (concession to sell) its goods in a certain territory and within a specified period. The buyer in these relations does not represent anyone, but acts on his own behalf, at his own expense and at his own risk, i.e. he is an independent party under the contract and acquires ownership of the goods from the seller.

Immediately after the delivery of the goods, the dealer makes settlements with the supplier and actually becomes the owner of the goods, and then sells these goods on his own behalf and at his own expense. But unlike the usual resale of goods purchased under contracts of sale, when the new owner is not bound by any obligations with the seller from whom he purchased the goods, *the dealer is obliged to sell the goods purchased from the supplier on the terms determined by the agreement between them on granting the right to sell*. As a rule, this agreement establishes a minimum sales volume for a certain period of time, and if the actual sales volume is below the established minimum, the supplier has the right to terminate the agreement. The agreement may also include conditions on joint cooperation of the parties in promoting goods to the market of the country of importation of goods, on marketing, advertising, after-sales service of goods to end consumers, staff training, etc.

The dealer may be subject to a number of *additional responsibilities* : 1) organization of advertising; 2) pre-sales service (showrooms, sales exhibitions); 3) maintenance of goods; 4) observance of the interests of the supplier; 5) ensuring conditions for its goods that are not worse than for goods of other suppliers; 6)

informing your supplier of information about your activities.

With respect to setting prices, dealers are completely independent. An agreement may grant a monopoly right to a certain dealer to sell the supplier's goods in a particular territory. Then, with large and constant sales volumes, the dealer creates his own distribution network. When creating such a network, the supplier can no longer enter this market with goods of the nomenclature that is determined by the agreement, either independently or through other dealers. If he still needs to enter this market, he must pay a fee to such a monopoly dealer.

Therefore, when signing agreements on granting the dealer the exclusive right to sell goods the supplier should stipulate in the agreement in which cases he can independently market his goods in this market segment.

Unless prohibited by agreement, the dealer may enter into agreements with other suppliers. An agreement with the right of “first hand” can be concluded between the parties. In this case, the supplier is obliged to first offer the product to the “first hand” dealer and only in case of his refusal can sell this product on his own or through other dealers. In addition, an agreement signed between the parties may not restrict the rights of the supplier, he may enter the same market and with the same goods on his own or through other dealers.

Legalo - technically, relations with a dealer are regulated by an agency agreement, a commission agreement or an agency agreement. The amount of remuneration must be clearly defined. Dealers are remunerated in the form of the difference between the purchase price of the goods from the supplier and the price of its resale. It is necessary to specify in the contract the moment from which the dealer has the right to receive remuneration. Such a moment may be the date of the conclusion of the transaction, the date of its confirmation, the date

of transfer of funds to the bank account of the principal for transactions made with third parties. The frequency of payment of remuneration should also be determined by the contract.

The dealer cooperates with the manufacturer most closely. On the contrary, he is always interested in direct sales and expanding the customer base. Dealers act on behalf of the manufacturer, they always sell the manufacturer's products to specific consumers, regardless of whether it is an individual or a legal entity. Moreover, they buy goods at the manufacturer's price, and sell them at a higher price - at the seller's price. It is this difference that constitutes the remuneration of the dealer. Sometimes the dealer receives remuneration in the form of bonuses for a large volume of goods sold.

The main task of the dealer is to find and interest the consumer. At the same time, he can make discounts for regular customers or wholesalers. The dealer's income depends only on direct sales: how much is sold, how much is received. If the dealer has not sold anything in a certain period of time, then he will not receive his money. Unlike a distributor, who can receive money from the sales of people attracted by him.

Since the dealer does not act on his own behalf, then claims for the quality of the goods are made not to him, but to the manufacturer.

Thus, summing up the above, we can distinguish the following distinctive features of a distribution agreement from a dealer agreement:

1. A distributor, unlike a dealer, is engaged in the distribution of the manufacturer's products and acts on his own behalf. Being an intermediary, the distributor works with the same intermediaries, i.e. he develops his own sales channels, builds his own dealer network, without direct contact with the buyer.

2. By purchasing products directly from the manufacturer at his own expense, then the distributor distributes it on his own behalf.

However, the responsibility for the appropriate quality also falls on his shoulders, and the buyer will make claims directly to him, and not to the manufacturer.

3. As for the pricing policy, here the distributor, unlike the dealer, has relative freedom: in fact, being a seller, he has no particular interest in what the final price will be, because this is not the only product he distributes.

4. Still very often the term "distributor" found in network marketing, because their work is paid a little differently here. The distributor here does not so much receive money for the goods sold, but rather the percentage from the transactions carried out by him "agents" and the percentage from the sales of those whom these "agents" attracted. Thus, an extensive, income-generating network is created. In network marketing, the distributor's interest is not in sales, but in "recruiting" new "agents" who will attract other people, and the latter in turn will follow.

5. A distributor who sells goods through regional distribution channels can draw up an agreement with the manufacturer that only he and no one else will be granted the right to distribute goods in a particular region.

The dealer differs from the distributor in that, firstly, his cooperation with the manufacturer is closer.

The dealer's interest lies in sales and customer base development. That is, the dealer always acts on behalf of the manufacturing company, offering its products to a specific buyer, whether it be an individual or a legal entity. Purchase of products is made at the price of the manufacturer, and sales - at the price of the dealer, the resulting difference is the payment for the work of the dealer. That is, his income depends directly on how much he sold. If the dealer has not sold anything for a set period of time, then he will not receive any money either. In some cases, the dealer receives bonuses as a reward. This is another item

on the list of differences between a dealer and a distributor.

The dealer must find a buyer and interest him. This is done through discounts and bonuses for wholesalers and regular customers. In addition, he is engaged in market monitoring, product advertising, service, etc. The dealer agreement specifies all the duties of the dealer.

Since, unlike the distributor, the dealer works on behalf of the manufacturer, then claims regarding product quality are made to the latter.

As a result, the difference between a dealer and a distributor is that the former earns income through his own efforts and has relative freedom in pricing and sales territory, while the latter uses the image of the manufacturer. It is closely associated with it and sells goods at a set price and in a certain territory, and sometimes even to certain customers.

### Conclusions

As a result of our scientific analysis of the distinctive features of the distribution and dealer agreements in this article, we can note that these contractual structures are independent and independent, since they have an independent subject, conditions, content and goals.

The results obtained in the framework of this study make it possible to exclude all the contradictions and conflicts that exist in legal science on this issue.

### Bibliographical references

1. БЕЛОВ, А. *Посредничество во внешней торговле* // Право и экономика. 1998. № 8.
2. БОРИСОВА, А. *Дистрибьюторский договор* // Журнал российского права. 2005. № 3.
3. ВИЛКОВА, Н. *Договорное право в международном обороте*. М., 2002.
4. ИЛЮШИНА, М. *О новых договорных конструкциях в коммерческом обороте* // Вестник Российской правовой академии. 2007. № 3.
5. ИЛЮШИНА, М. *Проблемы типизации новых договорных конструкций в коммерческом обороте* // Законы России: опыт, анализ, практика. 2008. №11.
6. *Принципы европейского договорного права: коммерческое агентирование, франшиза и дистрибуция* // Коммерческое право. 2011. № 1.
7. *Руководство по составлению международных дистрибьюторских соглашений (Guide to Drafting International Distributorship Agreements)* (публикация МТП № 441 (E)). М., 1996.
8. *Типовой дистрибьюторский контракт МТП*. Монопольный импортер-дистрибьютор / МТП, ТПП РФ. М.: Изд-во АО «Консалтбанкир», 1996.