

Law Office
of
HOWARD L. STOVALL
2131 North Racine Avenue
Chicago, Illinois 60614
Telephone (773) 248-8896
Facsimile (773) 248-8897
E-mail Howard@Stovall-Law.com
Website www.stovall-law.com

SUMMARY OF
COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW
IN
PAKISTAN

1. Applicable Law

The Pakistani Contract Act 1872 (the "Contract Act") contains a special chapter on the relationship between agent and principal, broadly defining the terms as follows:

An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Thus, the provisions of this chapter in the Contract Act primarily address "true" agency, i.e., a legal representative who has the authority to act in the name of, and bind, its principal. Most multinational corporations' commercial agency agreements do not reflect such a true agency relationship. In those latter instances (i.e., where a commercial agency or distributorship agreement does not reflect a true agency relationship), the parties' relationship will be primarily governed by the terms and conditions of the contractual agreement.

2. Qualifications for Commercial Agents

In general, no special registration requirements or other such formalities apply to the commercial agency agreement. However, all companies opening a place of business in Pakistan are required to register with the Registrar of Companies within 30 days of opening such place of business. Depending upon the nature of the business, a company may also be required to register with the tax authorities (to

obtain a National Tax Number, and possibly also a sales tax registration number).

3. Direct and Exclusive Relationship

Pakistani law does not expressly require that the commercial agent have a direct contractual relationship with the foreign manufacturer, or otherwise be authorized directly by the manufacturer to act as a commercial agent in Pakistan.

Pakistani law does not contain any general prohibition on the appointment of exclusive commercial agents. However, section 206(3) of the Companies Ordinance 1984 states:

No company whether incorporated in Pakistan or outside Pakistan which is carrying on business in Pakistan shall, without the approval of the Securities and Exchange Commission, appoint any sole purchase, sale or distribution agent:

Provided that this subsection shall not apply to a sole purchase, sale or distribution agent appointed by a company incorporated, or person ordinarily residing, outside Pakistan, unless the major portion of the business of such company or person is conducted in Pakistan.

In general, Pakistani law should respect a contractual clause restricting the commercial agent from dealing in competitive products.

4. Mandatory Use of Agents

A foreign company does not need a Pakistani commercial agent to simply sell its products into the Pakistani market. However, Pakistani government ministries, departments and public sector companies may at times require bids to be submitted only by exclusive agents -- as an assurance that only one quotation is received from each qualified potential supplier.

5. Restrictions on Use/Payment

Pakistani law does not contain any general prohibition on the use of, or payments to, commercial agents. More specifically, Ministry of Defense regulations do not generally prohibit a defense contractor's use of, or payment to, an agent in Pakistani military procurement contracts -- but Ministry of Defense authorities have restricted such payments to certain specified percentages (fixed on a sliding scale basis, depending upon the value of the contract, and ranging generally between 0.5% for high value contracts to 4.0% for low value

contracts). The Directorate General Defense Purchase of the Ministry of Defense ("DGDP") has had varied policies in this regard over the years.

Pakistani law does not otherwise contain any general ceiling or restriction on the commission paid to a Pakistani commercial agent in connection with sales to private or public sector customers.

6. Registration Requirements for Commercial Agents

As mentioned above, no special registration requirements or other such formalities apply to the commercial agency agreement. In order to conduct import/export activities, however, a commercial agent (or any other business) may need to satisfy certain registration requirements. In addition, as discussed above, commercial agents may need to be registered in connection with activities relating to Pakistani Ministry of Defense procurement contracts.

7. Termination or Non-Renewal

Pakistan has not enacted any special statute limiting the right of a foreign company to terminate (or to not renew) a commercial agency agreement, or obligating the foreign company to provide a statutory minimum notice of termination or non-renewal, or pay termination or non-renewal compensation to its commercial agent. In general, therefore, the provisions of the commercial agency agreement will govern and define the rights of the parties upon termination or non-renewal -- subject to general principles of Pakistani contract law, including the Contract Act.

Some general provisions of the Contract Act might provide a basis for a Pakistani commercial agent to claim termination compensation. For example, Section 205 of the Contract Act states:

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must compensate the agent, or the agent compensate the principal as the case may be, for revocation or renunciation of the agency without sufficient cause.

In general, Pakistani law permits contractual parties to agree upon the advance notice which must be given for termination of the relationship. Absent such agreement, Section 206 of the Contract Act requires reasonable notice to be given, or else requires damages to be paid by the party failing to give such notice.

8. Choice of Law and Dispute Resolution

Pakistani law permits contractual parties to choose the applicable law to govern their contract (subject to the requirement that such governing law has a bona fide connection to the subject matter of the contract).

Moreover, Pakistani courts would generally respect a contractual choice of forum clause, giving jurisdiction to a foreign court or foreign arbitral panel with respect to any contractual dispute. However, such contractual clauses may not mandatorily exclude jurisdiction by the Pakistani courts. Some difficult issues may also arise in the enforcement in Pakistan of any resulting foreign court judgement or foreign arbitral award.

Pakistan is a party to the Geneva Convention on the Execution of Foreign Arbitral Awards of 1923, and Pakistan has recently ratified the United Nations' Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the so-called "New York Convention"). However, Pakistan has not yet issued any legislation to implement the New York Convention.

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

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