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The Power of Attorney of Customs Agents - Legal Overview

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As part of the representation before the Customs Authority, the customs agent and international forwarder act as the representatives of the importer or exporter before the Customs Authority, as well as before other entities: shipping agents (such as in releasing a delivery order), terminals and warehouses (such as in moving cargo into storage), ground transporters, and more. These actions, taken by the customs agent, are not merely technical - they are of a legal characteristic, as the customs agent or forwarder commit to monetary charges in the name of the importer, such as storage fees, detention and demurrage charges, and more.

In the following article we will review a number of principle points regarding the representation of importers by customs agents.

Representation by Customs Agents

At the base of the customs agent - importer relationship is a contractual agreement, by which the importer hires the services of the customs agent in order to perform customs related actions.

This agreement includes representing the importer before various entities, and we will now review a few aspects of this subject. How does the customs agent acquire the right to represent the importer? Must he obtain a written power of attorney? What can and can't the customs agent do in his capacity as the importer's representative? What are the customs agent's rights and obligations to the importer as his representative?

Power of Attorney in Order to Undertake Customs Related Actions

Certain representation services are exclusively provided by customs agents. If an importer wishes to use a representative to perform them, he must hire the services of a customs agent. These include "any such act, or any such contact with the Customs, in connection with the import, export or transit

of goods as the Minister of Finance has, by order, defined as a customs act, excluding submitting and receiving information requests, receiving excess tax returns, transfer of documents and samples, and presence during inspection." [clause 1 of the Customs Agents Law, 1964, Customs Agents Ordinance (Determination of Customs Operations), 1965].

Other actions (such as actions involving other commercial entities, including shipping agents, warehouses, etc.) have no such limitation. Even so, they are usually performed by a customs agent or forwarder in the name of the importer.

Is a Written Power of Attorney a Mandatory Requirement?

How is a customs agent appointed as the representative of the importer? The Agency Law, 1965, states that "Agency is conferred by written or oral authorization of the agent by the principal, or by notice to the third party by the principal, or by the conduct of the principal towards one of them".

In other words, agency does not require written authorization, and therefore the customs agent is not obligated to receive a written power of attorney from the importer. But there are two reservations: according to clause 3 (b) of the Agency Law, "where a person is called upon to accept the act of an agent, he may refuse to recognize the agency so long as a written authorization has not been produced and a copy thereof delivered to him".

According to clause 169 of the Customs Ordinance, which refers to the representation of an importer in acts before the Customs Authority, "any Customs Official may require an agent to present written authorization of the agent by the principal, and the Customs Official may refuse to recognize the agency so long as a written authorization has not been produced".

In addition, Mr. Reuven Meltzer of the Customs Administration published guidelines for customs agents between 2005 and 2007. According to these guidelines, the Customs Authority established that for acts performed by a customs agent in the name of an importer before the Customs Authority, "all customs agents must keep a validated original of a written power of attorney for each of their clients upon Customs Form 165 in their offices".

This procedure has several important implications:

1. All power of attorney documents held by customs agents must include the name of the signatory and his ID number.
2. A power of attorney signed with the name of the importing company only, without detailing the name of the signatory and his ID number, will not be admissible.

3. A copy of the signatory's ID must be attached to the original power of attorney form located in the customs agent's offices.
4. Customs agents must make sure to complete missing details in powers of attorney received in the past. Otherwise, the power of attorney will not be admissible, entries will be delayed until the missing details are complete, and a number 1 defect will be registered for the customs agent.

In light of the aforementioned procedure, a customs agent must obtain a written power of attorney when acting before the Customs Authority, even though the law does not define it as a mandatory requirement. For other acts which do not involve working before the Customs Authority, there is no requirement for a written power of attorney.

None the less, it is important to note that according to Customs Authority procedure, the obligation to obtain a written power of attorney does not apply in delivered duty paid (DDP) transactions. It can be assumed that since in DDP transactions the taxes were paid by the seller, and the customs agent is not required to perform any tax payment related customs acts, the Customs Authority eased its requirements, allowing the customs agent to act without a written power of attorney in such cases.

Is a Written Power of Attorney from Palestinian Clients a Mandatory Requirement?

A January 2016 message published by Ms. Galy Bar-Oz of the Customs Authority shows that the Customs Authority is aware of the customs agents difficulty in obtaining an original written power of attorney from Palestinian Authority clients, required for acts performed in the name of importers before the Customs Authority. Consequently, an appendix was added to Customs Form 165, stating that if an original written power of attorney cannot be obtained, claims, deposits and deficits matters may be handled with a copy of the power of attorney. Even so, if the section in the power of attorney allowing the customs agent to receive the importer's funds (the return of his deposit funds) is marked, the power of attorney appendix must be completed.

The 2005 procedure of the Customs Authority also eased some of the power of attorney requirements for Palestinian importers, as it stated that:

"Power of attorney for importers who are residents of the Palestinian Authority will be admissible even if not original, but sent by fax. These importers will be able to validate their power of attorney as detailed in clause b, below, as well as in the Palestinian Authority Customs Stations or the Customs Stations in Allenby Bridge and the Rafah Border Crossing."

As part of Customs Form 165, the customs agent declares that he possesses a power of attorney from a Palestinian importer, and that the copy, identical to the original, is presented to the Customs Authority. The customs agent declares further that he understands that the deposit funds deposited as part of the entries registration in the name of the importer are considered funds owned by the importer, along with all that this implies. Accordingly, the funds are subject to the Taxes (Collection) Ordinance with regard to the importer's tax deficit. In other words, the Tax Authority may collect previous deficits from the deposit funds.

Moreover, by signing Customs Form 165, the customs agent commits to indemnify the Tax Authority for any payment it may be required to pay to a third party and / or the importer, as well as all related expenses and damages, if the importer claims or a court determines that the power of attorney was not authorized in accordance with the law. The indemnity payments are to be paid by the customs agent to the Customs Authority within seven days of receiving the Customs Authority's written payment demand.

Authorization of a customs agent, form 165, applies to performing customs acts before the Customs Authority.

The Fiduciary Duty of a Customs Agent Representing an Importer

The fiduciary duty of customs agents is pursuant to clause 20 of the Customs Agents Law, which states: "A customs agent shall perform customs acts reliably, faithfully and honestly both vis-à-vis the Customs and vis-à-vis his clients... with a view to assisting the Customs in carrying out their functions under any law".

The Agency Law also lays clear obligations on any agent. For example: "when a person has taken upon himself to be an agent, he shall be loyal to the principal and shall act in accordance with his instructions."

In his capacity as a customs agent, the agent possesses significant authority, as is evident from his ability to submit declarations to the Customs Authority in the name of the importer, commits in the name of the importer to various entities, and more. In order to ensure the customs agent performs his duties as required, he is subject to fiduciary duty, as detailed above.

The customs agent is subject to other duties as well, pursuant to the Agency Law, as detailed in clause 8 of the Agency Law, including an information disclosure duty, a prohibition to receive any

benefit in connection with the object of the agency, a prohibition on the misuse of information, and more.

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**The above review is a summary. The information presented is for informative purposes only,
and does not constitute legal advice.**

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