

COMMERCIAL AGENCY IN IRAN

Executive summary

At least 184 foreign companies have entered agency agreements with Iranian agents. Foreign companies need to know more about the agency law of Iran before entering into an agreement with the Iranian companies.

The starting point is to explain the definition of agency in the law of Iran. The trade law of Iran is founded on the civil law system of Iran that is based on the Civil Code, the writings of civil law professor/authors, and finally the Sharia. The trade law of Iran has a stronger and more practical source too: the Commercial Code of Iran that is redrafted recently (Cf. our report on this subject on our website).

After getting an understanding of agency, we will look at the issue of establishing an agency structure in Iran. After general discussions taken from the Civil Code of Iran, a recent Guideline that explains in detail the steps to be taken for establishing a commercial agency in Iran will be analysed.

In the next part, duties and liabilities of the principal and the agent take us to the field of tort law. Unfortunately the Iranian authors have not been clear and expressive enough about the civil liability resulting from the actions of those who are involved in an agency relationship. For the time being, we need to focus on the provisions of the Civil Code. Later, in a separate paper we will return back to this subject.

The last part of this report is about terminating an agency when it becomes dissolved, void or automatically cancelled. Dissolution is the result of either an action by the parties to an agency agreement or of an unavoidable situation. An agency becomes void when an incapacity issue is triggered. Automatic cancellation, finally, occurs where the subject of agency becomes non-existent or the principal plays role of the agent by carrying out the subject of agency.

Definition of agency

The term ‘agency’ refers to a legal relation in which a person, the principal, empowers another person, the agent, to represent him in the performance of a juridical or business act with a third person. The term agency also refers to the service an agent performs on behalf of the principal under a contract of agency.

Agency agreement creates relationships between three corners of a triangle: the principal (P), the agent (A) and the third party (TP). The following forms of relationship occur in each agency:

1) P --- A: These two parties are cornerstones of an agency relationship. Without these two persons, it is impossible to build a connection between the authorizing person (P)

and the authorized person (A) in order to reach the third party.

2) A --- TP: This is the second half of the triangle of agency because the relationship between P and A must result in establishing an indirect link between A and TP. The purpose of agency is for P to get into a relationship with TP through A.

3) P --- TP: The principal may find it useful to get to know the third party directly in order to develop this relationship into a deeper and more fundamental business partnership.

If the parties to the above business arrangement face legal problems, six possible forms of claim may be raised:

a. *P v. A*: If the agent fails in carrying out his duties under the agency agreement, the principal may lodge a claim against the agent.

b. *P v. TP*: In certain circumstances, if the third party fails in meeting its obligations, the principal shall have the right to bring a case against the third party.

c. *A v. P*: If the principal does not pay the agent's commission, or if the agent incurs damages due to the failure or negligence of the principal, the principal shall be liable vis-à-vis the agent.

d. *A v. TP*: If the third party interferes in the agent's performance, then it will be possible for the agent to have a claim against the third party.

e. *TP v. P*: If the agent is not in a position to meet his obligations vis-à-vis the principal, and if the third person suffers as a result of this, in certain circumstances there may be a case for the TP against the P.

f. *TP v. A*: It is evident that if the third party finds out that the agent is not respecting its agency-related obligations, it may bring its claim before a competent court.

Agency is an empowerment relationship. As a result, an agency must not be given except for a matter which the principal is entitled to perform while an agent must be a person who has the legal and the commercial capacity to execute the subject of an agency agreement. Further, by performing an *ultra vires* action an agent may face the risk of executing a matter which exceeds the limits of the empowerment relationship. Finally, a principal must not misrepresent his powers because in that case, the principal shall be liable for any tort caused by misrepresentation.

The term "agency" may loosely refer to wide panoply of legal-commercial relations between a principal and an agent including brokerage, commission agency, commercial representation, etc. For all of those who plan to be involved in any of the above forms of agency activity in Iran, it is indispensable to get detailed practical information about how to establish, to manage, and finally to terminate their agency relations with their Iranian agents.

Establishment of agency in Iran

Under the Civil Code of Iran, establishment of agency relationship is subject to the offer of the principal and acceptance of the agent. This means that an agency comes into being after an agent indicates his acceptance either by word or conduct, either gratuitously or in return for remuneration. The parties to an agency agreement may agree to have an agency relationship of a general nature, and for the whole affairs of

the principal, or they may opt for a limited form of agency activity. In the latter case, they must specify the subjects of their agency activity to avoid any misunderstandings or mishaps in the future.

Procedure of establishing agency in Iran

Under the 'Guidelines for Regulating the Activities of Official Agents of Foreign Companies that Supply Foreign Goods and Services in Iran', the practical steps that must be taken by the principal to establish its agency in Iran are:

1. Determine the subject of agency

According to the letter attached to the above Guideline addressed to the Head of the Food and Drug Administration issued almost one month ago, the Ministry of Industry, Mine and Trade shall be responsible for regulating activities of official agents of foreign companies who supply capital and durable consumer goods in Iran. In all other cases, other Iranian entities, including the Food and Drug Administration shall be responsible for regulating the matter. The former cases must be subject to the Guideline for Regulating the Activities of Official Agents of Foreign Companies Supplying Foreign Goods and Services in Iran.

2. Apply to obtain an Activity Authorization

All juridical and natural persons that are involved in importing to and supplying foreign goods and services in Iran and have concluded agreements with a foreign producing company or its agent (who is authorized to grant agency or to appoint agents for distribution, sale, and after sale services) are required to apply for "Activity Authorization" by submitting the contract concluded with the foreign company as well as the other documents to the Ministry of Trade Center for the Affairs of Guilds (*Asnaf*) and Merchants".

If the agency agreement (sale and after sale services) is concluded with foreign companies, the following issues must be included in the application: the period of the contract (starting and ending dates of the period), modes of cancellation, settlement of accounts, referral to arbitration, responsibilities of the parties, etc. according to the framework compatible with the general conditions of international agreements and contracts.

3. Establish your presence in Iran

Importation and registration of order of any consumer or capital goods require presence of an official agent for the same goods and brands in Iran.

Under Article 1 of the Guideline, all foreign companies and their official agents in the Islamic Republic of Iran who import durable consumer goods, capital goods, industrial machinery, etc. such as house appliances, medical devices, etc. that need after sale services, are required to establish after-sale-services centers and authorized service

centers and to submit a list of these centers to the Center for the Affairs of Guilds and Merchants, the Organization for Protection of Consumers and Producers, and the Commercial Organizations of the respective provinces.

4. Prepare the information-sharing material

All foreign companies and their official agents shall prepare manuals, warranty cards, and after-sale services card in Persian language and shall submit them to the purchasers of their durable goods.

5. Termination of presence in Iran

Where an Iranian agent is removed or replaced by the foreign company or in case of disagreement, it would be necessary for the foreign company to submit an official letter of consent signed by the Iranian agent, or an arbitration decision as provided in the agency agreement, to be considered as meeting the duties and settlement of accounts, before registering an agency agreement under the name of the next agent. It is evident that the sale and after-sale-services' obligations of the previous agent shall be transferred to the next agents.

The Agent's Duties

The first duty of the agent is to act in the interests of his principal in his handlings and performances. The limits set for the interests of the principal are either explicitly stated in the agency agreement or they may be inferred from custom, usage, and circumstances. According to the Civil Code of Iran, an agency for a certain matter involves an agency for the preliminaries and essential preparations for that matter, unless it is expressly stated that the agency does not apply to them.

The agent must also give to his principal an account of the time of his agency, and must give up to him all that he has received for his principal.

The agency in principle is joint and several. This means that if two or more agents are appointed for the execution of one matter, none of the agents may participate in that matter individually unless the agency of each of the agents is independent.

Agency in principle is personal too. As a result, an agent in a matter may not give an agency to anyone else in that matter, unless he is expressly or impliedly an agent entitled to select a sub-agent.

The Principal's Duties

The most important duty of the principal is to execute all the engagements undertaken by the agent on his behalf within the limits set for the agent in the agency agreement. In this case, the principal's engagements are *intra vires*. However, in respect of the *ultra vires* actions taken by the agent, i.e. those which are outside the limits of the agent's powers, the principal shall be under no obligation whatsoever, unless he expressly or implicitly permits the irregular actions of the agent.

One of the obligations of P to A is to pay the whole of the expenditure incurred by the agent in the execution of his agency, and also to pay the remuneration of the agent, unless other arrangements have been made in the agency agreement. It must be noted that if the agency agreement is silent about the fee of the agent, the legal presumption is that the agency is not gratuitous. Therefore, if the fee of the agent is not expressly stated in the agreement, it shall be determined according to the local practice and custom. If the custom is silent on this issue, then the agent shall be entitled to a reasonable remuneration.

Liability for Agent's Tortious Conduct

Liability of the agent is either based on fault or on surpassing the limits fixed by the agency agreement. In the former case, if the principal suffers loss owing to the fault of the agent, and if the agent is by common custom considered to be the cause of the loss, then the agent shall be considered liable. In the latter case, if an agent who is not entitled to transfer his powers to a sub-agent goes beyond the provisions of the agency agreement by appointing a sub-agent, then both the agent and the sub-agent shall be responsible to the principal for the losses which they may have caused.

Termination of Agency

An agency comes to an end when it is either dissolved or has become void. The agency becomes dissolved in three ways:

- 1) *Dismissal of the agent by the principal*: The principal can, whenever he desires, dismiss the agent, unless a condition has been made in the course of an irrevocable contract as to the agency or the impossibility of agent's dismissal. Everything which the agent has done before the news of his dismissal reaches him, in the limits of his powers, is valid.
- 2) *Resignation of the agent*: After the agent has resigned, he may continue to take steps in pursuance of the agency as long as it is evident that the principal continues to give him permission.
- 3) *Death or insanity of the principal or the agent*: The fact that the principal becomes incapacitated annuls the agency except in respect of things in which incapacity does not impede that an agency exists; similarly, the incapacity of the agent annuls the agency, except where incapacity does not impede the steps necessary for the agency.

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