

Agency Law Guide – Middle East

2018-2019

STA



MIDDLE EAST AGENCY LAW GUIDE

Introduction

The expansion of multinational corporation is either setting up its subsidiary company in a foreign jurisdiction or to tie up with the local company in a foreign jurisdiction. United Arab Emirates (UAE) is one of the international courts where foreign companies are entering into agency agreements with the Emirate nationals to expand their business in the UAE since UAE being a major port and best-networked countries in the world. Foreign parties are wishing to trade offshore with minimal investment then UAE is one of the most convenient options where the external parties either enters into distribution agreement or makes an arrangement with the commercial agencies to expand their business with the locals. The UAE Agency Law regulates these commercial agency and distribution agreements in the UAE as per the amended Federal Law 18 of 1981 commonly known as Agency Laws. Federal Law 13 of 2006 in regards to UAE Agency Law was changed and repealed in 2010, but there was a reinstatement of Federal law 18 of 1981.

The rights of the Local agents are only protected under UAE Agency Law (Federal law number 18 of 1981) if the agency registers the agreement with the UAE Ministry of Economy. Unregistered contracts do not render the rights of Emirate agents or protect them from the termination of agency agreement by the foreign parties under UAE Agency Law. Additionally, UAE commercial agent should hold a valid and appropriate license in each emirate, and registration with the Chamber of Commerce of the relevant Emirate. Article 4 of the Commercial Agency law states that there should be a direct relationship between a local commercial agent and a foreign principal without any interference by the regional or multi-country sales agent. On the other hand, Article 5 of the UAE Agency Law states that *"A qualified commercial agent will be deemed exclusive in its territory, but allows a foreign company to appoint a separate commercial agent for each emirate."* The Federal Act defines Commercial Agency as *"the representation of the principal by an agent for distribution, sale, display or provision of any commodity or service within the state in consideration of any commission or profit."* Here the word principal includes the manufacturer, whether based in the UAE or overseas.

The Emirate of Abu Dhabi enacted Law Number 11 of 1973 which focuses on the operation and regulation of commercial agency activities. This provision of Law Number 11 of 1973 had limited the foreign business in Abu Dhabi and had created various challenges for the government about primary regulation carried out for commercial activity further discussed in this guide.

It has a positive impact on UAE's economy since there is an increase in Foreign Direct Investment (FDI). Even the former Ministry of Economy Sheikha Lubna Al Qasimi states that *"The new amendments will certainly boost the competitive economic climate in the UAE. This law promulgated out of the desire to enhance and maintain stability in prices and ensure that agencies are not manipulated to increase prices."* Furthermore, the leadership of UAE His Highness Sheikh Khalifa bin Zayed Al Nahyan, President of the UAE and His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of Dubai, they all are committed to providing support for the growth of the economy in the UAE.

STA Law Firm houses one of the leading corporate lawyers in the whole of UAE. We believe that UAE Agency Laws are to protect the local agents from the termination of the agency agreement by the foreign principal without any legitimate reasoning. Furthermore, the comparative study of agency laws has been carried out between UAE, Oman, Kuwait, Bahrain and Saudi Arabia.

Things to Know	
i	Registered commercial agents have a benefit in the middle east since they can be entitled to compensation on termination of agency agreement by the foreign principal without a valid reason.
ii	The foreign principal can do business with multiple agents in the middle east.
iii	Commercial agents have right to receive a commission on foreign business except in Oman.
iv	Registration of Commercial Agency with Ministry of Commerce and Industry in the Middle East.



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Agency laws in the United Arab Emirates

Definition

A commercial agency is "*an arrangement whereby an international company appoints an agent to distribute, offer or provide goods within the UAE market for earning commission or profit.*"

Types of Agencies

The different kinds of agency agreements which are regulated under Federal Law Number 18 of 1981. There are different types of the agency which is listed as follows:

i. *Contractual Agency*

It is the most common form of agency that consists of an agent representing the international company. Wherein the agency sells and distributes the products or provide services or undertake specific activities, or to negotiate deals on behalf of the principal.

ii. *Tender agents*

Tender agents are unaffected by the Federal Act and remain subject to the laws and customs of each Emirate. For example, Tender Agents in Abu Dhabi are retained on a commission basis for specific projects and are subject to limited to agency commissions on government contracts. For instance, if the arrangements are more than \$13 million then it is restricted by 1% commission on the ceiling; contracts rendered between \$2.5 million and \$13 million are subject to a 1.5% ceiling, and for contracts under \$2.5 million, the cap is 2%. It is important to highlight that the Federal Act deals with commercial agents, but these Tender Agency rules are still valid. The commission limitations on delicate agents can be misleading because an agent can act simultaneously as a sponsor and charge a flat fee or commission for sponsorship services.

Is your agency agreement registered or not?

iii. *Registered and Unregistered Commercial Agencies*

Commercial agencies can either be registered or unregistered. Although as per UAE Agency Law all the commercial agencies are required to be registered to be protected from termination of the agency agreement by foreign parties without legal reasoning. A commercial agent is not registered and conducts business with international parties then it technically breaches. Article 22 of the UAE Agency Law which states that a person performing commercial agency in violation of the law's requirement then they shall be subject to a fine of not less than AED 5,000/-, and as per Article 3 UAE courts will not entertain any claims brought under unregistered UAE commercial agency. A similar provision had appeared in Abu Dhabi Law Number 11 (1973), and the intent behind both the rule of law is to encourage registration of commercial agencies.

To attain legislative protection for an agent under the UAE Agency Law then the following criteria must be fulfilled:

- i. As per Article 2 of the UAE Agency Law, the agent must be a UAE national or the company must be wholly owned by UAE nationals.
- ii. As per Article 5 of the UAE Agency Law, the arrangements must be in the defined territory of one of the Emirates.
- iii. As per Article 3 of UAE Agency Law there is a mandate to register the commercial agency agreement with the Ministry of Economy.

A commercial agent enjoys the benefits under the UAE Agency Law if the abovementioned requirement is fulfilled. The UAE Agency Law is a Federal Law which is applicable throughout UAE and grants following rights to the commercial agents:

Rights (and duties) of a commercial agent...



A commercial agent enjoys the benefits under the UAE Agency Law if the abovementioned requirement is fulfilled. The UAE Agency Law is a Federal Law which is applicable throughout UAE and grants following rights to the commercial agents:

- I. The law entitles commercial agents to an exclusive territory encompassing for the specified products or services.
- II. Registered commercial agents are entitled to receive a commission on sales of specified products or services in their designated territory (Article 7 of the UAE Agency law).
- III. Registered commercial agents are entitled to prevent products subject to their agency from being imported into the UAE if the registered commercial agent is not a consignee.
- IV. Commercial agents are entitled to seek compensation from the foreign parties for termination of agency agreement without any legitimate reasoning (Article 8 of the Agency law).
- V. Right to stop the principal from appointing a new agent (Article 8 of the Agency law).
- VI. Right to prevent the import of principal's products into the UAE (Article 23 of the Agency law).

A Commercial Agent must file a separate application to register for every agency including the principal's name, the products covered, the agent's territory, commencement and termination dates of the agency. Foreign shareholding is 51% in the UAE. According to Ministry Rules, the application should be filed by a commercial agent within fifteen days, and the Ministry provides the approval of use by issuing a certificate. The Official Gazette publishes Ministry's decision to Customs Authorities and the Chamber of Commerce and notifies

them if there were any deletions from Commercial Agent's Register. The Ministry can reject the registration application of the Commercial Agent, but they must specify the reason for denying the request. The Commercial Applicant can appeal against Ministry's decision within sixty days of their occurrence or else the conclusion of the ministry will sustain, and it will result in nullification of the agency registration.

Sham Agency Registration

When the foreign company wishes to appoint a non-Emirati individual or company to act as its agent in the UAE is known as Sham Agency Registration (SAR). But such scenario for Agency registration, an Emirati individual or company will act "front" as an agent and will be the contracting party to the agency agreement. Under this agency agreement, the contractual agent will not undertake any of the agency's activities. Instead, it will assign its rights and obligations under the agency agreed to a third party instead of a service fee. In simple words, the Emirati agent enters into the agency agreement with the foreign company but then it will immediately assign the management of the entire agency agreement to the third party.

Termination of Sham Agency Agreement

The dispute arises when the Emirati agent claims compensation on completion of the agency agreement by the foreign company. In such instances, the international company will attempt to argue that the Emirati agent is not entitled to any compensation since the registered agent is not the 'real' agent since the Emirati agent assigns its right and obligation to the third party. The Court of Cassation issued a judgment in 1997, concluding that Emirati agent waives its rights to receive compensation on termination of agency agreement by entering into the management agreement.



All streams flow into the same sea?

On the contrary, recently the Court of Appeal upheld a registered agency agreement despite the fact that the agency was assigned to the management of the agency. However, the party filed an appeal against this decision in the Court of Cassation which referred the case again to the Court of Appeal for reconsideration. These decisions highlight the complexity and uncertainty of only one area of commercial agency laws and its practical impact on businesses.

Termination of Agency Agreement

There are certain exceptions to Article 8 of the UAE Agency Law where the principal has terminated the agency agreement if there is the real reasoning behind it. The term material reasoning includes the following:

- i. Non-performance by the agent, including agent's failure to meet sales targets or minimum purchase requirements.
- ii. Any breach of UAE Agency Law by the commercial agent.
- iii. Agent undertaking commercial activities which compete with the foreign company's products and services.
- iv. The agent is failing to maintain the image of the foreign company or acting in a manner that harms the reputation of the international company.

UAE's Court Jurisdiction in Commercial Agency Agreement

UAE law generally respects party's contractual choice of foreign law to govern their commercial agreement as long as the international law does not conflict with UAE's public policy. Thus, the UAE courts would not recognize a choice of foreign law clause in a commercial agency agreement if the principal does not comply with the obligation to compensate the UAE commercial agent upon termination of the contract. Article 6 of the UAE Agency Law, it empowers the UAE courts to resolve disputes arising under a UAE commercial agreement

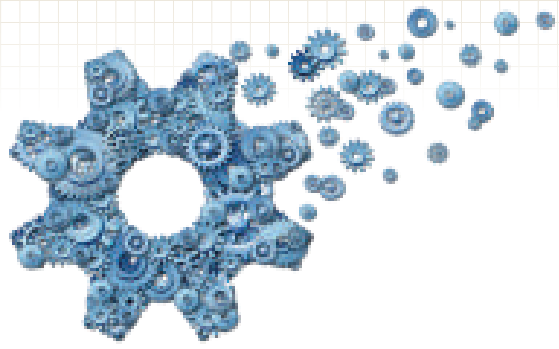
and states that *"no effect shall be given to any agreement contrary hereto."* Nonetheless, if a UAE commercial agent attempts to enforce a UAE judgment in the courts of the foreign principal's home jurisdiction, then it is possible through an arbitration clause in the agency agreement since UAE has agreed to the U.N Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

Commercial Agency Committee

According to Article 27 and 28 of the UAE Agency Law, a Commercial Agencies Committee is authorized to settle any dispute arising between a commercial agency in the UAE and the foreign principal. Commercial Agency Committee will take primary jurisdiction over commercial agency disputes with the foreign principal, coming to the attention of the Ministry. If either of the party is not satisfied with the decision of the Commercial Agency Committee, then either of them can institute a lawsuit in the UAE courts. According to the provisions of the UAE Agency Law, either party can file an appeal within 30 days with the relevant court post notifying the parties about the decision of the committee. The UAE courts- Federal and Local courts tend to reject the claims filed in connection with a registered commercial agency for failure to approach the Committee first in regards to the dispute arose between agent and principal as per the law.

This opinion went counter to a judgment passed by Dubai Court of Cassation (Number 54 of 17 November 1991) in which court concluded that the disputants might directly institute their claim to the UAE courts without first submitting their matter to the Committee. In 2006, there was a significant amendment in the UAE Agency Law which entirely repealed Article 27 & 28 of the UAE Agency Law whereby, eliminating the Committee and their rights to resolve a dispute arising out of the principal-agent relationship.

More on the jurisdictional boundaries of the Commercial Agencies Committee...



Most of the prominent lawyers and academic scholars are currently debating upon whether the Commercial Agencies Committee can assume jurisdiction to entertain disputes between one or two parties of a commercial agency and a third parties. We can infer it through the judgment of *Dubai Cassation Court decision in Civil Appeal Number 126/2014 dated 18/12/2014*. In this case, a Commercial Agent filed a civil claim for compensation before the Dubai Court of First Instance against the third party for importing products subject to the commercial agency into the UAE. The Court of First Instance set aside the case mentioning the parties should file the case before the Committee. The Agent filed the lawsuit with Committee which issued a preliminary decision assuming jurisdiction to hear the case and notifying the parties to attend before the Committee. The third party appealed against the decision of the Committee to the Court of First Instance and asserted that as per Article 27 of the UAE Agency Law. The Article 27 suggests that the Committee is competent to look into the dispute arising between a principal and its commercial agent within the territory of his registered agency as the third party falls out of such jurisdiction. The third party further submitted that the dispute does not fall under UAE Agency Law as it is of civil nature.

Furthermore, third-party appealed to the Dubai Court of Appeal which rejected the case as well, so the third party filed the instant petition to the Dubai Court of Cassation challenging lower court decision on the grounds of jurisdiction and the nature of the case. The Court of Cassation rejected the appealed judgment and held that as per the UAE Agency Law, Commercial Agency Committee has authority to hear the dispute between a commercial agent and the third parties. The case falls under the ambit of commercial agency law, and it is not of civil nature. Therefore, it is prohibited for any party to bypass the Committee's jurisdiction and take the dispute directly to the court.

Similar to the above case, in the judgment of Union Supreme Court (challenge number 147/2014 dated 28/5/2014), the Commercial Agent-initiated proceedings before the Dubai Court of First Instance against two entities (the Claimants). Commercial Agents requested the Committee to appoint experts to evaluate the damages and losses incurred by them due to the importation of vehicles subject to its agency into the UAE when the Commercial Agent was not the consignee. The Dubai Court of First Instance set aside the claim of Commercial Agents as parties should file it before the Commercial Agency Committee. The Agent presented the case before the Committee which issued a preliminary decision with its jurisdiction over the dispute and notified the parties with the proceedings.

The Claimants objected Committee's decision to the Abu Dhabi Federal Court of First Instance and Ministry of Economy. The Court of First Instance of Abu Dhabi was of the opinion that they lack the jurisdiction to resolve the dispute as according to the Law Committee has the authority over the matter. Furthermore, the Claimants appealed to the Abu Dhabi Federal Appeal Court which upheld the lower court's decision. Claimants challenged the Appeal Court's decision before the Union Supreme Court on the same grounds as before. The Union Supreme Court upheld the appealed decision based on the reasoning that in instant case the Committee's decision was merely an invitation to party to attend before the Committee which is a preliminary decision which cannot be appealed as per the Law.

Regardless of the fact that Committee's decision is considered to be quasi-judicial and falls out of the scope of the procedural law, the UAE Courts rely on the Article 23 of the UAE Agencies Law. Article 23 of the Law states that the Committee's jurisdiction includes disputes.



Arbitration in the United Arab Emirates(UAE)

There are a general rule and practice of UAE courts that they will not adjudicate upon an agreement wherein there is a specific arbitration clause. However, if either of the parties decided to go to the court despite arbitration clause and the other party does not object the first hearing then the arbitration clause becomes inoperative. The arbitration agreement is valid if it does not contradict the UAE Agency Law. It is explained better through the illustration of the judgment rendered by Dubai Court of Cassation; the highest court in the Emirate of Dubai whose decision interprets the application of lower court's ruling since the arbitration clause violated Article 6 of the UAE Agency Law. In this case, a commercial agent registered with the UAE commercial agents register (Claimant) entered into an agency agreement with the Respondent to sell and distribute Respondent's products within the UAE. According to the agency agreement the parties agreed to refer the disputes arising thereof to arbitration. The Claimant was performing its duties as per the terms of agency agreement but the Respondent failed to provide required documents, and it eventually led to the deletion of the commercial agency agreement from the commercial register. The Claimant, therefore, appointed an Arbitrator who issued an arbitral award against the Respondent to pay the sum of AED 328,850 with damages and arbitration costs. Furthermore, the Claimant filed an industrial action against the Respondent before the Dubai Court of First Instance to ratify the arbitral award.

The First Instance Court rendered the judgment ratifying the arbitral award. The Respondent appealed before the Court of Appeals to set aside the verdict passed by First Instance Court, and the Court of Appeals upheld the judgment. The Respondent further challenged the Appeals Court judgment before the Court of Cassation.

What happens in case your agency agreement is not registered and refers disputes to arbitration?

The Court of Cassation heard the argument of Respondent that the lower court's decision contradicted the provisions of Article 6 of the UAE Agency Law. According to Article 6, *"The Commercial Agency Agreement shall be deemed to be for the joint interest of the contracting parties, and the State's Courts shall rule in any disputes which may arise between the Principal and the agent due to its implementation. Any agreement to the contrary shall be void."* The Court of Cassation observed that the Appealed Court's judgment erred in reasoning Article 6 and therefore it concluded that Article 6 of the UAE Agency Law is applicable and the appealed judgment contradicted the Law. Thus, the Court of Cassation overturned the lower court's decision.

Based on the above judgment it is crucial to note that the arbitration clause mentioned in the agency agreement should not violate the UAE Agency Law or else it will nullify the arbitration clause. Due to the sensitivity of the commercial agencies contracts and their effect on the economy, the legislator has reserved the jurisdiction solely to the national courts.

Penalties

There are some penalties imposed on the commercial agent. Any commercial agency which undertakes any activities which contradict the UAE Agency Law then it is subject to a fine of AED 5,000. Additionally, if the goods are not shipped through the registered commercial agent to the UAE, then the products are subject to confiscation. If the commercial agent willfully submits an incorrect statement about agency registration, then it is subject to a fine of AED 5,000. The UAE courts of law determine the punishment for violations of the agent's obligation to maintain an adequate supply of spare



Agency Law in Abu Dhabi

The Emirate of Abu Dhabi enacted Law Number 17 (1969) to regulate commercial agencies with a primary focus on import and export activities carried out by business agents. Article 4 of Abu Dhabi Law No. 17(1969) expresses that *"no person is allowed to conduct any commercial activity except upon obtaining a license by the Commercial License law of 1969."* This provision of Law Number 17(1969) had limited the foreign business in Abu Dhabi and had created various challenges for the government about basic regulation carried out for commercial activity. Four years later Law Number 17 (1969) was repealed with the enactment of Abu Dhabi Law Number 11(1973). Unlike Law Number 17 of 1969, Abu Dhabi Law Number 11 (1973) focuses on the operation and regulation of commercial agency activities. There were several loopholes in the Abu Dhabi Law Number 11 of 1973 considering the law did not mention that commercial agents would have exclusive rights over the products, and no dealer protection provisions allowing qualified agents to claim for special compensation in the event principal terminated the agency agreement without any legitimate reason. On the contrary, Dubai government was not in a hurry to implement commercial agency regulations like those in Abu Dhabi which restricted the commercial agency activities of the local nationals. Instead, the Dubai government gradually developed its commercial agency regulation because Dubai had become a trading hub, it was inclined towards legislative protection to the commercial agents. Even, the UAE Federal Ministry of Economy and Commerce recommended legal protection for commercial agents and products subject to their agreement. Abu Dhabi Chamber of Commerce opposed the decision expressing their view that

"such a proposal would give monopoly rights to commercial agents and will result in higher prices for imported commodities."

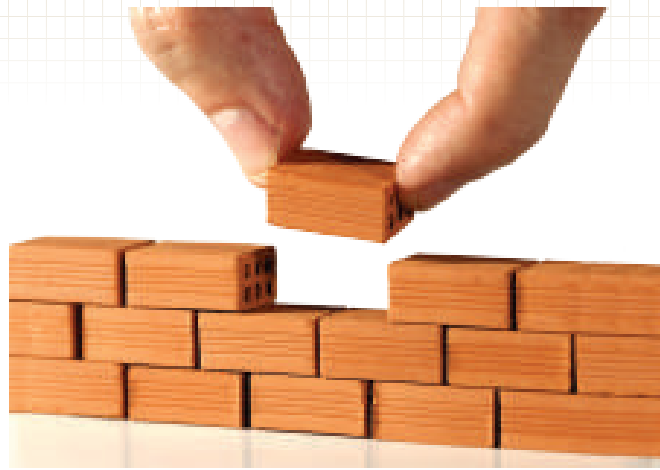
Commercial Agency Laws in the Middle East (GCC)

Many countries in the Middle East have a commercial agency legal framework set out in law, regulation, and practice that acts to protect local agents. The protections for local agents include (1) reserving the business of commercial agency for local nationals, (2) a registration system for agents, (3) agent exclusivity granted by law, and (4) protection from termination or non-renewal of agency agreements. Oman, Kuwait, and Qatar are three of the six countries of the Gulf Cooperation Council (GCC) have amended their commercial agency laws in recent years. In this guide, we will be discussing Oman, Kuwait, Bahrain and Saudi Arabia's agency laws.

Agency Laws in Oman

The commercial agencies in Oman are governed by the commercial law which has been issued by the Royal Decree Number. 55/90; the Oman Agencies Law published by the Royal Decree Number. 26/77 which was amended by Royal Decree 34/2014, valid from 21 July 2014. The original Oman Agency Law consisted of typical agent protection provisions, but Oman had amended that law in 1966 which allows multiple agents appointed on a non-exclusive basis. The latest amendments to the legislation introduce four significant changes which are:

- i. Compensation for registered agents is no longer expressly provided by the law. Parties to commercial agency agreements are now free to decide the terms of renewal and termination of those agreements, but compensation is no longer expressly provided by the Law. However, an agent can still claim breach of contract.



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one brick at a time...***

ii. Registered agent will no longer have rights to claim commission from parallel imports. It has abolished the prohibition on the foreign principal from selling or distributing its goods or services itself or through a third party. It may have effectively put the registered agent in the position of having statutory obligation to provide the original manufacturer's guarantee and after sale services, as required by law but losses protection to claim for commission on the other sales.

iii. The Minister of Commerce and Industry no longer has the statutory authority to ban the import of goods.

iv. New anti-monopoly powers are issued to the Council of Ministers who may act on the recommendation of the Public Authority for Consumer Protection.

Definition

According to the Omani Commercial Agencies Law (CAL), the commercial agency is: *"Any agreement through which a commercial company in the Sultanate of Oman is authorized to sell, promote or distribute the products or services of a foreign entity in consideration for protection or commission."*

Registration of Agency Agreement

The parties must register the agency agreement at the Commercial Agencies and at the Ministry of Commerce and Industry to be enforceable. Ministry will issue a certificate to prove the recorder within 15 days as from the date of application. Article 11 of Omani Commercial Agency Law sets out the procedure required in completing the registration of an agency agreement with the Commercial Agencies Department at the Ministry of Commerce and Industry (MOCI). Following are the terms and conditions as are necessary for certification of a commercial:

i. Any person intending to act as a commercial agent must first complete the registration of his agency in commercial agency register before proceeding to serve as a commercial agent.

ii. The agency will only come into existence from the date of its registration by the provisions of the Omani Commercial Agency Law. The Omani law will not recognize any agency which is not registered.

Kinds of Agency Agreements

i. Limited term Agencies – the agency agreement is governed by the fixed duration between the parties.

ii. Unlimited term Agencies- the agency agreement does not include any fix duration period.

Ownership

Omani companies intending to act as an agent of a foreign principal must be established under Omani Law, and they must have secure their right to import, trade and to undertake commercial agency business. The minimum shareholding of an Omani national in a company taking agency business in Oman remains 51% as per the Omani Commercial Agency Law. With regards to the MOCI, Omani companies having foreign shareholding upto 70% can act agents in Oman for a foreign principal.

Termination of Agency Agreement

Previously, agency agreements were governed by Omani Commercial Agency Law which could not terminate the contract without any cause or give sufficient notice to the agent. In the event of termination without legitimate purpose, a foreign principal would be required to pay compensation to the agent equivalent to the average of commissions/profits received by the agent over the last three to five years.

A brief explanation on the new commercial agency law in Bahrain and its impact on the corporate sector.



In the light of preceding amendments to Omani Commercial Agency Law, Article 15 allows the principal company to request MOCI for canceling the registration of an agency agreement post its expiry, provided that the principal has given at least three months' notice before the expiry of the contract or else the transaction will be renewed automatically. Ministry can terminate the agency agreement if the parties register the agency agreement with incorrect data. Furthermore, Article 18 of Omani Commercial Agency Law provides that the courts shall decide all the matters and disputes between agents and principals regarding the agency contract and may decide on appropriate compensation depending on the commercial and local practices unless parties opt for arbitration. However, after the amendment of Article 10, there is no certainty as to how the Omani courts decide such cases.

Agency Laws in Kuwait

The State of Kuwait had one of the oldest Agency Laws in the Gulf region, as the original law (Law Number 36 of 1964). On 13 March 2016, this law was replaced by a new Commercial Agency Law, Law Number 13 of 2016 because the oldest Commercial Agency Law Number 36 was criticized for causing foreign principals to be locked out of Kuwaiti market due to the complicated formalities in setting up and monitoring agency agreements in Kuwait.

The Kuwaiti Commercial Code governs the principal-agent relationship in Kuwait, and the Kuwaiti Commercial Agency Law mainly deals with registration issues, the changes with the amendment to the law are somewhat limited to the following:

- i. Registered agents should not be exclusive. The new law outrightly mentions that the principal may appoint more than one agent. The new legislation does not prohibit private contracts. This aims of encouraging fair competition and protection of consumer rights in combating monopolies.
- ii. The law also covers the franchises in the country. Similarly, distributorship agreements and dealership agreements may also be registered as commercial agency agreements.
- iii. Registered agents cannot block the import goods and services regardless of whether there is a registered and exclusive agent for such products and services.
- iv. There is no express provision for compensation for termination of agency agreement under Kuwaiti Commercial Agency Law. However, agents can still claim compensation under the Kuwaiti Commercial Code if the foreign principal terminates the agency agreement without any legitimate reason.
- v. An agent must notify the Kuwaiti Ministry of Commerce if they intend to renew an agency agreement even if the contract provides automatic renewal. To deregister the agency's registration then an agent may request the Ministry of Commerce within three months before agency term ends.
- vi. The new commercial agency law sets out that only the registered commercial agencies will be considered and heard by the courts of Kuwait as per Article 6 of the Kuwaiti Commercial Agency Law. The old commercial agency laws contained a similar provision, where the courts allowed claims from unregistered agents under the commercial code.



Skipping the maze and paving your path...

vii. The agent or distributor of a commodity inside Kuwait is also obliged to provide maintenance and repair services for such products.

viii. Any goods or products imported by a third party should meet international quality standards and achieve the same specifications applied by the Gulf Cooperation Council.

ix. All the commercial agents must be registered with the Department of Commercial Agencies within 2 (two) weeks of appointment at Commercial Agency Registration Department. The Ministry of Commerce can reject the application within 30 days.

x. Under Kuwaiti Commercial Agency Law, arbitration has been given more formal recognition.

Agency laws in Bahrain

Bahrain's first Commercial Agency Law, Decree-Law Number 23 (1975) contained so-called "dealer protections and remained unchanged for many years. In 1992 after years of groundwork Ministry of Commerce and Industry amended the law where there was significant liberalization of dealer's protection rules but it was still inadequate. In April 1998, Bahrain enacted substantial amendments to its Commercial Agency Law, liberalizing some provisions and abolishing the statutory requirement of exclusivity of local commercial agents. The commercial agency adopted in 1998 was amended on July 14, 1992, Bahraini Decree Law Number 10 (1992). The 1992 Law had provided significant liberal-

Bahrain's dealer-protection rules, but it retained the earlier statutory obligation of exclusivity in favor of a local commercial agent as well as most of the legislative protections that had existed in previous Bahrain Law.

Definition

Article 1 (as amended by Legislative Decree Number 8 of 1998) defines commercial agency as *"representing a principal in the distribution of goods and products of displaying them for sale or trading purposes in consideration of profit or commission or providing facilities of any kind whatsoever including overland travel, shipping or airline agencies, tourist and travel agents service, insurance, printing, publishing, press publicity, commercial activities and advertising agencies or firms specified by an order of the Minister for Commerce"*.

Ownership

Commercial agencies in Bahrain shall at least have 51% local Bahraini ownership and are registered under any of the forms as provided under the Bahrain Commercial Companies Law. All the commercial agency agreements must be registered with the Commercial Registry of the Directorate of Commerce and Companies Affairs in the Ministry of Industry and Commerce (MOIC). Any unregistered commercial agency shall not be recognized under the provisions of the Bahrain's Commercial Agencies law. Commercial agency contracts may be made for definite or indefinite periods. He shall be Bahraini national as per Article 14 of the CAL.

Exclusivity

The Ministry would register a commercial agency agreement with the principal being either an affiliate of the manufacturer or an unaffiliated third party as long as the product manufacturer had authorized that principal to sign commercial agency agreements for such products in the Middle East. To broaden the scope of the exception, the Ministry may permit the registration of a commercial agency agreement between a qualified agent and a foreign company, export house or any other party that is authorized to ratify a commercial agency agreement.



Article 5 of the 1992 Bahrain Commercial Agency Law retained the provision that a principal was not permitted to use the services more than one agent in the specific area of activity for the same commercial business covered by the agency. In the recent years, Bahraini law also permits the foreign companies to appoint different agents for different brands for the same general class of product.

Termination of Agency Agreement

Thus, in the case of the fixed-term agency agreement, it can be terminated upon the expiry of its fixed term unless the parties agree upon the renewal, as per Article 8 (a) of 1992 Bahrain Commercial Agency Law. In case of disagreement, as per Article 8 (a), the Direc-

Companies Affairs shall be empowered to strike off the agency or register it in the name of another trader who agrees with the principal. Under the provision of Article 8(b), if either party wishes to terminate the agency contract before the term of the agreement expires, the agency shall not be canceled or registered in the name of another trader except with the mutual consent of the two parties. A commercial agent has the right to claim compensation on termination of agency agreement by the principal before the expiry of the fixed term.

The concerned committee formed under an order of the Minister of Commerce shall be empowered to strike off the registration of an agency for an indefinite term upon the agreement of the parties to it seeks the termination thereof in spite of the opposition of the other party. The aggrieved party can claim compensation for damages suffered as per Article 9 (as amended by Legislative Decree No.8 of 1998) (a).

Penalties

According to Article 27 of the Law a fine not exceeding BD 500, punishment is inflicted upon any person who willfully presents the Directorate of Commerce and Companies Affairs, Ministry of Commerce any false information in aspect during registration or renewal in order to register the agency or fails to inform the Directorate of any amendment with regards to agency details. The same penalty is imposed upon an agent of the company publishing that he is a commercial agent of a company or firm without having his name registered in the Commercial Agencies Register.

Agency Laws in Saudi Arabia

In Saudi Arabia, the agency agreements are regulated under the Saudi Commercial Agencies Law issued by Royal Decree Number M/11 dated 20/2/1382H (corresponding to July 22, 1962G) (the Law) and its implementing Regulations (the Regulations).



The all-in-all of agency law in Saudi Arabia

Definitions

The law sets out the meaning of the commercial agent, which covers agents, distributors, and the franchises. The legislation is relevant to any individual who contracts with the producer or his delegate for commercial activity, either as an agent or merchant in any office or appropriation revenue driven, commission or offices of any nature. It further includes organizations for marine transport, air, or arrive and whatever other offices that would be chosen by the Minister of Commerce and Industry".

Features of Saudi Agency Law:

Royal Decree enacted the Saudi Commercial Agencies Law have established a comprehensive framework that governs the relationship between the Saudi agent and foreign principal, key features include:

- i. A Saudi Agent should register with and obtain approval from the MOCI for each agency agreement into which it enters and if failure to disclose will result in invalidation of the contract. The agent has to register the agency within three months from the date on which the agency came into effect.
- ii. Until the termination of the agency or appointment of a new agent, the existing agent must provide customers with necessary spare parts and maintenance at a reasonable price, available within 30 days of the request.
- iii. The MOCI has the authority to check that the agency agreement is consistent with the Saudi law and satisfies the minimum criteria.
- iv. The agency agreement must contain information about the product line and geographic scope, but there is no requirement that the appointment of the Saudi agent is made on an exclusive basis.

v. The principal must guarantee the quality of the products and materials to ensure that they are approved as per the standard specifications in the importing country. The Saudi agent is not obliged to receive or be responsible for distribution of any quantities obtained from the principle that is contrary to such required standard specifications.

vi. There are severe penalties imposed for violating specific clauses of the Saudi Agency Law, including a fine of a sum not less than 5,000 Saudi Riyals.

Ownership

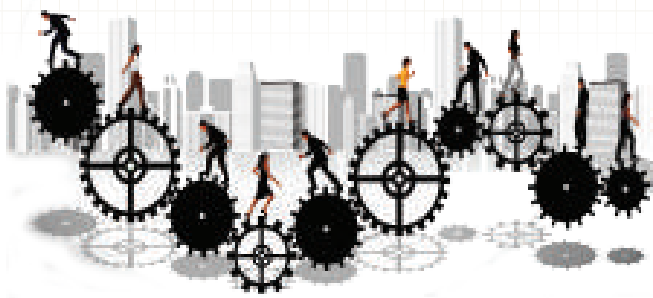
In Saudi Arabia it is possible for the foreign principal to establish a company to carry out the activity of franchising provided that it satisfies some conditions that include:

- i. A limit on foreign shareholding of 75% and
- ii. The requirement that the international applicant provides evidence that it is authorized in its own country to practice franchising.
- iii. The law mentions that only a Saudi national or a wholly owned Saudi entity is authorized to act as a commercial agent in the country, and the parties must register the agreement with the Commercial Agencies Department at the MOCI.

Nevertheless, individual foreign companies appoint a Saudi agent to enter the market in a fast and efficient manner.

Commission

The Saudi Agency Law does not have a precise definition of commission. In practice, an agent has the right to a percentage of the value of products sold to be agreed between the parties.



Choice of Law and Jurisdiction

While there is nothing under Saudi Agency Law that prevents parties from governing their agreement with foreign law or referring the dispute to international courts through arbitration.

Termination of Agency Agreement

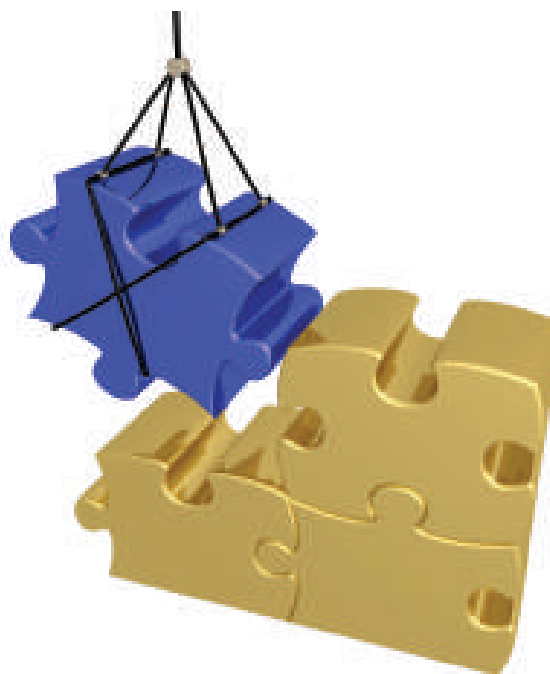
The regulations do not provide an agent with a statutory right to compensation upon completion of an agency agreement. Saudi courts do not typically award compensation for termination or non-renewal of agency agreement unless there is a breach of contract, or the contract expressly provides for such payment. Additionally, in under Shariah law, lost profits or other consequential damages are not recoverable in Saudi Arabia. The compensation upon termination of agency agreement is decided by the Saudi courts on a case by case basis and according to Shariah law.

Conclusion

The introduction of the Agency Laws in the middle is for the common purpose which is the protection of the local agents from the termination of the agency agreements by the foreign principals without a valid reason. The Agency Law guides offer detailed insight of the rules and regulations required for an international principal to expand or start their business in the middle east and their direct relations with the commercial agent of that particular region. Comparatively, in UAE registered and unregistered agents recognize the court unlike in Oman the Omani Law will not accept the unregistered commercial agency. Exclusively in the UAE, the foreign principal can appoint a Non-Emirati individual for trade and distribution of their product in that particular Emirate. Non- Emirati agent selecta local agent to render management of the business of the

foreign national. But there is a drawback for a Non-Emirati individual that it will not be entitled to receive compensation since he will not be recognized as a real agent. It is known as Sham Agency Registration.

Under UAE Agency Laws, a registered agent is entitled to receive a commission on foreign business whereas only in Oman registered agents has no right to claim commission on the international market. Comparatively, as per agency laws in Bahrain, foreign shareholding is 75% whereas in Oman it is 70% foreign shareholding and 51% is Omani shareholding. Therefore, it is more beneficial for the foreign principal to expand their business in Bahrain rather than in Oman. It is same in the UAE as Oman. Registration of commercial agency is a common link in the whole of middle east. Foreign principals can directly do their business in the middle is through a commercial agent. It has given a positive impact on the economy in the middle east.



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