



## Law 173 on the Protection of Importer Agents of Merchandises and Products

### CONTENTS

1. LEGAL BASIS. ....	1
2. PURPOSE OF THE LAW. ....	1
3. CHARACTERISTIC OF PUBLIC ORDER OF LAW 173. ....	1
4. TERMINATION. ....	1
5. EXCLUSIVITY. NON-EXCLUSIVITY. ....	2
6. APPOINTING A REPRESENTATIVE IN THE DOMINICAN REPUBLIC. ....	2
7. REGISTRATION REQUIREMENT IN THE CENTRAL BANK. ....	2
8. JURISDICTION. GOVERNING LAW. ....	3

### 1. LEGAL BASIS.

The contractual relations between the parties intervening in any distribution agreement in the Dominican Republic are under the scope of Law 173 of April 6 of 1966, on Protection to the Importer Agents of Goods and Products, amended by the laws No. 263 of 1971, No. 325 of 1972, No. 622 of 1973 and No. 664 of 1977, provided that said contracts are duly registered in the Legal Department of the Central Bank, according to the procedure and the term provided in the law.

In agreement with the provisions of said law, it is considered:

- **Licensee**, "any individual or corporation dedicated in the Dominican Republic to promote or manage the importation, distribution, sale of products or services, rent or any other form of traffic, exploitation of goods, products of foreign origin and the services related to said management or when the same were made in the Dominican Republic, whether it acts as agent, representative, commission merchant, concessionaire, or under any other name";
- **Licensor**, "any individual or corporation to whom the licensee is representing, whether the concession contract has been granted directly by said individuals or corporations, or through other persons or entities", and,
- **Concession Contract**, "any form of relation established between a licensee and a licensor.."

### 2. PURPOSE OF THE LAW.

The second of the clauses that precede Law 173 establish the object of the same:

"...That it is necessary the protection of the individuals or corporations dedicated in the Dominican Republic to promote and manage the importation, distribution, sale, and rent or any other form of exploitation of goods or products of foreign origin or when the same are manufactured in the country, acting as agents, or under any other name, against the damages that can cause the unjust resolution of the relations by virtue of which they are performing such activities, by the unilateral action of the persons or entities to whom they are representing or for which account or interest they act, in order to assure the equitable and complete repair of all the losses they have suffered, as well as the profits legitimately perceived that they could be deprived."

### 3. CHARACTERISTIC OF PUBLIC ORDER OF LAW 173.

Between the several dispositions that Law 173 contains to protect the importer agents, the most important and general of all is its characteristic of public order. In effect, its article 8 establishes the following: "The dispositions of the present law are of public order and therefore cannot be derogated, or amended by particular conventions." This article has two basic implications for any distribution contract registered according to the law:

- a) The Dominican Courts always will interpret the clauses contained in the distribution contract duly registered according to the dispositions of Law 173 and its amendments; and,
- b) Those clauses that are contrary to the dispositions of Law 173 shall be in executable and null before the courts of the country.

### 4. TERMINATION.

Notion of Just Cause. Compensations. The stipulations of Law 173 referring to the termination of local representatives by foreign companies without a just cause are some of the most important characteristics of Law 173. In this sense, the first paragraph of Article 3 of the law provides the following:

" Any licensee will have the right to demand the Licensor in the case of its dismissal or substitution of the Concession

Contract that exits between them, or the negative to renew said contract, for unilateral action and without a just cause of the Licensor, the equitable and complete repair of the damages that for such case will be caused, which amount will be settled by the following factors..."

Resuming the dispositions of the subsequent paragraphs of Article 3, if a Dominican Court would determine that a foreign licensor has terminated a distribution contract without a just cause, the licensor shall pay the following compensations to the licensee:

- Any expenses and losses suffered by the distributor due to said termination.
- The value of the investment of the distributor in the commercial activity.
- The value of the promotions of the services developed because of the commercial prestige of the agent; and,
- The amount of the gross profits obtained by the Licensee in the last five years.

As can be appreciated, the compensations that Article 3 agrees in favor of the local licensee unfairly terminated are essential (also, increase in proportion with the seniority and the sale levels obtained), so that generally, these are a striking force or obstacle at the moment in which the foreign licensor, decides to terminate a distribution contract or substitute the representative.

Nevertheless, in order for the contract to be truly dissuasive, and to make valid the compensations agreed in Article 3, the distribution contract must meet certain requirements of form and substance, some of them expressly required by the law. The law defines just cause as the non compliance by the licensee of any of the essential obligations of the concession contract, or any action or omission of it that will adversely affect in a substantial way the interests of the licensor.

Based in the dispositions of the law regarding termination, the characteristic of public order of the law and the implicit advantages that said characteristic confers to the licensee, it would be practically impossible for the licensor to prove the termination of the contract with a just cause, which will be the only case in which the compensations agreed by the law will not be paid to the licensee.

#### **5. EXCLUSIVITY. NON-EXCLUSIVITY.**

In spite that the law does not make an explicit differentiation between the effects of the exclusive or nonexclusive characteristic in the contractual relation, licensee -licensor, we can emphasize the following advantages that the nonexclusive distribution contract offers:

- a) If after a determined period of commercial relations, for any reason or circumstance the foreign licensor is not satisfied with the performance of the licensee, or simply wishes to reduce power or get rid of it, if the exclusivity has not been granted to the latter it would always have the possibility to designate another distributor or distributors in the country without ending the initial agreement

(releasing itself by the way to compensate the exclusive licensee as is provided in Article 3 of Law 173).

- b) Proceeding in this way, then, the licensor would put itself in an advantageous position regarding the dispositions of Articles 3 and 6 of Law 173; it will avoid or reduce an eventual legal action by the original distributor for the reasons mentioned in Article 3, or against the new distributor by virtue of its responsibility shared with the licensor, as is established in article 6.

#### **6. APPOINTING A REPRESENTATIVE IN THE DOMINICAN REPUBLIC.**

Under foreign investment law No. 16-95 as of December 16, 1995, a provision included in Law 173, regarding the requirements for a foreign person acting as agent, representative, commission merchant, concessionaire, or under any other name, was modified. Article 12 of said law used to be an obstacle for investors considering to promote and manage the importation, distribution, sale, and rent or any other form of exploitation of goods, products of foreign or national origin, in the Dominican Republic; since it established that, the investor shall be a resident in the country for no less than four years, before starting any kind of operation.

Article 12 of Law 173 also establishes that 66% of the paid in capital of any entity involved in the before mentioned operations shall belong to Dominican shareholders and that such proportion shall be maintained until its liquidation. Said law also required a license that had to be obtained through the Secretariat of State of Industry and Commerce, institute which is in charge of inspecting and regulating the compliance of the before mentioned Law 173.

However, pursuant to the above referred amendment, Article 12 requirements, concerning domicile, Dominican paid in capital proportions, and the obtention of the license, are no longer valid; Nevertheless, a provision that remains unchanged in both the old and new provision, is the one regarding the licensor's obligation to cover all damages and losses caused to a previous local representative in accordance to Article 3 of Law 173, which makes the alternative of appointing an agent more appealing.

#### **7. REGISTRATION REQUIREMENT IN THE CENTRAL BANK.**

By virtue of Article 10 of Law 173, as amended, in order to be based to the dispositions of that law, the distribution contracts must be registered in the Legal Department of the Central Bank. The registration requirement has a fundamental interest for the local licensee, who is the natural beneficiary of Law 173.

Without the registration, the licensee shall not assert the characteristic of public order of the law, nor shall require the compensations that the same agrees in case of termination by the licensee without a fair reason. The contract would pass to be governed purely and simply by the dispositions of common law, being the licensee even more unprotected.

**8. JURISDICTION. GOVERING LAW.**

Article 7 of Law 173, amended by law 622 of 1971, provided that any actions taken according to said law shall be governed by the provisions of common law in what is referred to the competence, procedure and prescription. The paragraphs I to VIII of said article, added by Law 622, established a preliminary procedure of conciliation before the Official Chamber of Commerce, Agriculture and Industry (denominated today "Chamber of Commerce and Production") of the licensee jurisdiction

for the actions initiated under Law 173. Our Supreme Court of Justice has decided that the parties to a distribution agreement in the Dominican Republic, cannot present their conflicts to arbitration courts abroad (B.J. 708, p. 7201).

For the characteristic of public order of the law, the rules related to the jurisdiction not necessarily must be contemplated in an express way in the text of the contract, these could be enforced in any moment during the execution or the termination of the same.

PELLERANO & HERRERA  
ATTORNEYS AT LAW

Av. John F. Kennedy No.10  
Santo Domingo, República Dominicana  
Apartado Postal 20682  
Tel. (809) 541-5200  
Fax (809) 567-0773

-----  
Calle Paseo Oeste,  
La Rosaleda, Edif. Bionuclear  
1er. Piso, Santiago  
Republica Dominicana  
Tel.: (809) 580-1725  
Fax : (809) 582-2170

-----  
International Mailing Address  
A-303  
P.O. Box 52-4121  
Miami, FL 33152-4121  
United States of America

[www.phlaw.com](http://www.phlaw.com)  
[ph@phlaw.com](mailto:ph@phlaw.com)