Commercial Agent: EU and Israel

*An interview with Attorneys-at-law Dor Heskia and Amos Hacmun partners at the Israel based Heskia-Hacmun Law Firm**

By Reuven Marko

Frequently an Israeli commercial agent is used by an EU principal to forward business engagements in Israel. An EU principal may be cognizant of the fact that the EU countries have adopted a unified approach as to the relationship between a principal and a commercial agent, while being unaware that in Israel there is no special law governing such relationship. Attorneys-at-law Dor Heskia and Amos Hacmun, partners at the Israel based Heskia-Hacmun law firm, discussed the practical aspects of the legal differences with us.

Dor Heskia

Amos Hacmun

Let me start with a little background information. What is the position of the EU in matters of the relationship between a manufacturer and the commercial agent?

Hacmun: In 1986 the EU has issued a directive which unified the legal situation in respect of a self employed commercial agent throughout the EU countries. The directive intended to protect the commercial agent by setting a standard in matters, such as the parties' duties, commissions, termination of the relationship, compensation and restriction of competition, which the EU countries had to adopt within their local laws.

Is there something similar in Israel?

Heskia: In Israel there is no special law, there are different laws that may apply and there is the interpretation of the courts. The legal norms are applicable to different situations and apply to the relationship of a manufacturer and a commercial agent just as they would apply in other commercial-contractual relations. The Israeli jurisprudence did not recognize the need to provide a special status or rights to the self employed commercial agent.

Are there any special instructions in respect of the commission rates?

Heskia: This is a matter left to the parties. In Israel there is no minimum commission standard. The parties are also free to determine all other contractual terms, obligations and rights. If the commission was not agreed then an Israeli court may elect to determine that the commission rate should be "as customary in the market" or "appropriate consideration", in most other cases the courts will not intervene.

Are there regulations in respect of the notice periods?

Hacmun: If the agreement is not made for a defined term, then the local laws of the EU country usually apply a standard deriving from the directive. In this respect the EU directive determines that, unless exceptional circumstances for termination exist, such as breach of agreement etc., the notice period shall be one month for the first year of the contract, two months after the second year, and three months after the third year and subsequent years. The directive specifically states that the parties may not agree on shorter periods of notification, while allowing member states to even go further by fixing a longer period.

Heskia: According to the Israeli contract law, in the absence of a breach of the agreement, a reasonable notice period will be required. The term of the period may vary with the specific circumstances. When determining the reasonable notice period, an Israeli court will most likely take into consideration, among others, the time period that will be needed by the agent to prepare and organize an alternative activity, as well as the longevity of the relationship between the parties. A legitimate expectation for the determination of a reasonable notice period is to allow the agent to recover the investments made in connection with the relationship. Good faith and representations, which may have been relied upon, may also be taken into account.

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The EU directive imposes an obligatory compensation upon the conclusion of the relationship. Could an EU principal face such ramifications under the Israeli law?

Heskia: There is no such separate duty in Israel as long as the manufacturer acted in good faith and did not make misleading representations. In Israel, when a compensation to an agent is discussed, it is usually the compensation in terms of an appropriate advance notice period for a termination and not an extensive compensation for building a market, loss of investment or other possible items. However, if the parties agreed to apply a compensation, then normally such provisions would hold in a court of law.

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Does this mean that the Israeli law favors the manufacturer over the agent?

Heskia: One may conclude so. Practically, the duty under the Israeli law amounts to providing a reasonable period for a termination notice. A principal not doing so, potentially, risks the liability of being obligated to compensate the agent for the non-granting of the possibility to provide the commercial agent services and enjoy the resulting income during the period of termination he was entitled to.

Obviously there are differences of approaches between the EU and Israel. What can be done to be more certain about the meaning of the terms of such agreements?

Hacmun: It is sufficient to arrange the relationship in a short written document covering the main aspects of the relationship, such as term of representation, commissions, exclusivity, competition, termination notice, compensation, jurisdiction and applicable law. A simple one-pager that covers the main aspects in clear and simple language can avoid unnecessary disputes.

Would it be safe to assume that when it comes to the choice-of-law that the European countries' law should be chosen?

Hacmun: Actually not. Paradoxically a European manufacturer which is acting through a commercial agent in Israel may be increasing the obligations towards the agent by electing to apply "his" national laws which provide for a variety of safeguards to the commercial agent.

Heskia: That reasoning does not apply vice versa. But this is a different matter.

This is interesting. How is this situation different from the previous ones that we have discussed?

Hacmun: The European directive is intended to protect the self employed commercial agents acting within the EU, regardless of the principal's origin. This was affirmed by the European court in the matter of Ingmar GB Ltd versus Eaton Leonard Technologies Inc. In that case, the parties agreed to apply the laws of California, which do not obligate compensation to a commercial agent. However, the court decided that in this respect, the English law, which reflects the European directive, has priority over the parties agreement. The reasoning was that an EU based commercial agent had the right to enjoy the privileges resulting from the directive and the applicable law, regardless of the foreign principal's origin.

In this case, could the EU based principal and Israeli agent choose the law of the respective EU country to govern their agreement?

Heskia: Yes, under Israeli law parties may choose the law governing their contractual relationship. The European manufacturer should realize however that by choosing the EU local law the agreement will be in favor of the commercial agent.

Gentlemen, I would like to thank you for spending this time with me. I take from it that you recommend to use a detailed enough agreement, written in clear language, to avoid, or at least minimize, future disputes. It is also important to understand all the ramifications of the selection of the governing law beyond the immediate convenience of a next-door court.

** Heskia – Hacmun law firm provides commercial and civil legal services. Focusing on corporate, banking and dispute resolution, as well as international transactions.*
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