

**Commercial Agency and Distributorship:
Egyptian Law And Practice**

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Compared with many other jurisdictions in the Middle East, Egypt provides a more complete and therefore a relatively more certain legal framework for foreign companies planning commercial agency and distributor arrangements. Egyptian law also allows a relatively greater flexibility to foreign companies and their local commercial agents or distributors to agree upon, register and enforce their commercial agreements.

Nevertheless, in some instances day-to-day practice can be more important than the express provisions of the laws. While commercial agency and distributorship law has been evolving and becoming an increasingly significant area of law, and a number of relevant laws and regulations have recently been promulgated, the laws generally are ambiguous, and statutory construction rests with government officials who have broad discretion and are sometimes not constrained by precedent.

In Egypt, the discretionary authority of officials to refuse to register commercial agency agreements results in an implicit power to interpret the law. While lawyers and business people need to be aware of these administrative interpretations, which are discussed below, it cannot be emphasized too strongly that the Egyptian courts might reach different conclusions if the issues involved were the subject of litigation.

Ambiguities Resolved, Questions Remaining

Egyptian Law No. 120¹ and Ministry of Economy and Foreign Trade Decision No. 342² were issued in 1982 and constitute the current Commercial Agencies Law and Implementing Regulations (hereafter, Commercial Agencies Law and Implementing Regulations). Many of the provisions of the Law were ambiguous, and some conflicted with existing Egyptian laws or practices. The Implementing Regulations failed to resolve these ambiguities and conflicts. Because of the resulting difficulty in interpreting the Law, many business people and legal advisors chose to wait and observe how this legislation would be applied by Egyptian government authorities.

Recent interpretations and practices are beginning to resolve some of these uncertainties and ambiguities. In order to understand the current state of Egyptian commercial agency and distributorship law, it is necessary to examine the Commercial Agencies Law in light of these recent interpretations and practices. For foreign firms, particularly important areas include:

- requirements for registering a commercial agency,
- the role of commercial agents,
- termination or non-renewal of a commercial agency, and
- issues related to governing law and dispute resolution.

Registering Commercial Agency Agreements

The Commercial Agencies Law requires that all commercial agency agreements be registered in the Commercial Agents Register at the Ministry of Economy and Foreign Trade.³ Registry officials have the discretion to refuse registration of an agreement if they believe that it contains provisions violating Egyptian law, including the Commercial Agencies Law, or provisions that depart from "customary" practice.

As a practical matter, therefore, the registration requirement gives Registry officials broad discretion to interpret and enforce the Commercial Agencies Law. For example, if Registry officials refuse to register a commercial agency agreement, the contractual parties often amend their agreement, incorporating the comments of Registry officials, and then resubmit the agreement for registration.

In light of the broad discretion available to Registry officials to refuse to register an agreement, some foreign suppliers and Egyptian commercial agents have questioned whether they might conduct business using an unregistered agreement. This raises the question of the enforceability of an unregistered commercial agency agreement.

Unlike the commercial agency laws in some Middle Eastern countries,⁴ the Egyptian Law does not explicitly state that unregistered agreements will be considered null and void or unenforceable. Moreover, the Egyptian Court of Cassation ruled in 1974 that unregistered commercial agency agreements are enforceable.⁵ Although this judgment was issued under a prior commercial agency law,⁶ Registry officials have recently expressed the view that contractual rights and duties of the

foreign supplier and the commercial agent are enforceable independent of whether the agreement has been properly registered. Thus, for example, a commercial agent would be entitled to commission earned regardless of whether the underlying agreement had been registered.

In some instances, however, registration of the commercial agency could be quite important to the parties. As discussed in detail later in this article, when a foreign company is bidding for sales to the Egyptian government, the latter may require proof that the foreign company's commercial agent is registered under the Commercial Agencies Law. Further, there are strong reasons for the local commercial agent to insist on registration of the commercial agency. Under the Commercial Agencies Law, any person who acts a commercial agent without being registered in the Commercial Agents Register is subject to imprisonment and/or fines (Article 16).

Defining Commercial Agency Terms

In order to fully understand the Commercial Agencies Law, legal practitioners must understand the basic terms contained in the Law. Following are definitions of such terms and a discussion of issues that may arise when interpreting those definitions.

Commercial Agents

The Commercial Agencies Law (Article 1) defines a "commercial agent" as any natural or juristic person who, without being engaged under an employment contract, habitually undertakes "to submit bids or conclude purchasing, selling or leasing operations or to provide services in the name and account of producers, merchants or distributors, or in its own name but for the account of any of these parties."

Although this definition is broad,⁷ the parties to a commercial agency agreement may restrict the authority granted to the commercial agent under their agreement. An express contractual restriction on the commercial agent's authority is recommended for, among other reasons, ensuring that the commercial agent is not considered, by force of law, an Egyptian branch of the foreign company it represents.

Under Article 165 of the Egyptian Companies Law,⁸ a local commercial agent may be considered a branch of its foreign principal if:

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- the foreign company is managing the commercial agent or entrusting its discretion to the staff of the foreign company;
- the commercial agent has authority to conclude contracts on behalf of the foreign company; or
- the commercial agent has possession of goods or products of the foreign company which the commercial agent sells or transfers at the instructions of the foreign company.

Article 165 of the Companies Law also provides, with the above three exceptions, that an Egyptian commercial agent will not be considered a branch of its foreign principal.

Distributors

Despite the broad and somewhat ambiguous definition of a commercial agent contained in Article 1 of the Commercial Agencies Law, many local observers, including at least one Registry official, initially interpreted the Law as being inapplicable to distributorship arrangements. (In this context, "distribution" is where an individual or a company buys from a foreign company and resells in its own name and for its own account.) Of course, a distributor was considered subject to the Commercial Agencies Law if the distributorship agreement also entitled the distributor to act as a commercial agent or representative. Although some attorneys disagreed with this initial interpretation, it was accepted by most authorities, particularly in light of the numerous other provisions of the Commercial Agencies Law which appeared otherwise difficult to apply to a distributorship arrangement.⁹ Moreover, most distributors for foreign companies were subject to a "sister" law which regulates importers.¹⁰ The existence of the two laws bolstered the view that a distinction was being made between commercial agency and distributorship, and that local distributors generally were not subject to the Commercial Agencies Law.

Over the last two years, however, it appears that Registry officials have decided to accept distributorship agreements submitted for registration. In addition, at least one Registry official has taken the position in certain instances that distributors are subject to the Commercial Agencies Law, and has advised that distributors must register and abide by applicable provisions. As to the provisions of the Commercial Agency Law

which appear inapplicable to distributors, Registry officials exercise broad discretion and in effect modify or disregard such provisions.

For example, Article 4(a) of the Commercial Agencies Law requires, for registration purposes, that the commercial agency agreement expressly indicate the rate of commission as well as the currency and place of payment of such commission. A distributor, by the nature of the arrangement, generally does not receive commission compensation.

In lieu of information on commissions, Registry officials are currently requiring that a distributorship agreement submitted for registration include other information on supplier pricing, including the method of purchase and delivery. Moreover, such a distributorship agreement must expressly state that no part of the prices paid by the distributor will be rebated, or, if a rebate, discount, or price allowance is to be received from the foreign supplier, the distributorship agreement must state the amount of any such rebate or allowance. Registry officials have not, however, insisted on disclosure of distributorship markups or profit margins.¹¹

In summary, Registry officials have required, or at least allowed, registration of distributorship agreements in some instances. Nonetheless, many Egyptian attorneys continue to believe that distributorship agreements are not subject to the registration and other requirements of the Commercial Agencies Law.

Intermediaries

The Commercial Agencies Law applies not only to commercial agents promoting the sale of products of another company, but also to "commercial intermediaries" who assist another company in bidding and negotiating particular contracts.¹² A common example is an agent who assists a foreign company in obtaining an Egyptian government contract. (Some refer to such a commercial intermediary as a project commercial agent as opposed to a product commercial agent.)

This extended regulatory scope is consistent with the Egyptian tender law¹³ which, at Article 36, prohibits all commercial agents or intermediaries from being involved in the purchase by government departments of products which are usually sold only to such departments, except when:

- the sale is by a foreign company which has its head office abroad, and

- the commercial agent or intermediary is the foreign company's "duly registered" commercial agent or intermediary in Egypt.

It is generally agreed that "duly registered" for this purpose refers to the registration requirements of the Commercial Agencies Law.¹⁴

Although there is a clear basis, under the definition of a commercial intermediary contained in Article 1 of the Commercial Agencies Law, for applying all the provisions of the Law to project agents, the substantive provisions of the Law are primarily designed to regulate product commercial agencies. Moreover, after the enactment of the Commercial Agencies Law, some Registry officials initially refused to give effect to any provision in a commercial agency agreement which limited the customers to whom the commercial agent could promote. This is inconsistent with the notion that the Law applies to project commercial agents, who are often authorized to promote the conclusion of one particular contract, and who have no general responsibility for promoting sales to other or all potential purchasers.

Recently, however, Registry officials have changed their position and have registered commercial intermediaries or project commercial agents. One Registry official based the changed interpretation on his preference for having such agents registered and the terms of representation subject to some form of review, rather than permitting such agents to operate outside the framework of the Commercial Agencies Law. Of course, the explicit language of Article 1 of the Commercial Agencies Law,¹⁵ and Article 2(2) of the Implementing Regulations,¹⁶ also support application of the law to intermediaries.

In the remainder of this discussion, and subject to the foregoing limitations, references to registration and qualification requirements are applicable not only to commercial agencies, but to distributorships and intermediaries as well.

Qualifications For Registering

Under Article 3 of the Commercial Agencies Law, an individual intending to perform commercial agency activities will not be allowed to register a commercial agency agreement in the Commercial Agents Register unless certain requirements are satisfied. For example, the individual must be a native Egyptian citizen or an Egyptian citizen naturalized for at least 10 years, and must be of "good reputation" and "financially solvent."

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Certain categories of individuals will not be allowed to register commercial agency agreements, including:

- employees of government municipalities or public sector entities, unless their employment was terminated at least two years prior to their application for registration; and
- members of the General Assembly, the Shoura Council, or municipal councils, unless the individual has been practicing commercial agency activities before assuming any such position.¹⁷

In addition, "first degree" relatives of the above-mentioned public employees and government members are prohibited from registering as commercial agents.¹⁸

Other provisions of Article 3 set out the requirements that must be satisfied for a company to register its commercial agency agreement(s) in the Commercial Agents Register. For example, the company's "head office" must be in Egypt,¹⁹ and its deed of incorporation must specify commercial agency work as one of the company's purposes. The capital of the company must be held entirely by Egyptians, and if an owner is a naturalized Egyptian, that owner must have held Egyptian nationality for at least 10 years. All the managers and directors of the company must satisfy the same requirements of Article 3 which are applicable to individuals acting as commercial agents.²⁰

The Commercial Agencies Law does not expressly require that a commercial agency company be established under Egyptian law, and at least one Registry official has previously stated that it is theoretically possible for a foreign company possessing requisite characteristics to form an Egyptian branch office to perform commercial agency work in the country. The better view, and apparently the current view within the Registry, is that a branch of a foreign company, regardless of the nationality of the owners of that company, cannot register and act as an Egyptian commercial agent.²¹ In that view, a branch office arguably could never be the "head office" of the company for Article 3 purposes.²²

Although Article 3 requires an Egyptian commercial agency company to be wholly owned by Egyptian parties, it also provides that those Egyptian parties, if juristic entities, need only have majority Egyptian ownership. Thus it is theoretically possible for an Egyptian commercial agency company to be owned by two or more Egyptian companies with 49-percent foreign ownership. This loophole in the nationality requirements, however, is probably not significant for most purposes in light of the requirement

that only Egyptian nationals are permitted to be managers, board members, and general partners of the commercial agency company.

Direct Relationship Rules

Under previous Egyptian law, registration was denied unless the commercial agency agreement was "concluded with the original producing or distributing company."²³ This requirement is more liberal than the commercial agency rules of certain other Middle Eastern countries, which demand a "direct relationship" between the local agent and the foreign producer or manufacturer.²⁴

The latter requirement probably represents an effort in those countries to prohibit, by making non-registrable, agreements between commercial agents and foreign middlemen which might make goods or services more expensive locally because of the added middleman's markup or commission.²⁵ Another justification for the strict direct relationship requirement is that local commercial agents should be permitted to represent only financially responsible foreign companies that will be able to provide spare parts and honor warranties. Normally this is best assured by requiring privity of contract between the local commercial agent and the foreign manufacturer of the products in question.

Prior Egyptian law never adopted this strict direct relationship requirement, but instead allowed registration of agreements involving "the original producing or distributing company [emphasis added]."²⁶ One commentator has suggested that this provision of the prior law required the commercial agency agreement to be with either the producer or the first-tier distributor,²⁷ although the accuracy of this interpretation has not to date been confirmed. In any event, the requirement in the prior law apparently was never strictly enforced.

The Commercial Agencies Law, however, does not contain an express direct relationship requirement, either of a strict or liberal nature, and it is not clear whether even the relatively liberal requirement of the prior law was meant to be retained. The liberal direct relationship requirement of the prior Egyptian law arguably is not inconsistent with any provision in the Commercial Agencies Law, and it is contained in a Presidential Decree²⁸ which was not expressly repealed by the Commercial Agencies Law. Based on views expressed by one high-ranking Registry official, it appears that the prior "liberal" direct relationship requirements will be imposed when an agreement is presented for registration.

Thus Registry officials will register a commercial agency

agreement in which the foreign principal is a distributor with appropriate authority. As a practical matter, the Registry will require proof that a foreign principal, such as an export management company or distributor granted regional sales territory, has a satisfactory underlying agreement with the original manufacturer of the product subject to the Egyptian commercial agency. Registry officials might be satisfied if such proof is a copy of the principal's agreement with the manufacturer. Similarly, a notarized letter could be sent to the Registry from the manufacturer, authorizing the principal to appoint a local commercial agent for the manufacturer's products. If such proof is not provided, the Registry may refuse registration unless the manufacturer becomes a party to the commercial agency agreement.

Exclusive Relationship Rules

The Commercial Agencies Law does not expressly require a commercial agent to act as the exclusive commercial agent of a foreign principal for a particular product line. Prior Egyptian commercial agency law similarly did not contain any requirement of exclusivity.²⁹ Nonetheless, after the enactment of the Commercial Agencies Law, Registry officials initially followed prior practice by refusing to register more than one commercial agent for the same product line of a foreign company. Moreover, Registry officials refused to allow the registration of agreements which restricted an Egyptian commercial agent's territory to less than the entire country.

On June 2, 1985, the Council of State issued an opinion concerning the non-exclusive appointment of Egyptian commercial agents, actually, distributors, by General Motors.³⁰ The Council of State advised that in its view a foreign manufacturer may appoint more than one commercial agent for the same product or product line, and that the manufacturer may divide the country into more than one "sales territory."³¹ The Council of State also opined that the foreign manufacturer may appoint different commercial agents to promote sales to different customers, in both the public and private sectors.³² There are exceptions to these rules if a commercial agent is owned and/or controlled by the public sector.³³ The Council of State acknowledged these exceptions, discussed below.

Perhaps in light of the Council of State opinion, the policy of Registry officials has changed recently, and non-exclusive commercial agency agreements have been registered. Although the practice of Registry officials in this regard is not consistent and therefore could change on a case-by-case basis, it appears possible for a foreign company to appoint a number of non-

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exclusive Egyptian commercial agents for the same product line and territory, and each of those commercial agents probably will be able to secure registration. A foreign company might also assign overlapping sales territories, or several commercial agents may be given an exclusive but defined territory within Egypt, defined either geographically or by the type of customer.

For example, one commercial agent could be given responsibility for Egyptian private sector customers and another for public sector customers, or several agents could be appointed with responsibility for specified government ministries. In instances where non-exclusive commercial agencies have been registered, a Registry official advised that any agreement appointing an additional Egyptian commercial agent should recite that the foreign company has an existing commercial agent.

Another distinct question of "exclusivity" is addressed in the Commercial Agencies Law. Under previous Egyptian commercial agency law,³⁴ a foreign company using a "public sector" commercial agent was prohibited from terminating that agent to appoint a "private sector" agent. (Here, the terms public sector and private sector refer to the ownership and control of the agents, not their sales territories.) That prohibition was adopted at the same time that commercial agency activity was reopened to the private sector, and was aimed at preventing large-scale "defections" by foreign companies from public sector commercial agencies.³⁵ In that light, Article 4(c) of the Commercial Agencies Law prohibits the registration of a commercial agency agreement if the foreign principal already has a public sector commercial agent.³⁶

Article 4(c) may have been intended to reaffirm the earlier restrictions, and thus prevent defections to private sector agents. At least one Registry official initially interpreted Article 4(c) to mean that a foreign company may not simultaneously use a public sector commercial agent and a private sector commercial agent, even if each commercial agent would be assigned a distinct territory in Egypt or distinct product lines.³⁷ The current view, however, apparently now supported by that same Registry official, is that a foreign principal can appoint both public and private sector commercial agencies provided that the private sector agency is not entitled to promote the same products or product lines as the public sector agency. Such an interpretation, when effected, facilitates competition between certain public and private sector companies and allows foreign companies greater freedom to choose the appropriate means of product promotion and distribution.

Practical Registration Matters

As noted, the Commercial Agencies Law requires that all commercial agency agreements be registered in the Commercial Agents Register.³⁸ The commercial agent, and not the foreign principal, bears the responsibility of registering its commercial agency agreement. Under the Commercial Agencies Law, registration of each agreement must be renewed at least every five years (Article 6).

As a practical matter, a product commercial agency typically must be registered for a term of at least one year or it may be rejected by the Commercial Agents Register. This rule would not apply to project commercial agents, whose agreements could be limited to a single government tender and would expire thereafter. The agreement must be legalized by an appropriate chamber of commerce and by the Egyptian embassy or consulate in the foreign principal's home country.

Anyone is permitted, upon payment of a fee, to have the results of a search of the Register to determine whether a foreign company has a registered commercial agent. An official certificate of the registration of a commercial agency agreement will be provided. Moreover, the Commercial Agents Register publishes a directory showing the names of each registered Egyptian commercial agent and the foreign companies represented by that agent.

Registry officials have refused to register amendments to commercial agency agreements registered under previous commercial agency law, even if such amendments make the agreement conform to the requirements of the Commercial Agencies Law. It has therefore been necessary for agents with pre-1982 agreements to submit complete restatements of their agreements.

Unlike some of the other Arab countries in the Middle East, Egypt does not require any "clearing certificate" or other document relating to the Arab boycott of Israel in connection with the registration of a commercial agent. Egypt abolished its boycott of Israel following the Camp David agreements.³⁹

Although Registry officials have broad discretion to reject commercial agency agreements, such agreements are generally rejected only if they fail to satisfy particular requirements specified in the Commercial Agencies Law. For example, in accordance with Article 4(a) of the Law, it is particularly important for commercial agency agreements to specify:

- the nature of each party's responsibilities and obligations,

- the territory of, and the product line(s) given to, the commercial agent,
- the rate of commission, the currency in which commissions are payable, the means of payments, and the place of payment.⁴⁰

In certain instances, however, officials have refused to register agreements for other reasons. Furthermore, in some cases the refusals were not supported by any express provision of the Commercial Agencies Law.⁴¹ If Registry officials refuse to register an agreement which otherwise conforms to the requirements of the Commercial Agencies Law, it is unclear what remedies would be available to the foreign principal or the commercial agent. The parties might petition the Minister of Economy or file suit at the administrative court of the Council of State seeking an order nullifying the Registry's decision refusing registration of the agreement. To the author's knowledge, this matter is untested under the Commercial Agencies Law.

In addition, the Commercial Agencies Law, at Article 4(b), requires that each commercial agency agreement contain a specific undertaking by the foreign principal to inform the Egyptian embassy or consulate in the principal's country of residence of any amendments to the commercial agency agreement. No other Middle Eastern commercial agency law explicitly imposes such a requirement on the foreign principal.⁴² Although the Commercial Agencies Law does not elaborate, this requirement apparently establishes a procedure to apprise the Register of changes to a registered agreement. Thus, for example, if the parties decide to change the rate or place of payment of the commission, the corresponding amendment must be presented to an appropriate Egyptian embassy or consulate, which presumably would forward the amendment to the officials at the Registry.

Role of Egyptian Commercial Agents

Sales to the Government

Non-military Procurement

Generally, only commercial agents registered in the Egyptian Commercial Agents Register at the Ministry of Economy and Foreign Trade⁴³ are permitted to file bids with the purchasing committee of any government ministry or public sector unit, under the consolidated executive regulations⁴⁴ to the Egyptian Import/Export Law. Article 36 of the Egyptian "Tender Law"⁴⁵ is consistent with this requirement. It provides that if a foreign

company that has its head office abroad makes such a sale, an Egyptian commercial agent may be used but must be "duly registered."⁴⁶ "Duly registered" is commonly understood to refer primarily to registration under the Commercial Agencies Law.⁴⁷

In accordance with these government procurement rules, and assuming that the foreign company satisfies the conditions in Article 36 of the Tender Law, a foreign company generally is required to use a commercial agent for sales of non-military equipment to Egyptian government departments. In some cases, however, tender documents contractually prohibit commercial agencies or intermediaries; these cases almost exclusively involve tenders from government entities or organizations in the petroleum industry or tenders for train or locomotive transportation equipment. Thus, a foreign company should carefully examine the terms and requirements of each particular tender.

Under current interpretation, every project funded or financed by the United States Agency for International Development (AID), even if it is an Egyptian government project, is exempt from the rule that contracting companies must use an agent. Companies are not prohibited from using or paying commissions to an agent on such projects, however, except where such use or payment is prohibited or restricted by applicable AID regulations or contract provisions.

Military Procurement

Egyptian military procurement is the most significant exception to the general allowance of commercial agents in Egyptian government contracts. The Ministry of Defense has adopted a policy prohibiting the use of any commercial agent, intermediary, or sales representative in connection with the purchase of military equipment, and its practice is to deal directly with a product manufacturer. The Ministry's two-fold rationale for this policy is to ensure that:

- prices of products purchased are not increased by commissions or contingent fees paid by the foreign supplier, and
- products are purchased on the basis of the highest quality and not because of the influence of a commercial agent or intermediary.

In following this policy, the Ministry of Defense in a number of instances has required bidders to include the following statement with bid documents:

The price mentioned in this offer does not include any kind of direct or indirect commission, fees, etc., to any agent or representative or consultant or etc.

If a contract is concluded from this offer and it is proven that the Egyptian government has paid any kind of direct or indirect commission or fees, etc., relating to such contract, the Egyptian government shall have the right to reduce the contract value by the value of such commissions or fees, etc., besides its substitutions resulting from any consequential damages.⁴⁸

Moreover, in other cases, the Ministry of Defense has taken the position that the use of, and not merely payments to, an agent or intermediary in connection with its contracts is against its policy.

Even if a Ministry of Defense contract does not contain such provisions, a foreign company should not assume that it may use a commercial agent or intermediary in connection with the contract. The Ministry considers its policy a matter of public record and assumes that the policy is known to all bidders for its contracts.⁴⁹ In addition, even where the Ministry has failed to address the matter in prior negotiations, it has been known to present a foreign supplier with a copy of its statement (see above) at the final negotiation and execution of a sales agreement and require the supplier to sign the statement. A foreign company that appoints an agent or intermediary based on the absence of explicit prohibitions in the tender documents could therefore find itself in an extremely difficult situation; the company could face the prospect of meeting additional standards just as the contract is to be awarded and signed.

If the Ministry of Defense learns of a foreign contractor's breach of this policy prohibition, the Ministry could reduce the contract value by the amount of the commission paid. Theoretically, the Ministry may also sue the contractor for any consequential damages resulting from breach of contract, assuming the prohibition on agents and intermediaries has been included in the contract documents. Possibly the most significant penalty the Ministry may impose on a foreign contractor in such circumstances is to "blacklist" the contractor. As noted, these remedies have, at least in some instances, been expressly set out in provisions of Ministry of Defense contracts.⁵⁰

In practice, some companies do make use of "consultants" or "contacts" in connection with military sales. It is not unusual for bidders to designate a local company or individual as a subcontractor for legitimate local support services. The bidder

will then use the designated subcontractor as a go-between with the government before the contract is awarded. In all circumstances, foreign companies should be cautioned against using these techniques in connection with sales to the Egyptian military if the techniques are intended to disguise a commercial agency or intermediation arrangement.

Despite the Ministry of Defense policy prohibition, the Commercial Agents Register has registered agreements between foreign military equipment manufacturers and local commercial agents, apparently because the Register considers enforcement of the policy to fall outside the Register's jurisdiction and responsibility.

Private Sector Sales

There is no general requirement that a local commercial agent be used by a foreign supplier in connection with sales to private customers in Egypt. Sales may be made through direct purchase orders sent to the supplier in a foreign country. Certain specified products cannot be imported into Egypt, however, unless they are covered by a registered commercial agency agreement and a facility exists in Egypt for their repair and service.⁵¹

In addition, as a condition to opening a scientific, technical, consulting, or other similar office in Egypt, a foreign company must appoint an Egyptian commercial agent, under Article 7 of the Commercial Agencies Law.⁵² Under Article 8, the foreign company must register the office, often referred to as a "liaison" office, with the Ministry of Economy. These requirements have caused a great deal of confusion,⁵³ both because the Commercial Agencies Law contains no specific definition of what constitutes such an office, and because the liaison office registration provision conflicts with requirements in the Egyptian Companies Law.⁵⁴

Different registries for liaison offices have been established by the Commercial Agencies Law and the Companies Law. The government almost certainly did not intend to establish a system of dual registration. The conflict between the two laws was eventually referred to the Egyptian Council of State for consideration, and the Council reportedly decided under a ruling issued in 1985 that the registration requirement of the Commercial Agencies Law took precedence because it was enacted after the Companies Law. (The authors have not yet been able to verify this information or review this ruling.) Not surprisingly, at least one high-ranking advisor to the Commercial Agents Registry supports a similar interpretation.

The current interpretation within the Companies Department, which is another division of the Ministry of Economy and Foreign Trade and is responsible for liaison office registration under the Companies Law, is contrary to the reported Council of State decision. The Companies Department asserts that a foreign company's liaison office should always be registered under the Commercial Agencies Law if that company has an Egyptian commercial agent; if the foreign company does not have a local commercial agent, then it may register its liaison office under the Companies Law. A Ministry of Economy decision is expected to resolve the conflict.

Egyptian law restricts the activities of scientific, technical, and other similar liaison offices to certain "non-commercial" activities, such as gathering technical information and conducting market surveys. Some observers suggest that the requirements in Articles 7 and 8 of the Commercial Agencies Law are intended to remedy abuses by liaison offices, which in many cases have carried on commercial activities despite being restricted under law to non-commercial activities. The government may have assumed that a liaison office would be disinclined to undertake direct sales and other commercial activities if its foreign parent were required to appoint (and thus could avail itself of) local commercial agents. It is not known why the government did not take the more direct approach of enforcing the existing prohibition on commercial activities by such liaison offices. (As noted above, under current administrative interpretation, a foreign company without a local commercial agent may establish and register a liaison office under the Companies Law.)

In any event, the requirements contained in Articles 7 and 8 of the Commercial Agencies Law do not change the nature of liaison offices. Liaison offices continue to be limited, by law, to non-commercial activities, even if registered in accordance with the Commercial Agencies Law.⁵⁵

Payment of Commissions

Notification

There are no prohibitions or restrictions on the amount or rate of the commission paid to an Egyptian commercial agent, except in connection with certain government sales where the payment of sales commissions is prohibited.⁵⁶ Article 15 of the Commercial Agencies Law, however, provides that a contracting government entity must require in the bid documents that the foreign contractor notify the contracting entity of the name of such contractor's commercial agent and the commissions paid to

that agent.⁵⁷ Article 15 also states that if the foreign contractor fails to provide such notification, it shall be jointly and severally liable with the commercial agent for all taxes, penalties, and damages resulting from such failure.

In addition, Article 14 of the Commercial Agencies Law entitles the contracting government entity to deduct such commissions from the bid value and pay the commission directly to the commercial agent.⁵⁸ The authors understand that certain contracting government entities have exercised this option on occasion, paying the commission themselves. (The authors have also been advised that the government, in exercising its right to pay such commissions directly, has occasionally reduced the commission payment to an amount it deemed "appropriate.")

Markups

As for distributor pricing, the Ministry of Supply is entitled to limit the maximum markup charged on all imported products.⁵⁹ Under current Egyptian law, the maximum total markup by the local importer, wholesaler, and retailer is generally 30 percent of the import cost to the storeroom or warehouse in Egypt, including transportation costs.⁶⁰

There are a number of difficult questions regarding the application of these maximum markup regulations, particularly in connection with the price rebates or allowances that might result in "over-invoicing." For example, "over-invoicing" can occur when the invoiced price of a product is intentionally inflated to allow a higher gross markup, despite the fixed percentage that the markup bears to the invoiced price. A foreign company selling to an Egyptian distributor is responsible for issuing correct and accurate invoices reflecting the actual price at which the goods were duly sold to the distributor. Registry officials require disclosure of rebates and allowances in distributorship agreements submitted for registration.⁶¹

Foreign Currency Payments Outside Egypt

Local commercial agents have frequently requested that foreign currency commissions or other compensation from the foreign principal be paid outside Egypt by, for example, wire transfer to a bank or a check mailed to an address outside Egypt. Such payments are governed by the relevant provisions of the Currency Exchange Control Regulations (Currency Regulations)⁶² and the Commercial Agencies Law.⁶³

The Currency Regulations do not expressly state that

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Egyptian residents are permitted to maintain foreign currency bank accounts outside Egypt. The Currency Regulations, however, contain a general authorization for Egyptian residents to transfer foreign currency provided that the transfer is effected through "regular" banking channels in Egypt. This necessarily implies that maintaining foreign currency bank accounts outside Egypt would not be in violation of the law.⁶⁴ Under the Currency Regulations, residents are not required to repatriate funds in these accounts to Egypt.⁶⁵ The Currency Regulations and the implementing regulations thereunder do not distinguish between payments for services provided by an Egyptian resident within Egypt and payments for services provided by a resident outside Egypt.

The rules under the Commercial Agencies Law are somewhat different. As discussed earlier, a commercial agent applying for registration must submit a copy of the commercial agency contract to the Register (Article 4). The contract must stipulate, among other things, the place and currency in which the commission shall be paid.⁶⁶ Based upon the provisions of Articles 4 and 11 of the Commercial Agencies Law, Registry officials probably will refuse to register a commercial agency agreement providing for commercial agency compensation to be paid outside Egypt.

Article 14 of the Commercial Agencies Law (quoted above), which applies only to contracts involving the Egyptian government or a public sector entity, provides that the contracting government entity "shall consider in [its] tender contracts" the commercial agent's commissions, "which shall be deposited . . . in any of the banks operating in Egypt and subject to the supervision of the Central Bank." Article 14 implies an obligation on a foreign company to ensure that commissions are deposited in such banks. This obligation is in addition to the requirement imposed on a foreign company by Articles 14 and 15 to notify the relevant authorities of the details of commission payments made to commercial agents.⁶⁷

In summary, if a foreign company enters into an Egyptian government or public sector contract in connection with which it will pay its commercial agent a commission or fee, such amounts should be disclosed to the contracting government entity and also should be paid into an authorized bank in Egypt. If the foreign company does not give the notification required under Article 15, it will be jointly obligated with the commercial agent, under Article 9 of the Commercial Agencies Law, to pay all taxes and other fees due.

Termination or Non-renewal of a Commercial Agency

Neither the Commercial Agencies Law nor any other special legislation in Egypt limits a foreign company's right to terminate or not renew a commercial agency, or obligates the foreign company to provide a statutory minimum notice of termination or non-renewal, or to pay termination or non-renewal compensation to its commercial agent.⁶⁸ This absence of "protective" legislation is significant: many other Middle Eastern countries have specific laws or administrative practices that provide substantial rights to commercial agents in the event of their termination or non-renewal.⁶⁹

In general, therefore, the provisions of the Egyptian commercial agency agreement will govern and define the rights of the parties upon termination or non-renewal. For example, in 1969 the Cairo Court of Appeals decided in a particular case before it that a commercial agent had lost its right to claim termination compensation.⁷⁰ The decision in that case probably was based, at least in part, on the explicit "no termination compensation" clause contained in the commercial agency agreement.⁷¹ The commercial agent was precluded from claiming termination compensation even though the agent alleged that termination was effected by the principal at an "inappropriate" time.

Where otherwise appropriate, a foreign company should negotiate performance standards such as minimum sale or purchase quotas with its proposed Egyptian commercial agent. The foreign company should include such provisions, as well as other specific conditions that would constitute breach, in the agreement submitted for registration to the Commercial Agents Register. A Registry official has informally confirmed that agreements with such provisions will be registered.⁷² These provisions should in most circumstances be enforceable in Egyptian courts and should provide an objective contractual basis for termination if the commercial agent fails to reach its performance standard.

Egyptian law requires adequate notice for termination, which generally is agreed upon and defined by the parties in the commercial agency agreement.⁷³ In addition, Egyptian law includes the "abuse of rights" doctrine, under which a court might grant a commercial agent damages for its principal's abusive exercise of a right to terminate the agreement.⁷⁴

Whether or not termination was inappropriate or unjustified, however, no "administrative" penalties will be applied. For example, a commercial agent is not specially entitled to block imports of the foreign principal's products into Egypt while a commercial agency dispute is pending. This also differs from the

law and practice in certain other Middle Eastern countries, where in specified circumstances a commercial agent can petition local authorities to prohibit the importation of goods that are the subject of the commercial agency in dispute.⁷⁵

Upon termination or expiration of the commercial agency agreement in accordance with its terms and conditions, presumably either the foreign principal or the commercial agent can arrange for "deregistration" of the agreement by notifying the Register in writing. A Registry official has informally stated that, alternatively, the foreign principal should notify the Egyptian embassy or consulate in the principal's home country of the termination or non-renewal. As discussed earlier, such a notification procedure is required for amendments to commercial agency agreements.⁷⁶

The Commercial Agencies Law contains no express provisions or procedures for the cancellation of the registration of an agreement, except where the cancellation is due to, for example, the death or disqualification of the agent, or the agent's violation of the Commercial Agencies Law. In such circumstances, cancellation is by "a reasoned decree from the Ministry of Economy."⁷⁷

Governing Law and Dispute Resolution

Article 19 of the Egyptian Civil Code recognizes that parties may stipulate that their commercial agreements are to be governed by foreign law. In the past, parties have drafted Egyptian commercial agency agreements with such provisions, and these agreements have been registered. Although a Registry official has recently prepared an informal opinion that suggests administrative practice may be changing, it appears that Registry officials will continue to register a commercial agency agreement that contains references to specific foreign laws. For example, the agreement could contain a reference to the U.S. Foreign Corrupt Practices Act⁷⁸ or an express choice of foreign governing law, provided that the chosen law relates to or has some connection with at least one of the contractual parties.

If an Egyptian commercial agency agreement contains no arbitration provision, however, an Egyptian court probably would exercise jurisdiction, and absent proof of the applicable foreign law, it might apply Egyptian law despite a foreign governing law clause in the relevant agreement.

In recent years, the enforceability of arbitration agreements has come under attack in Egypt, despite the substantial local legal basis supporting the enforceability of

such agreements. Egypt is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and the Convention on the Settlement of Investment Disputes under the auspices of the World Bank.⁷⁹

In theory, arbitration is permitted in Egypt or abroad to settle contractual disputes. Also in theory, foreign arbitral awards can be enforced in Egypt under Article 299 of the Code of Civil and Commercial Procedure of 1968 provided that two conditions have been met:

- there has been no denial of justice during the arbitral proceedings, and
- the subject matter of the dispute is a kind that would be capable of settlement by arbitration in Egypt.

Despite the substantial basis under Egyptian law for the enforceability of arbitration agreements, some Egyptian parties involved in arbitration agreements in both the public and private sectors have argued when an arbitral dispute develops that particular arbitration clauses conflict with Article 502 of the Egyptian Code of Civil and Commercial Procedure.⁸⁰ These parties argue that Article 502 requires the parties themselves to select the arbitrator(s) and that an arbitral body such as the International Chamber of Commerce⁸¹ may not make such a selection if either party fails to nominate its arbitrator.

More significant, some Egyptian courts have accepted these arguments and have provisionally suspended arbitration proceedings if the arbitrators were not selected by the disputants themselves, pending the court's examination of the merits of the Article 502 argument.⁸² These suspensions have seriously delayed arbitrations and have called into question the enforceability of many arbitration agreements in Egypt and with Egyptian parties.⁸³

ENDNOTES

1. The Commercial Agencies Law, Law No. 120 (Egypt 1982) [hereinafter Commercial Agencies Law] came into force on May 4, 1983, and was published in Official Gazette No. 31 (Egypt, Aug. 5, 1982). The Commercial Agencies Law repeals Law No. 107 (Egypt 1961), Law No. 93 (Egypt 1974) and Law No. 117 (Egypt 1975), as well as any other inconsistent laws or regulations. Applicable provisions of the Commercial Code (including arts. 81-89) and the Civil Code (including arts. 699-717) are beyond the scope of this article.
2. Ministry of Economy and Foreign Trade Decision No. 342 (Egypt 1982) implementing the Commercial Agencies Law, supra note 1 [hereinafter Implementing Regulations].
3. Commercial Agencies Law, supra note 1, art. 2.
4. See, e.g., Federal Act No. 18, art. 3 (U. Arab Emirates 1981); Omani Royal Decree No. 26, art. 11(d) (1977).
5. Case No. 439/39 (Egypt, March 26, 1974) (on file at the Cairo office of Baker & McKenzie).
6. Law No. 107 (Egypt 1961).
7. This broad definition of "commercial agent" is markedly similar to the definition contained in the first paragraph of article 1 of the Lebanese Law on Commercial Representation, Law No. 34, as amended (Lebanon 1967).
8. Companies Law, Law No. 159 (Egypt 1981).
9. Some provisions of the Commercial Agencies Law were obviously drafted only with commercial agency relationships in mind. Despite the difficulties in applying such provisions to distributorships, many other Middle Eastern countries have nevertheless viewed their similar laws to be applicable to both commercial agencies and distributorships. See e.g., Federal Act No. 18 (U. Arab Emirates 1981); Omani Royal Decree No. 26 (1977); Royal Decree M/11 (Saudi Arabia 1962), as amended.
10. See Importers Register Law, Law No. 121 (Egypt 1982). While not explicitly stated, the Importers Register Law will also apply to a commercial agent if it imports with the intent of trading.
11. Ministry of Supply and Internal Trade Decision No. 121 (1986) limits a distributor's markup for imported products.

(Discussed in the second article of this series.)

12. Commercial Agencies Law, supra note 1, art. 1 defines a commercial intermediary to include "anyone whose activity, even if confined to one transaction, is on behalf of a contractor or is negotiating to convince him to contract" So-called "brokers" or "contract agents," as further described and defined in the Commercial Code, are included within the definition of a commercial intermediary. Id.
13. Tenders and Outbidding Law, Law No. 9 (Egypt 1983).
14. Despite the permissibility of commercial agents or intermediaries in circumstances described under article 36 of the Tenders and Outbidding Law, certain Egyptian government ministries and departments have adopted a policy of not allowing the use of commercial agents or intermediaries in connection with their purchases. (Discussed further in the second article of this series.)
15. "The following law shall be enforced to organize Commercial Agency and certain Commercial Intermediary activities." Commercial Agencies Law, supra note 1, art. 1.
16. This includes "any person whose activity . . . is negotiating with a contracting party to convince him to enter into a contract." Implementing Regulations, supra note 2, art. 2(2).
17. Although such Egyptian Assembly or Council members could qualify in some circumstances to register as commercial agents under the Commercial Agencies Law, a foreign company should carefully consider other Egyptian and non-Egyptian laws before appointing such a government official as its commercial agent. See e.g., the U.S. Foreign Corrupt Practices Act, Pub. L. No. 95-213, 91 Stat. 1495 (1977).
18. The prohibition applicable to "first degree" relatives is absolute. Commercial Agencies Law, supra note 1, art. 3. An exception was probably omitted inadvertently. For example, it is irrelevant whether the latter was already carrying on commercial agency activities at the time a relative obtains government office. This can lead to some surprising results. For example, a newly elected member of the National Assembly can register additional commercial agencies, provided that he had carried on commercial agency business prior to election. The National Assembly member's son, however, could not register commercial agencies after his father's election to office, even if the son had previously conducted such

commercial agency business.

19. This requirement is akin to the requirement that an individual acting as a commercial agent be an Egyptian national. Under article 11 of the Civil Code and article 41 of the Commercial Code, a company headquartered in Egypt is deemed to have Egyptian nationality.
20. Public sector companies, and their directors and managers, are given certain exemptions from these requirements.
21. The authors are unaware of any branch office of a foreign company currently registered as an Egyptian commercial agent.
22. The head office concept probably refers to the seat of management of a company, not the company's principal place of business.
23. Presidential Decree No. 1906, art. 2 (Egypt 1974), as amended by Presidential Decree No. 14 (Egypt 1976).
24. See, e.g., Law No. 44, art. 8 (Jordan 1985); United Arab Emirates Federal Act No. 18, art. 4 (1981).
25. See, e.g., Cartwright, The New Saudi Commercial Agencies Regulation, 16 INT'L LAW. 443, 445 (1982).
26. Presidential Decree No. 1906, art. 2 (Egypt 1974) as amended by Presidential Decree No. 14 (1976).
27. See Homsy, Agency Law in the Arabian Peninsula and North Africa, 5 NW. J. INT'L L. & BUS. 296-302 (1983).
28. See supra note 23 and accompanying text.
29. But see Homsy, supra, note 27, at 302-303.
30. Council of State Op. No. A-1/1555 (Egypt, June 2, 1985) (on file at the Cairo office of Baker & McKenzie).
31. Id.
32. Id.
33. Id.
34. See Law No. 93 (Egypt 1974); see also Presidential Decree No. 1906, art. 2 (Egypt 1974).
35. Id.

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36. The officially published Arabic text of article 4(c), which appears to contain a significant typographical error, states that the foreign principal already should have a public sector agent as a condition precedent to the registration of a commercial agency agreement. The commonly accepted meaning of article 4(c) is that the principal, if seeking to appoint a commercial agent, should not already have a public sector agent. See Implementing Regulations, supra note 2, art. 13.
37. Commercial Agencies Law, supra note 1, art. 4(c). Article 4(c), if we ignore the typographical error in the Arabic text, quite clearly states a prohibition against any additional registrations if the foreign party already has a registered public sector commercial agent.
38. One combined register is maintained at the Register Office, rather than separate registers for commercial agents, distributors and intermediaries. Article 11 of the Implementing Regulations requires all foreign language documents submitted with an application to be accompanied by an approved Arabic translation. The commercial agent must also be registered in the Commercial Registry, as specifically required by article 2(5) of Law No. 34 (Egypt 1976).
39. See Law No. 66 (Egypt 1980).
40. The Implementing Regulations require that the commercial agency agreement specify the method and place of payment to the commercial agent. See Implementing Regulations, supra note 2, art. 15(1).
41. See, e.g., text accompanying notes 29-33, supra.
42. Of course, some other Middle East commercial agency laws generally require the registration of amendments to commercial agency agreements, but these laws do not impose the requirement on the foreign party. See, e.g., Omani Royal Decree No. 26, art. 6 (1977); Yemen Arab Republic Decree No. 6, art. 13 (1976).
43. The scope of the term "commercial agent," and the scope of the registration requirement are discussed supra notes 7-16 and accompanying text.
44. Ministry of Commerce Decision No. 1036, art. 16 (Egypt 1978). This rule conforms to the prior requirement under an earlier regulation. See Ministry of Commerce Decision 1336, art. 11 (Egypt 1975). There are a few exceptions to this general rule that apparently provide the basis for certain government

departments, discussed below, and the Ministry of Defense, to prohibit the use of any commercial agent in their purchases.

45. Supra note 13.
46. Id., art. 36.
47. This rule conforms to the prior requirements under earlier Egyptian tender law, Law No. 236 (1954). One commentator has suggested that, in accordance with article 59 of Ministry of Finance Decision No. 157 (Egypt 1983) (the implementing regulations for the Tender Law), and the opinion of the legal advisor to the Ministry of Planning and International Cooperation, Egyptian law does not require a bidder to have an Egyptian commercial agent, but only that the bidder must indicate a qualified party as the agent in the event the bidder is awarded the contract. Attia, AID Contracting and Law 9: Reconciling the Differences, 9 MIDDLE EAST EXEC. REP. 9, 13 (Feb. 1986). We are aware of very few instances, however, when the latter arrangement has been acceptable to a government contracting entity. See, e.g., Taylor, Sales and Contracting with Government Agencies, paper presented at MIDDLE EAST ECON. DIGEST Conference on Law and Business in Egypt (Cairo, Mar. 17-18, 1986).
48. Certain U.S. regulations contain generally similar language in connection with Foreign Military Sales (FMS) transactions and in connection with FMS credit transactions. See, e.g., Munitions Control Newsletter No. 89, updating Newsletter No. 84, and DSAA (Defense Security Assistance Agency) Guidelines for FMS Loan Financing of Direct Commercial Contracts; see also DOD FAR (Department of Defense Federal Acquisition Regulations) Supp. 25.7305.
49. One Egyptian legal commentator has suggested that the Ministry of Defense policy reflects a fundamental domestic rule, "the promotion of which is necessary in view of safeguarding certain community objectives of prime importance." A. El-Kosheri, Arbitration and the ICC Clause, paper presented at MIDDLE EAST ECON. DIGEST Conference on Law and Business in Egypt, at 12-13 (Cairo, Mar. 17-18, 1986). In at least one instance, an Egyptian judge, acting as sole arbitrator in an International Chamber of Commerce arbitration, had to determine the legality of payments promised for services aimed at facilitating the award of a military procurement contract. "The Egyptian sole arbitrator declared the claimed payments illegal for being promised within the framework of an agreement having, [as its exclusive purpose,] the corruption of those vital institutions which must be kept immune from any possible

traffic of influence[Accordingly,] the sole arbitrator relied on the Egyptian domestic concept of nullity for illegal cause as a mandatory rule of national public order." Id. (referring to ICC Case No. 4409).

50. See also, supra note 13. Article 28 of the Tender Law provides that if a contractor violates the terms of the contract, the contracting government entity may annul the contract or have it completed at the contractor's expense. In either event, under Article 29 of the Tender Law, the contracting government entity is entitled to confiscate the performance bond and collect all fines from payments otherwise owed to the contractor by the contracting government entity or other government entities, without the need to take any judicial action.
51. Ministry of Commerce Decision No. 1036, art. 5 and Annex 3 (Egypt 1978) (describing the products that are subject to this requirement). The foreign manufacturer or supplier need not necessarily establish the Egyptian service center itself. For example, the local commercial agent could be responsible for such a service center.
52. A similar requirement was contained in article 5 of Presidential Decree No. 1906 (Egypt 1974). This provision of the prior commercial agency law, however, was widely ignored.
53. See Davies, Commercial Agency Rules: Clarification Needed, 7 MIDDLE EAST EXEC. REP. 10 (Jan. 1984).
54. Companies Law, Law No. 159, art. 173 (Egypt 1981) states:

Foreign companies may establish in Egypt representative, liaison, service, technical, scientific or other offices, whose objects are confined to studying the markets and the possibilities of production, without carrying on any commercial activity, inclusive of the activity of commercial agents.

A special register shall be kept by the Administrative Authority concerned for the registration of such offices; registration as well as removal of the registration in said register shall be effected in accordance with the terms and conditions provided for in the executive regulations.
55. See id.
56. See supra text accompanying notes 46-52.

57. Article 15 of the Commercial Agencies Law specifically applies only in the context of contracts between a foreign party and the Egyptian government, and states:

Contracts concluded between the entities referred to in the previous article [government ministries, departments, public organizations, companies and the like] and any foreign party shall include an obligation on that foreign entity to notify the contracting party of all the fees due upon it because of this contract, no matter under what name, to any commercial intermediary or any other person regardless of his title and whether this fee was due before concluding the contract or simultaneous to or subsequent to it. If such foreign entity does not provide this notification, it shall be jointly obliged, with whomever has received these fees, to pay all taxes, compensations and fees due.

58. Article 14 of the Commercial Agencies Law states:

Ministries, official departments, municipal entities, public organizations and corporations and entities of the public sector shall consider in their tender contracts any rate of commission or brokerage likely to be paid to the commercial agent or commercial intermediary in case the tender is awarded, and the identity of the person(s) receiving such payment, which shall be deposited, in the currency agreed upon by the contracting parties, to the accounts of those persons who have rights to such amounts, in any of the banks operating in Egypt and subject to the supervision of the Central Bank. The aforesaid entities have the authority to increase or decrease the tender by the amount of the commission or brokerage fee; these entities shall then pay to the commercial agent or intermediary the commission or brokerage fee according to the rate and requirements agreed upon.

59. See Ministry of Supply and Internal Trade Decision No. 121, art. 2 (Egypt 1986).

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60. The 30-percent maximum markup is retained from prior law. Ministry of Commerce and Supply Decision No. 119, art. 1 (Egypt 1977). Under Ministry of Supply and Internal Trade Decision No. 121, art. 3(b) (Egypt 1986), the markup is specifically allocated: 10 percent to the importer, five percent to the wholesaler, and 15 percent to the retailer.
61. See text accompanying note 11, supra.
62. Law No. 97 (Egypt 1976). The legal advisor to the Registry has informally stated that a foreign principal's commissions to a commercial agent may be paid in Egyptian pounds, provided that this arrangement is set out in the parties' commercial agency agreement. If commission payments are made in Egyptian pounds, however, the foreign principal might be required to prove that it obtained such local currency from legitimate sources. For example, payments from a government contracting entity for work performed by the foreign principal is a legitimate source. Moreover, in virtually every instance, Egyptian pound commissions must be paid in Egypt. Id. art. 9.
63. See also Income Tax Law No. 157 (Egypt 1981), infra note 69 (discussing income tax implications).
64. See Law No. 97, supra note 64, art. 1.
65. Id.
66. See supra note 40 and accompanying text.
67. In addition to these requirements, article 9 of the Commercial Agencies Law provides for the enforcement of withholding taxes and related penalties under the Egyptian Income Tax Law (Law No. 157 of 1981). Law No. 157 specifically provides that the tax shall apply to the profits realized from operations undertaken by brokers or agents on commission, and in general, to any profit realized by a person, firm, agency or office working as an intermediary (art. 15). Under article 10 of the Implementing Regulations, supra note 2, all producers, merchants and distributors must advise the Department of Taxation within one month from the date of any payment to a commercial agent, of a commission or other amount and must make the appropriate withholding tax deduction from such payment. The rate of withholding tax on commission payments is currently 10 percent of the total paid to the commercial agent.

Article 9 of the Commercial Agencies Law also provides that any party that has not withheld taxes on amounts payable

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to its commercial agent shall be obliged to pay such tax to the Tax Department without prejudice to its rights for reimbursement from the party primarily obliged to pay such tax. If notification has not been given to the tax authorities, the payor of the commissions or other such compensation shall be jointly obliged, with the commercial agent, to pay the applicable fines and other fees.

Despite the above, a foreign party with no presence in Egypt would not be under any obligation to withhold taxes from payments made to its Egyptian commercial agent because the tax regulations do not have such extraterritorial effect.

Incidentally, the United States and Egypt have entered into a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, December 31, 1981, United States-Egypt, T.I.A.S. No. 10149. Absent special circumstances, such as those described in article 15 of the Commercial Agencies Law, a foreign company should not be subject to Egyptian income tax for mere export sales to Egypt, even if the sales are made with the promotional assistance of an independent commercial agent.

68. Egyptian Civil Code, articles 699 through 717, apply to "mandates," which are akin to a true agency whereby the agent acts on behalf of a principal with the power to create rights and obligations in the name of the principal. Some legal advisors have suggested that, depending on the particular authority of a commercial agent or distributor, these provisions might be applicable to a commercial agency or distributorship arrangement. Under articles 715 and 715, either party to a mandate agreement may terminate the arrangement at any time, notwithstanding any agreement to the contrary. Under those same articles, however, the party terminating the agreement is required to indemnify the terminated party for loss sustained by the latter as a result of an "inappropriate" or "unjustified" revocation. A court may, in particular instances, assess damages to compensate for expenses incurred as well as lost profits and "moral prejudice" resulting from the termination.
69. See, e.g., Law No. 44, art. 18 (Jordan 1985); Law No. 68, arts. 281 & 282 (Kuwait 1980); Law No. 34., art. 4 (as amended) (Lebanon 1967); Federal Law No. 18, arts. 8 & 9 (U. Arab Emirates 1981).
70. Case No. 280, Cairo Court of Appeals (Egypt 1969) (on file at the Cairo office of Baker & McKenzie).

71. Egyptian Civil Code, article 217, provides, in part, that a party "may by agreement be discharged from all liability for his failure to perform the contractual obligation, with the exception of liability arising from his fraud or gross negligence."
72. By comparison, under recent practice in Saudi Arabia, a number of commercial agency agreements have been refused registration because of provisions establishing minimum sales quotas or other such performance standards.
73. See, e.g., Egyptian Civil Code, art. 158, which provides:
- [t]hat in case of non-performance of the obligations flowing from the contract, the contract will be deemed to have been rescinded ipso facto without a court order. Such an agreement does not release the parties from the obligation of serving a formal summons, unless the parties expressly agree that such a summons will be dispensed with.
74. See Egyptian Civil Code, art. 5. The Egyptian "abuse of rights" principle reflected in article 5 of the Civil Code is based partially in tort theory and, as such, probably cannot be preempted by the provisions of the parties' contract.
75. See, e.g., Law No. 34, art. 4 (Lebanon 1967); Omani Royal Decree No. 26, art. 5 (1977); Federal Law No. 18, arts. 17 & 23 (U. Arab Emirates 1981).
76. See supra, text under "Practical Registration Matters" in the first article of this series. Article 4(b) of the Commercial Agencies Law states:
- Foreign companies or parties who are principals, in addition to the aforesaid requisites, shall legalize the contract at the relevant Chamber of Commerce or the official substitute, attested by the relevant Egyptian consulate. The contract must also provide that such foreign companies and parties are obligated to report to that consulate any agreement amending any of the provisions of the aforesaid contract.
77. See Commercial Agencies Law, supra note 1, art. 22. In the event of a cancellation by "a reasoned decree from the

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Minister of Economy", article 22(a) of the Commercial Agencies Law provides that "the right to a refund of the guarantee or security deposit shall be denied."

78. See U.S. Foreign Corrupt Practices Act, Pub. L. No. 95-213, 91 Stat. 1495 (1977).
79. Egypt ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards on March 3, 1959, 330 U.N.T.S. 3. Egypt ratified the World Bank Convention on the Settlement of Investment Disputes on May 3, 1972, 575 U.N.T.S. 159.
80. See Jarvin, The ICC Court of Arbitration - Recent Developments and Experience Related to Arab Countries, Arab L. Q. 297-98 (May 1986). See also El-Kosheri, supra note 51.
81. See Jarvin, supra note 82, at 281.
82. See id. at 298. One example where arbitration was suspended pending an examination of the merits occurred in December 1984. See Mohafazat of Port Said and Suez Canal Co. v. Rolaco Holdings (Court of Port Said Dec. 1984) (on file at the Cairo office of Baker & McKenzie).
83. Jarvin, supra note 82, at 298.