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SUMMARY OF
COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW
IN
TURKEY

1. Applicable Law

In Turkey, the relationship between a principal and a commercial agent or distributor is primarily governed by the Turkish Commercial Code and the Code of Obligations. In cases not explicitly covered by the Commercial Code, the Code of Obligations applies.

2. Definitions

Article 116 of the Commercial Code defines an "agent" as:

... persons practicing the profession of acting as intermediary in contracts concerning a commercial undertaking or executing contracts on behalf of such undertaking in a permanent manner, in a designated territory or district on the basis of a contract, without having a dependent position such as being a commercial representative, commercial proxy, salesman or employee.

The Turkish Commercial Code states that such an "agent" has the authority to give and receive notices on behalf of the principal for contracts on which that agent acts as intermediary or which it executes on behalf of the principal, as well as the authority to sue and be sued on behalf of the principal in disputes arising from such contracts. This Turkish legislative provision is mandatory and may not be modified by the parties' agreement.

In addition, an agent may not execute a contract on behalf of the principal without specific written authorization from the latter.

In many cases, a multinational company would not wish to give such broad authority to its Turkish commercial agent. Therefore, the commercial agency agreement should clearly delineate the commercial agent's authority, and should state that the commercial agent is an independent contractor without authority to act on behalf of the principal in any matter not expressly authorized in writing.

The Turkish Commercial Code does not explicitly address distributorship arrangements, and therefore distributorship relationships are primarily governed by general principles of the Commercial Code and Code of Obligations. However, some Turkish court decisions have made analogies between commercial agency and distributorship arrangements. In that light, the terms "commercial agent" and "commercial agency" used in this summary should be read as possibly also encompassing "distributor" and "distributorship".

3. Qualifications for Commercial Agents

Turkish law does not require that a commercial agent be a Turkish national or a Turkish company wholly/majority-owned by Turkish nationals. However, any party conducting commercial activity (including commercial agency activities) in Turkey must be permanently domiciled in Turkey. In order to establish a branch or subsidiary in Turkey, a foreign company will be subject to Turkish foreign investment regulations (which have been liberalized recently).

4. Direct and Exclusive Relationship

Turkish 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 Turkey.

Similarly, Turkish law does not prevent a foreign company from appointing its Turkish commercial agent(s) on a non-exclusive basis. Under Article 118 of the Commercial Code, however, a Turkish commercial agent is deemed exclusive unless the parties indicate otherwise in their agreement. Turkish law does not generally prohibit a foreign company from selling its products directly into Turkey, although an exclusive Turkish commercial agent would probably be entitled to compensation for

all sales made within its territory, regardless of whether concluded as a result of its efforts, unless otherwise agreed.

Article 118 of the Commercial Code also states that a commercial agent may not represent more than one competing principal in the same territory, unless otherwise agreed.

In communiques issued under the Competition Law, the Turkish Competition Board established rules for group (block) exemptions for Distribution and Servicing Agreements relating to motor vehicles (1998/3), Vertical Agreements (2002/2), and Research and Development Agreements (2003/2). Individual exemptions are also given under the Competition Law.

5. Mandatory Use of Commercial Agents

Turkish government procurement contracts usually do not require that foreign suppliers use a Turkish commercial agent. However, the Turkish government often considers a foreign company's Turkish commercial agent to be a useful contact for local liaison and communications. According to commercial officers at the U.S. Embassy in Turkey: "When dealing with government tenders, an agent is an absolute necessity in view of complicated bureaucratic procedures and the language barrier."

6. Restrictions on Use/Payment

There are no general prohibition or limitation under Turkish law on a foreign company's payment of compensation to a local commercial agent in either Turkish government (including military) or private sector procurement. In that light, therefore, compensation for commercial agency activities is primarily subject to the agreement of the parties. Despite this general rule, in some instances a particular tender may contain a stipulation that would contractually prohibit a foreign company's use of a commercial agent or other intermediary.

Turkish exchange control rules permit a foreign principal to pay commissions and similar compensation to its Turkish commercial agent in foreign currency and outside Turkey. However, the Turkish commercial agent may be required to repatriate any such compensation to Turkey, and would be required to report income to the Turkish tax authorities. (Turkish tax law will also require a commercial agent to add VAT, at the current rate of 18%, to its invoices for services rendered. Many Turkish service providers expressly agree that the principal's payment shall be inclusive of VAT and all other Turkish taxes.)

For a number of reasons, including the fact that Turkish exchange control laws have been subject to significant changes over the years, a foreign principal is usually best served by making payments to the Turkish commercial agent's bank or address in Turkey.

7. Registration Requirements for Commercial Agents

Turkish law does not require that a commercial agency agreement be reviewed or registered with any Turkish government department in order to be valid and enforceable. Of course, Turkish commercial agents (as well as all other parties conducting business in Turkey) must register with the Commercial Registry of the Ministry of Industry and Commerce.

In the case of a Turkish "agent" who has authority to execute contracts on behalf of a principal, the "agent" must register as such in the Commercial Registry, and publish a description of the relationship in the Turkish commercial gazette. When the relationship is terminated, the Turkish "agent" should de-register and publish a notice to that effect in the Turkish commercial gazette.

8. Termination or Non-renewal

Turkey has not enacted any special legislation governing the termination of commercial agency agreements, or requiring the principal to compensate the commercial agent upon such termination. In general, therefore, the relationship between a foreign principal and a Turkish commercial agent is governed by the terms and conditions of the parties' contract, subject to mandatory provisions of Turkish law (e.g., in the Commercial Code and Code of Obligations).

For example, the principal and commercial agent are free to provide for termination/non-renewal either at the end of a fixed period or on specified notice with or without cause. The parties may also specify the amount of notice required to terminate the commercial agency, and in almost all cases such specified notice will be considered sufficient.

As an exception to these general rules, Article 133 of the Turkish Commercial Code states that an indefinite term commercial agency contract may be terminated with three months prior notice, and that any (indefinite or definite term) commercial agency contract may be terminated at any time for cause.

Under Article 134 of the Commercial Code, if a party terminates the commercial agency without cause and/or without the

statutory three months prior notice, that party shall be liable to compensate the other party for losses resulting from the latter's inability to complete any relevant transactions.

9. Choice of Law and Dispute Resolution

Given the general principles of freedom of contract contained in the Turkish Code of Obligations, as well as the Turkish International Private and Procedure Law, Turkish courts would likely enforce a choice of foreign governing law in a commercial agency agreement -- provided that no Turkish public policy would be violated by the application of such foreign law, and provided that the matter is not within the exclusive jurisdiction of Turkish courts.

Similarly, the Turkish courts should uphold the parties' agreement to submit commercial agency disputes to the jurisdiction of foreign courts or foreign arbitration. Under Article 38 of the Turkish International Private and Procedure Law, Turkish courts may recognize foreign judicial judgments upon certain conditions (e.g., the foreign judgment is from a country whose courts recognize Turkish judicial judgments on a reciprocal basis). In addition, Turkey is a party to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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