

A supplier's look at distributorship agreements

Under Thai law, a distributorship agreement is generally considered to be a type of sales agreement in which a supplier sells products to a distributor and the distributor resells the products at his own risk to his customers. Unless the parties agree otherwise, this type of agreement is governed principally by the general principles of contract and sales provisions under the Thai Civil and Commercial Code.

Does a supplier need to enter into a distributorship agreement? Looking at the business practice of most local companies in Thailand, sale and purchase transactions are normally made by issuing quotations, purchase orders, invoices and/or receipts without entering into long-term or substantial sales and purchase agreements or supply/distributorship/agency agreements. Why is this so? The answer is simple. Trust.

Trust is all very well and good if all parties honor their word. However, in our substantial experience as legal advisers, we have seen too many disputes take place because of mistrust.

Another reason why many local businesses do not consider it necessary to enter into written contracts is that they believe all terms and conditions are already embedded in the Civil and Commercial Code of Thailand, which is a code country. Most terms — such as transfer of ownership, duties and liabilities of the seller, liability for defects and eviction and duties of the buyer — are already specified in the sales provisions of Sections 453 to 517 of the CCC. If that is the case, then why is it still advisable or even necessary to enter written contracts under Thai laws? This is because the sales provisions under Book III of the CCC were enacted and came into force way back in 1929. With the modernisation of business practices and the rapid development and increasing complexity of the business environment, it is almost impossible for

the CCC's sales provisions to cover and cope with all the techniques, disputes and other matters concerning trading.

Moreover, Thailand ranks among the world's major exporting countries. Exports are the major contributor to the Thai economy. Internal trade has faded into insignificance when compared with the sheer volume of global trade. Should suppliers place their trust in a new customer in a foreign country? And vice versa, should the new customer trust the supplier? The answer is obviously "no", so the written contract has become a must in international business transactions.

What issues should typically be covered in a distributorship agreement? At least the following issues should be taken into consideration when drafting the distributorship agreement, especially if the supplier desires to appoint a sole and exclusive distributor:

- ◆ definition of the territory and products;
- ◆ marketing obligations and expenses;
- ◆ minimum purchase or sales target;
- ◆ price and resale price;
- ◆ term and mode of delivery;
- ◆ payment terms;
- ◆ duties of the distributor;
- ◆ non-competition clause;
- ◆ use of intellectual property rights;
- ◆ confidentiality of information;
- ◆ terms of the agreement;
- ◆ events of default or termination;
- ◆ arrangements regarding the disposal of stock after termination;
- ◆ governing law and dispute resolution.

By clearly providing for the above items in a written distributorship agreement, the supplier can be secure knowing that it has taken the proper precautionary measures and saved itself from potential grief.

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