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Client Alert: Iran's MIMT 2016 Regulations

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Agent and Distributor Legal Protections in Iran

Unlike most other Middle Eastern countries, Iran has no specific commercial agency or distributorship related laws, and as such, no special rights are granted by statute to agents and distributors in Iran.

In general, the relation of the foreign principal and the Iranian distributor is based on their contract. Therefore, distribution agreements will be governed by ordinary contract principles, and for the most part, in accordance with the intention of the parties pursuant to the principle of freedom of contract, as expressed under article 10 of the Iranian Civil Code including termination and compensation.

With certain exceptions, generally there is no legal or regulatory requirement of exclusivity, minimum territory, or mandatory termination compensation applicable in Iran.

Given the lack of commercial agency laws, there is no legal requirement that “commercial agents” be registered in Iran, and no such “commercial agency” register exists. However, there is a body of administrative law that is relevant to any foreign manufacturer or trader selling goods to Iran.

Distributor and Importer Registration with Ministry of Industry, Mine and Trade (MIMT)

Distinct from the foregoing, is the requirement of registration of the distributors and importers with the Iranian authorities, namely the Ministry of Industry, Mine and Trade (MIMT). The MIMT is the body responsible for the issuance of import licenses and the authority with which distributors are registered. Though no formal agency/distributor laws are in place, the MIMT itself has issued regulations regulating the subject. Such registration (depending on the type of product) may be mandatory, failing which imports become impossible.

In general, importers of “capital goods” into Iran must be registered with the MIMT as an “official representative” (which in essence is the authorized importer/distributor) of foreign suppliers. Such appointment can be exclusive or non-exclusive. The purposes of such registration, from a regulatory point of a view, is to ensure the set-up of service centers as well as continued supply of parts. Nevertheless, such registration (especially if on exclusive basis) will create impediments for replacement of a registered Iranian importer.

MIMT has from time to time issued a number of instructions in this respect. The first of such instructions (the “*Instruction on Organizing the Activities of Authorized Distributor/Representatives of Foreign Companies Supplying Foreign Goods and Services*” (the “**Instructions**”)) was issued in 2009 by the MIMT. The 2009 Instructions were superseded by new instructions in 2014, again in 2015 and most recently, the MIMT has issued new instructions relating to the registration of distributors and agents dated 8 September 2016 (the “**2016 Instructions**”).

The former Instructions were issued in favor of Iranian importers, whereby once registered, the replacement of such importers was only possible through a consent letter issued by the former distributor or through a court order.

The 2016 Instructions (which are currently in force) were specifically issued following the lifting of international sanctions on Iran and appear to be issued with the intention, among other things, to create direct relationships between manufacturers and importers as well as to restrict the business of many intermediary traders that developed business selling goods with Iran in the years that many of the toughest international sanctions were applied.

Registration Application

Registration is through an online registration portal administered through a body within the MIMT. The Iranian importer must provide a number of supporting documents which includes, letters of commitment from the foreign supplier undertaking, among other things, the supply to the market of spare parts for a certain period of years as well as support in after sales services of the importer.

Termination and De-Registration

The practice of the MIMT has been inconsistent in the past in respect of de-registration of a terminated representative. However, the approach has been to a large extent in favor of the locally registered importer.

By way of example, for the purposes of de-registration, the 2009 Instructions required either consent of the importer or a court order/arbitration award. This requirement was reflected or alluded to in subsequent instructions that were issued in 2015 with the reference to a committee within the MIMT to resolve termination issues.

The 2016 Instructions currently in force have removed the explicit requirement for the consent of a registered importer in order to be de-registered. Rather, a general reference has been provided that the MIMT should be notified of such revocation and de-registration to occur. However, given the very recent issuance of the 2016 Instructions, it remains to be seen in practice how the MIMT will respond to requests for de-registration. Experience suggests that complications can arise especially for those importers registered on an exclusive basis.

Nevertheless, there are mechanisms enabling the foreign supplier to mitigate against such issues. Consequently, it is important to structure such relations properly in advance.

Points of Caution

With the gradual opening of the Iranian market in 2016, manufacturers and traders selling into Iran should be aware of the changing requirements for local dealers and importers and sure that their agreements are carefully structured prior to registration.

Further, the MIMT has issued circulars in relation to certain sectors stating that the MIMT will no longer register agents/distributors in such sectors and others (such as automotive sector) requiring further qualifications to be registered.

While the foregoing generally refers to the practice of the MIMT, it should be noted that in certain areas (i.e. medicine and food) registration of Iranian importers/distributors with relevant ministries would still be required, and such registration does create certain rights for such importers/distributors.

It is thus advisable that prior to the appointment of any agent/distributor in Iran, proper legal advice be sought to ensure the minimal liability of the foreign principal.

If you would like more information about this topic then please contact us.

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