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**SUMMARY OF COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW
IN EGYPT**

by

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1. Applicable Law

The primary laws regulating the operation of commercial agencies in Egypt are Law No. 120 (1982) and implementing regulations issued thereunder (the "Commercial Agencies Law"), and Law No. 17 (1999) (the "Commercial Code").

The Commercial Agencies Law addresses various qualification and registration requirements for the conduct of commercial agency activities in Egypt. The Commercial Code addresses the general legal relationship between a commercial agent and principal.

Although beyond the scope of this Summary, a person acting as the importer for a foreign company's products would also be regulated by another special statute, Law No. 121 (1982), pertaining to importers and an importers' registry.

2. Definitions

The Commercial Agencies Law defines a "commercial agent" (in Arabic, الوكيل التجاري) as any natural or juristic person who (without being engaged under an employment contract) undertakes

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to submit bids or conclude purchasing, selling or leasing operations or provide services in the name and account of producers or distributors, or in its own name but for the account of any other party.

The Commercial Agencies Law has been generally interpreted as being inapplicable to a distributor (i.e., an individual or a company who buys and re-sells in its own name and for its own account). However, we understand that the Commercial Agencies Department (Cairo) at the Ministry of Economy and Foreign Trade (the "Ministry") has registered some distributorship agreements submitted to it, pursuant to registration procedures in the Commercial Agencies Law.

The Egyptian Commercial Code distinguishes various types of commercial agents, but of particular relevance for present purposes is a "contract agent" (in Arabic, وكيل العقود) -- defined as a commercial agent who undertakes to submit bids or conclude purchasing, selling or leasing operations or provide services in the name and for the account of a principal.

Egyptian practice is not yet sufficiently developed to allow us to advise with certainty whether the so-called contract agent is deemed to include a sales representative who -- in exchange for a commission -- assists its principal in obtaining private sector or government contracts. We are unaware of any Egyptian court decision(s) having yet addressed this issue. At least a few local lawyers believe that the Commercial Code provisions regulating contract agents should not apply to a usual form of sales representative unless the latter holds true agency (power of attorney) authority -- i.e., the authority to make commitments in the name of its principal.

Nonetheless, we believe that the dealer protections contained in the new Commercial Code could be applied to independent commercial agents (conducting sales promotion for a principal in exchange for compensation contingent on sales), but probably should not be applied to pure buy-resell distributors.

3. Qualifications for Commercial Agents

The Commercial Agencies Law requires a commercial agent to meet certain qualifications. For example, a company wishing to conduct commercial agency must have headquarters in Egypt, its deed of incorporation must specify commercial agency work as one of its purposes, and its capital must be owned by Egyptian nationals. (Managers and directors of the company must satisfy the same nationality requirement.) The company must also hold a license from the commercial registry, said license including appropriate authorized business purposes.

If the commercial agent is an individual, the agent must be an Egyptian national or an Egyptian naturalized for at least ten years. The individual must be of good reputation and financially solvent. Certain categories of individuals may not act as commercial agents, for example, (i) employees of government or public sector entities, or (ii) government officials, members of the General Assembly, the Shoura Council or public or municipal councils (unless the individual had practiced such commercial agency activities before obtaining any such position). In addition, a "first degree" relative of such a government official or council member may not be engaged as a commercial agent.

If a company is appointed as a commercial agent, the company's head office must be in Egypt and its deed of incorporation must specify commercial agency work as one of its purposes. The capital of the company must be held by Egyptians and, if those holding the capital have acquired Egyptian nationality, they must have held such nationality for at least ten years. Managers and directors of the company must satisfy the same nationality requirement. Public sector corporations are exempt from the above-mentioned nationality requirement.

4. Direct and Exclusive Relationship

Egyptian law does not generally require a commercial agency to reflect a direct relationship between the foreign manufacturer or producer and the Egyptian commercial agent. Article 1 of the Commercial Agencies Law recognizes that such agents may undertake activities "in the name and account of ... distributors".

Egyptian law does not generally require exclusivity in a principal's appointment of private sector commercial agents (as opposed to the historical exclusivity requirement in favor of public sector trading agencies). Under Article 179 of the Commercial Code, however, a contract agent will be deemed exclusive for the relevant territory, products and area of activity unless the parties clearly agree to the contrary. Similarly, under Article 184 of the Commercial Code, if a particular territory is restricted in favor of one contract agent, that agent is entitled to remuneration for all transactions concluded by the principal or a third party within that territory (even if such transactions are not attributable to the contract agent's efforts) -- unless otherwise clearly agreed by the parties.

5. Mandatory Use of Commercial Agents

Under the terms of particular government tenders, foreign companies selling to Egyptian government departments or public

sector enterprises often must have a duly registered Egyptian commercial agent (with the exceptions discussed in paragraph 6 below). There is, however, no requirement that a local commercial agent or distributor be used in connection with sales to private sector customers in Egypt.

In addition, the Commercial Agencies Law requires a foreign company to appoint an Egyptian commercial agent before opening certain offices in Egypt, such as "scientific, technical, consultancy or other [similar] offices." (Compare provisions in the Egyptian Companies Law, Law No. 159 (1981), which also allows the establishment of some such offices, but under separate procedures -- and which does not contain the requirement for a commercial agent.)

6. Restrictions on Use/Payment

Egyptian law does not generally prohibit (or require) a foreign supplier to use a commercial agent or sales representative for sales to private sector customers in Egypt.

According to the Egyptian Tender Law, Law No. 89 (1999) as amended, a foreign company is generally required to have a duly registered Egyptian commercial agent for sales of non-military products to Egyptian government entities. In some instances, however, almost exclusively involving tenders from government entities or organizations in the petroleum industry, and train or locomotive transportation equipment, provisions in the tender documents may prohibit commercial agencies or intermediaries.

The Egyptian MOD has adopted a policy prohibiting the use of any commercial agent, intermediary or sales representative in connection with the purchase of military equipment. The underlying principles for the MOD's policy are to ensure that the prices of products are not increased by the amount of commissions or fees paid by the foreign supplier, and to ensure that products purchased are of high quality and are not purchased through the influence of a commercial agent or intermediary.

7. Registration Requirements for Commercial Agents

The Commercial Agencies Law requires that all commercial agency agreements be registered in a special register at the Ministry. In order for a commercial agency agreement to be registered, it must address various matters, including the nature of each party's obligations, the territory and product lines given to the commercial agent, information on commission payments, as well as the method, place and currency of such payments. In addition, such an agreement must either be in Arabic or be

accompanied by a certified Arabic translation, which will be relied upon for all official purposes.

The Ministry has refused to register commercial agency agreements that do not contain a specific undertaking by the foreign principal to inform the proper Egyptian embassy or consulate (located in the principal's country of residence) of any amendments to the agreement.

8. Termination or Non-renewal

The Commercial Code creates a statutory cause of action for termination or non-renewal of a contract agent. Article 188 of the Commercial Code provides that a contract agency agreement is for the joint interest of both parties and the principal therefore may not unilaterally terminate such an agency agreement unless "upon the agent's error" (in Arabic, خطأ من الوكيل). If the principal terminates this contract agency agreement and the contract agent has not committed such an error, the principal shall be obligated to compensate the contract agent for any damages the latter incurs as a result of the termination. Under Article 189 of the Commercial Code, in the event the principal chooses not to renew a contract agency agreement, that agent is entitled to "fair compensation" if (i) the latter has not committed any error in carrying out the agency agreement and (ii) its activities have resulted in considerable success in promoting the product(s) covered by the contract agency agreement or increasing the number of customers.

These statutory protections appear to be in the nature of ordre public in Egypt, and as such cannot be waived in advance by provisions in the parties' agreement.

The Commercial Code does not provide a detailed description of damages that may be owed by the principal to the local contract agent. Moreover, we are unaware of any Egyptian court decisions that have yet addressed this issue under the Commercial Code.

9. Choice of Law and Dispute Resolution

In general, Egyptian law freely permits contractual parties to select foreign law as governing their agreement. In all likelihood, however, a choice of foreign law would not be upheld in Egypt to the extent a substantive term thereof is deemed to violate Egyptian public policy (e.g., if the choice of law clause impairs a contract agent's rights under Egyptian law to compensation upon termination or non-renewal of the contract agency agreement).

Under Egyptian law, contractual parties are generally also permitted to select a foreign arbitral or judicial forum for the resolution of all contractual disputes. (Egypt is a signatory to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.) However, Article 191 of the Commercial Code instructs Egyptian courts to take cognizance of all disputes regarding contract agency agreements. In light of this legislative text, Egyptian courts should not relinquish jurisdiction to a foreign arbitral or judicial forum in the event a local contract agent is suing to enforce its rights in Egypt.

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This summary is based on information currently available in our Chicago office, including correspondence with Egyptian counsel. This summary is intended to highlight selected aspects of Egyptian commercial agency law, but it is not intended to provide legal advice on any specific question of local law.

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