

Commercial Agency Agreements

Webinar for the CPG Group
28 June 2020

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United Arab Emirates



Key highlights of the commercial agency framework in the UAE

- Federal Law 18 of 1981 (as amended).
- The requirement to register.
- Selecting an agent.
- Use of a corporate service provider.

Practical issues concerning commercial agencies in the UAE

Issue 1: The impact of the Competition Law on registered commercial agencies

- UAE Federal Law No. 4 of 2012.
- What is a restrictive agreement?
- Is my registered commercial agency agreement a “restrictive agreement”?
- One to watch: dealings between a registered commercial agent and its sub-distributors and customers.

Practical issues concerning commercial agencies in the UAE

Issue 2: The impact of the Competition Law on unregistered commercial agencies

- Is my unregistered agency agreement a “restrictive agreement”?
- Compliance.

Practical issues concerning commercial agencies in the UAE

Issue 3: Termination of a commercial agency agreement

- Unregistered v registered agreements.
- The cost of termination - tread with caution.



Bahrain



The Commercial Agency Law in Bahrain

- The Commercial Agency Law applicable in Bahrain was enacted in 1992 with the latest amendments issued in 2002.
- Commercial Agency defined under Bahraini Law as the: “Representation of the Principal” in the distribution of goods and products, displaying them for sale or trade in exchange for profit or commission, the provision of services of any kind whatsoever including land, shipping or air transport agencies, travel and tourism agencies, services offices, insurance, printing, publishing, press and advertising agencies and firms, or any other commercial activities.
- **Exclusion:** No agency for companies which the State entities procure weapons or military equipment.

Registration requirements

- There is a requirement to register the commercial agency contract with the Ministry of Industry, Commerce and Tourism, failing which the contract will not be subject to the provisions of the Commercial Agency Law.
- Any disputes arising out of the commercial agency will not be heard in accordance with the Commercial Agency Law.
- An unregistered contract will only give rise to private contractual rights and obligations between the parties.

Note: there is a Court of Cassation judgment which concluded that the non-registration of a commercial agency bars any dispute arising out of it from being heard by the Courts.

Agent requirements

- A commercial agent must be Bahraini, or any form of Bahraini company with local ownership of at least 51%.
- There is no requirement for exclusivity pursuant to an amendment in 1998.

Commercial agency contract requirements

- The MOICT will look for the following information in a commercial agency contract:
 1. The name and nationalities of the parties;
 2. The subject of the commercial agency: the goods or services, as well as the rights and obligations of the parties and the agent's profit or commission;
 3. The term and geographical scope of the agency;
 4. The place of business of the parties;
 5. The brand name or trademarks subject of the agency;
 6. The requirement on the Agent to provide sufficient spare parts and maintenance required for the vehicles, machinery or equipment under the commercial agency;
 7. The arbitration clause, if any;
 8. Any other provision that does not violate the Law.

Commercial agency contract requirements

- Discussion on practical impact: Letters of Appointment.

Termination

- A fixed term agency ends at its expiry unless renewed by the parties.
- If either party wishes to renew the contract before its expiry, the Ministry refrains from striking off the agency and registering it in the name of another agent unless the parties agree to terminate.
- An indefinite term contract may only be terminated by agreement of the parties. In the lack of an agreement, the matter may be referred to the Ministry to decide.

Compensation

- An agent may seek compensation for unjust termination. The Courts will look for evidence that the agent's efforts resulted in the profitability of the principal's products and increasing its customer base, and that the termination leads to unjust loss of profit, i.e. the decision prevents the agent from earning profits from a demonstrated market success.

Dispute resolution

- The parties have the freedom to choose the dispute resolution forum.
- In the absence of an arbitration clause, the Courts of Bahrain will have jurisdiction to hear the dispute.

Pricing and competition

- In 2018, Bahrain introduced the Competition Encouragement and Protection Law which, together with the Consumer Protection Law, prohibits anti-competitive conduct and price fixing.
- The Competition Law applies to extraterritorial economic activity which affects competition in Bahrain.
- Ministry of Industry, Commerce and Tourism, has the discretion to decide whether a conduct is considered anti-competitive. The Minister has the authority to allow exemptions if deemed to be in the public interest.

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Saudi Arabia



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Commercial agencies regime in Saudi Arabia

Scope:

- Applies to commercial agencies, distributorship and, until recently, franchise agreements.
- Registration requirements.
- Ministry of Commerce practices.

Commercial agencies regime in Saudi Arabia

Registration:

- Template commercial agency agreement (not mandatory).
- Exclusivity.
- Agent must be wholly owned and managed by Saudi national(s).

Termination:

- Appointment of new commercial agent.
- Requirement to post a financial guarantee to meet judgements in favor of the old commercial agent.
- Blocking of imports by terminated commercial agent.

Commercial agencies regime in Saudi Arabia

Dispute resolution:

- Parties have freedom to determine dispute resolution mechanism (for example: litigation or arbitration – inside or outside Saudi Arabia). Different from UAE where disputes must be brought before the competent courts in the UAE.
- Parties must consider difficulty of enforcing a KSA court judgement against a foreign principal (outside of Arab League / GCC) and vice versa.

Claimed damages:

- Only actual, proven damages can be awarded.
- Saudi courts unlikely to award punitive or consequential loss and/or damages, including lost profits.

Commercial agencies regime in Saudi Arabia

Competition Law:

- Saudi Competition Law may penalize parties for registering exclusive agencies in Saudi Arabia that would result in market dominance.
- General Authority for Competition (**GAC**) has been very active lately and market investigations might lead to GAC scrutinizing existing exclusive agency agreements in Saudi Arabia.
- GAC has broad discretion to determine whether an exclusive agency would result in market dominance or adversely impact fair market competition.

Franchise Law:

- Applies to all franchise agreements performed in Saudi Arabia.
- Also applies to pre-existing franchise agreements (i.e., entered into before Franchise Law), with the exception of certain provisions of the Franchise Law.
- Requires registration of franchise agreement and disclosure document. Also sets out certain rights and obligations of both franchisee and franchisor.

Questions?





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