

Law Office
of
HOWARD L. STOVALL
2131 North Racine Avenue
Chicago, Illinois 60614
Telephone (773) 248-8896
Facsimile (773) 248-8897
E-mail Howard@Stovall-Law.com

**Recent Requirement for
Registered Commercial Agents/Distributors
in Saudi Arabia**

For many years, Saudi Arabian government ministries and public sector entities have been required to purchase products only from local commercial agents and distributors who are properly registered under the Commercial Agency Regulations. In practice, that requirement was not always strictly observed, including by government-owned companies such as Saudi Aramco. More recently, Saudi Aramco appears to be taking steps to abide by that requirement to do business only with registered Saudi Arabian commercial agents and distributors. There are some significant implications for foreign companies who now seek to register their commercial agency/distributorship agreements.

1. Background

Saudi Arabian commercial agencies are governed by Royal Decree M/11 (1962) as amended (the "Commercial Agency Regulations"). The Commercial Agency Regulations apply both to commercial agency and distributorship arrangements. Therefore, in this memorandum, use of the term "commercial agent" generally also includes "distributor".

The Commercial Agency Regulations contain a number of qualification requirements applicable to commercial agents. For example, the Commercial Agency Regulations state that only Saudi Arabian nationals or companies organized under Saudi Arabian law and wholly-owned and managed by Saudi Arabian nationals may act as local commercial agents. The Commercial Agency Regulations also require a commercial agent to submit its commercial agency agreement for registration at the Ministry of Commerce and Industry (the "Ministry"), within three months of the agreement's commencement date.

2. Registration Requirement

According to the Commercial Agency Regulations, the parties' agreement must be submitted to the Ministry in Arabic or, if drafted in a foreign language, then accompanied by an authorized Arabic translation. The commercial agent bears both the responsibility for registering the parties' agreement as well as the penalties for failing to register.

Given the scrutiny sometimes applied by the Ministry to commercial agency agreements during the registration process, some foreign companies have been unwilling to amend the terms and conditions of their own standard commercial agency agreement, even if this might prevent registration. (Another reason why Saudi commercial agency agreements are sometimes not registered: in cases where the commercial agency agreement is extremely technical or lengthy, the required Arabic translation can be very difficult and expensive.)

Because the Saudi Arabian Customs Department has not customarily required that imported goods be cleared by a registered commercial agent, commercial agents have generally been able to operate in Saudi Arabia without registering their agreements with the Ministry. Assuming the Saudi Arabian commercial agent is otherwise qualified to perform commercial agency in the Kingdom (e.g., Saudi nationality, commercial registration to do business, purposes which include commercial agency activities), Saudi Arabian government authorities have rarely (if ever) sought to prosecute a qualified commercial agent for failure to register its commercial agency agreement.

Moreover, registration is not a prerequisite to the validity and enforceability of a commercial agency agreement in Saudi Arabia. Saudi Arabian courts have recognized and enforced the terms of commercial agency agreements despite the lack of registration. (Unlike some other commercial agency laws in the Middle East, the Commercial Agency Regulations do not contain any provision stating that 'no claims shall be heard on unregistered agreements'.)

From the foreign manufacturer's perspective, the most serious disadvantage of such an unregistered arrangement might be the commercial agent's inability to sell products to some Saudi Arabian government ministries and public sector entities. Over thirty years ago, the Saudi Ministry of Finance issued a circular instructing government departments not to enter into any contracts for the procurement of foreign manufactured goods unless the local supplier showed a certificate of registration under the Commercial Agency Regulations. However, not all Saudi Arabian government and public sector purchasers strictly observed that circular. Moreover, in some instances, Saudi government purchasers - including Saudi Aramco - would be willing to accept a letter from the foreign manufacturer, simply confirming that the Saudi commercial agent was authorized to act on its behalf for a particular tender.

Thus, in many instances in the past, Saudi Arabian commercial agents have been able to successfully market foreign products to Saudi Arabian government ministries and entities without being registered under the Commercial Agency Regulations. However, that practice now appears to be changing - at least in procurement by Saudi Aramco.

3. Saudi Aramco's Recent Policy

Beginning at least one year ago, the Supplier Registration Unit of Saudi Aramco began sending notices to local businesses listed within Saudi Aramco's records as commercial agents for foreign suppliers. That notice stated in part:

Please be advised that as of the date of this letter, Saudi Aramco will only accept (new) and maintain (existing) agency linkages between local and foreign suppliers when a local supplier provides a certified copy of the valid Commercial Agency Registration Certificate issued by Ministry of Commerce and Industry (MOCI).

Maintaining a valid Commercial Agency Certificate is mandatory to maintain the agency linkage in Saudi Aramco system.

The notice from Saudi Aramco goes on to state that suppliers who fail to provide the necessary documentation will have their existing agency linkages removed from Saudi Aramco's records until such time as the necessary documents are received. The implication is that Saudi Aramco will no longer procure goods through a Saudi Arabian commercial agent if the latter cannot provide a certificate from the Ministry, reflecting registration of a commercial agency agreement for the relevant products.

4. Some Implications

The Saudi Ministry of Commerce developed a model Contract of Agency or Distributorship in the mid-1980s, a form which was more or less required for registration with the Ministry for a few years. Over the past two decades or more, however, the Ministry has been willing to register commercial agency agreements that vary significantly from that model contract - provided that at least certain provisions (e.g., compliance with Saudi Arabian Standards Organization specifications, and a commitment to provide spare parts) are included in the agreement submitted for registration.

In light of Saudi Aramco's recent insistence on dealing only with registered commercial agents, some local commercial agents have begun presenting the Ministry's model contract to their foreign suppliers, suggesting that the model contract is required for registration with the Ministry. In fact, registration does not require use of the Ministry's model contract.

For example, the Ministry's model contains contractual provisions granting a commercial agent the right to claim compensation upon the foreign principal's termination or non-renewal of the commercial agency agreement - although neither Saudi Arabian law nor Ministry policy requires such provisions. Saudi Arabian law would offer

significantly less protections to a commercial agent in the event of termination or non-renewal absent such contractual provisions. Therefore, if a foreign manufacturer does decide to make some effort to register its commercial agency agreement in response to Saudi Aramco's request, these types of contractual provisions found in the Ministry's model contract should be avoided to the greatest extent possible.

One of the biggest potential 'down-sides' to registration of a commercial agency agreement with the Ministry might occur if the foreign manufacturer subsequently decides to terminate its relationship with the Saudi Arabian commercial agent. The Ministry has discretion to refuse registration of a replacement commercial agency until all disputes with the prior commercial agent are resolved. In this context, the Ministry established a special Committee for the Settlement of Commercial Agencies Disputes, and many terminated (or non-renewed) commercial agents have filed complaints before this special committee, effectively blocking the registration of replacement commercial agents for lengthy periods of time. We do not know what Saudi Aramco's position would be in such circumstances, for example, if it would insist on dealing only with the currently registered commercial agent. In the past, some replacement commercial agents have obtained temporary registrations from the Ministry, pending resolution of the prior commercial agent's dispute, if such temporary registration is in the public interest -- for example, if the principal's products are crucial to the Saudi Arabian market.

Given the Ministry's relatively recent policy permitting the registration of multiple non-exclusive agreements, a foreign manufacturer might consider developing a non-exclusive commercial agency for registration with the Ministry. A registered non-exclusive commercial agent would presumably have some difficulty subsequently blocking the registration of another non-exclusive commercial agent at a later time, e.g., in the event the foreign manufacturer decides to terminate the existing registered commercial agency.

* * * *

This memorandum is intended to summarize some general legal principles of commercial agency laws in Saudi Arabia, but not to provide legal advice on any specific question of law. Please let me know if you have any questions or comments regarding the background information in this summary, or if we might assist in connection with any other Middle Eastern commercial law matter(s).