The Spanish law on agency agreements can be applicable to the distribution of medical devices having specific regulation

Judgement of the Supreme Court, of 19 May 2017

Background

In 1993, two companies entered into an oral contract regarding the distribution of medical devices, specifically maxillo-facial surgery related devices. The duration of the contract was indefinite and the parties did not agree on a termination notice period.

In 2011, the manufacturer communicated his decision to unilaterally terminate the contract, by giving two months' notice to the distributor. The distributor sued the manufacturer claiming various compensations arising from the contract's termination and, after exhausting the corresponding judicial stages, the matter reached the Supreme Court (the Court).

Compensation for clientele

The distributor requested a compensation for clientele based on the provisions contained in the Law on Agency Agreements (Law). The manufacturer argued that the Law should not be applied by analogy to this case, since the clients were public hospitals obtaining supplies via tenders and because when dealing with medical devices, subject to specific regulation, customer attraction and loyalty practices are proscribed.

The Court expressed that the fact that medical devices have specific regulation was not an obstacle to apply the Law by analogy, because the manufacturer will continue to benefit from the customers gained during the distributor's performance. Moreover, the Court stated that there was not enough evidence to prove that the clients were exclusively public hospitals contracted via tenders and, therefore, the possibility to contract directly with the hospital management could not be excluded.

Termination notice and stocks

The Court's case-law consistently interprets that, based on the good faith principle of contractual relations, the termination notice must be adequate and reasonable, in the sense that it must allow the distributor to redirect his professional activity.

In this case, the Court expressed that the termination notice should have been for at least six months, according to the Law which, although not directly applicable, could be used as a reference to determine if the termination notice is reasonable and adequate.

As regards the obligation of the manufacturer to re-purchase the stock of products of the distributor, the Court said that that was not an essential obligation of this kind of contracts. Therefore, unless there is a specific pact, the obligation to re-purchase the distributor's stock can only be required under the good faith principle and taking into consideration the applicable circumstances. In this case, it was confirmed that the distributor had the obligation to keep certain stock of products in the hospitals. Considering that and the short termination notice provided, the Court considered that the distributor was entitled to require the manufacturer to re-purchase the stocks, as it has been done during the agreement.