

New Registration Regime for Representatives of Foreign Companies Importing Capital and Durable Consumer Goods into Iran

Legal Alert – 15 March 2019

Background

On 7 October 2018, Iran's Ministry of Industry, Mines and Trade (**MIMT**) issued a new directive¹ (the **2018 Directive**) intended to ease the registration process for representatives of foreign companies that import capital and durable consumer goods into Iran (the **Representatives**).² The new registration regime does not apply to foreign companies importing medical equipment and devices, which are subject to different regulations. Prior to the 2018 Directive, registration of the Representatives was based on an earlier directive by MIMT (the **2016 Directive**)³, now superseded by the 2018 Directive

Although aimed at ending a long-standing confusion over the scope, function and application of various laws and regulations on this subject and intended to ease the registration process, the 2018 Directive has created further ambiguities, some of which are discussed below.

Earlier Registration Regime

The 2016 Directive mandated the Guild Association Traders Centre (**GATC**) to register and monitor the activities of the Representatives. At the same time, the Law Permitting Registration of Branches or Representatives of Foreign Companies 1997 (the

Registration Law) and its Implementing Regulation 1998 allowed foreign companies to open branch or representative offices in Iran under certain circumstances and register them with Corporate Registration Office (**CRO**) in the relevant province in the country.

The 2016 Directive along with the Registration Law created considerable confusion among practitioners as to whether a Representative must register itself only with GATC or with both GATC and CRO. In practice, however, Representatives only registered themselves with GATC. This practise was perhaps due to the fact that regulating importation was generally under the jurisdiction of MIMT, which implemented its own policies and guidelines.

In an attempt to make sense of a practice that seemed not to comply with law, commentators differentiated between the meanings of “representative” under the Registration Law and the 2016 Directive. A “representative” under the Registration Law was argued to have meant a “representative office” of a foreign company that acted as the liaison office of its parent, whereas a “representative” under the 2016 Directive supposedly meant an Iranian individual or legal entity acting as the representative or distributor of a foreign company for importing and offering after-

products and communication equipment, are obligated to have official representative and authorised repair stores, supply the spare parts and to provide after-sale services.”

³ Directive on Issuance of Activity Certificate for Representatives, Distributors, Offices and Branches of Foreign Companies Distributing Capital Goods in Iran.

¹ Directive number 60/187245.

² The legal basis for the requirement to have Representatives is Article 4 of the Law on Protection of Consumer Rights 2009, according to which “all suppliers, including the manufacturers and importers of capital goods such as automobiles, industrial, agricultural and road construction machinery, home appliances, electronic, electrical, audio and video

sale services with respect to capital and durable consumable goods.

New Registration Regime

CRO as the sole registration authority

To facilitate and expedite the registration process, MIMT changed its long-standing practice of requiring registration with GATC. The 2018 Directive designated CRO as the sole registration authority for Representatives. The move also aimed to resolve the legal confusion over what “representative” means. Furthermore, GATC has taken the position that it no longer plays any role, not only in registering but also in supervising, the activities of both Representatives and distributors.

Registration procedure

Representatives must first register themselves with CRO. Thereafter, they must obtain a confirmation of their ability to provide after-sales services from either the Industries Deputyship at MIMT (for importing automobiles) or the Consumers and Producers Protection Organisation (for importing other capital and durable consumer goods). The foregoing confirmation is required before Representatives can register their import order with the Office of Import and Export Regulations within the Trade Promotion Organisation of Iran, which itself is an affiliate of MIMT.

Other implications

Representatives vs distributors. The 2016 Directive distinguished between “representative” and “distributor”, without clearly defining the difference. In contrast, neither the 2018 Directive nor the Registration Law make any reference to the term “distributor”. The result has been some confusion about whether MIMT continues to recognise “distributors” as a separate category or not, although the practice of GATC appears to suggest

⁴ The practice of using the term “distributor” instead of “representative” arises from the concern that representation can be viewed legally as a principal-agent relationship between the parties. For instance, a representative’s acts, omissions or undertakings may be deemed to create vicarious liability for its principal.

that is no longer the case and that distributors must now register themselves as Representatives. This has implications for many foreign companies who, for various reasons (including risk and liability management), preferred to refer to their local counterparts as “distributors”, as opposed to “representatives”, in the underlying agreements or authorisation letters.⁴ Neither MIMT nor CRO have so far offered any clarification despite multiple inquiries.

Term of activity certificates. Activity certificates under the 2016 Directive were valid for a period of: (i) up to five years for representatives in automotive industry; (ii) up to three years for representatives for other capital and durable consumer goods; and (iii) up to one year for distributors. The 2018 Directive is silent as to this matter which indicates that the activity certificate for each Representative will have a term based on what is provided for in the underlying agreement between the foreign company and such Representative.

Direct vs indirect appointments. The 2016 Directive allowed indirect appointment of a “representative” or “distributor” through an authorised intermediary. While there is no similar stipulation in the 2018 Directive, general legal principles as well as a recent ruling by the Administrative Justice Tribunal⁵ support the conclusion that indirect appointment through authorised intermediaries continues to be available.

What’s next?

The new registration regime for Representatives has, to a great extent, simplified the registration process through involvement of CRO, which is the dedicated corporate registration agency in the country. At the same time, the 2018 Directive has caused confusion over a number of matters such as the status of current “distributor”, and the implications for legal relationship between foreign companies and their local counterparts. The

As such, representation suggests broader delegated authority and different financial arrangement between the parties.

⁵ Dated 5 December 2017.

uncertainties continue to exist until further clarification are provided by MIMT or CRO. In the meantime, Representatives, and probably those “distributors” of foreign companies with expired certificates of activity, must register themselves with CRO as “representatives”. In addition, new underlying agreements and letters of authorisation

will likely need to refer to local counterparts as “representatives”. This in turn requires further risk assessment by foreign companies in relation to the liabilities that entering into a representation arrangement could invite.



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