

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
Website: www.stovall-law.com

RECENT DEVELOPMENTS IN

ARAB COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW

In the face of new uncertainties in the Arab Middle East, many multinational companies are relying more heavily on local sales agents and distributors. Meanwhile, a number of Arab governments have revised or replaced applicable laws. This summary describes some of these recent legislative developments in the region.

1. Bahrain

In 2002, the Bahraini government further reduced local commercial agents' right to so-called "commission override" for parallel imports. Decree Law No. 49 (2002) repealed Article 7 of the Bahraini Commercial Agency Law; that prior legal provision entitled a local commercial agent to claim sales commission on goods and services imported commercially into Bahrain by any third person (other than for the latter's personal use).

Bahrain had enacted other substantial amendments to its Commercial Agency Law, in 1998, liberalizing a number of provisions -- such as reducing the exclusivity rights of local agents. In sum, these (1998 and 2002) amendments reflect the Bahraini government's continuing efforts to allow for a more equitable relationship between principal and commercial agent, and to open the market for competition among local traders, thus expanding options for consumers.

2. Egypt

Egyptian commercial agents must satisfy various qualification and registration requirements contained in the Commercial Agency

Law, Law No. 120 (1982). More recently, the new Egyptian Commercial Code, Law No. 17 (1999), defines some of the specific rules governing the legal relationship between a commercial agent and principal.

For example, the Egyptian Commercial Code establishes statutory protections in favor of a qualified Egyptian "contract agent" -- defined as a commercial agent who undertakes to submit bids or conclude purchasing, selling or leasing operations or provide services in the name and for the account of a principal. In particular, under Article 188 of the Egyptian Commercial Code, if the principal terminates the contract agency agreement and the contract agent has not committed an "error", the principal is obliged to compensate the contract agent for any damages the latter incurs as a result of the termination. Such statutory protections appear to be in the nature of order public in Egypt, and as such cannot be waived in advance by provisions in the parties' agreement.

3. Iraq

Iraqi commercial law is subject to sudden and significant changes, given the current political circumstances in that country. In general, Iraqi Commercial Agency Law No. 51 (2000) currently remains in effect. However, the Coalition Provisional Authority ("CPA") issued a public notice on 9 June 2003, confirming the right of Iraqi citizens to establish direct trading agencies with international companies, and suspending previous administrative procedures "that extorted and exploited Iraqi business people who did not support the [former] regime".

The CPA's public notice is somewhat confused, describing the Iraqi "Companies Code" (rather than the Iraqi Commercial Agency Law) as the law generally regulating the establishment of Iraqi trading agencies. In that context, the CPA's public notice expressly suspends the former regime's administrative procedures arising under the Iraqi Companies Code (rather than the Commercial Agencies Law). Despite this confusion, a number of multinational companies have already appointed Iraqi commercial agents and distributors for this potentially important market.

4. Jordan

Jordanian Law No. 28 of 2001, the new Jordanian Commercial Agency Law, contains a number of significant changes from prior law. For example, the definition of "commercial agency" has been

expanded to include buy-sell distributors. This revision closes a loop-hole that had existed in the earlier Jordanian commercial agency law, whereby distributors might not benefit from the termination protections that the Jordanian legislature had provided to qualified local commercial agents.

As was the case under prior law, the new Jordanian Commercial Agency Law contains "dealer protections" in favor of a local qualified commercial agent in the event of termination -- but not the mere expiration -- of the parties' agreement. The new Jordanian Commercial Agency Law is more explicit in making this distinction between termination and non-renewal, stating (in Article 14) that the principal shall be liable to the commercial agent for cancelling the commercial agency agreement "before the expiration of its term".

The new Commercial Agency Law obliges the principal and successor commercial agent to purchase the former agent's relevant unsold inventory, and to assume all third party obligations arising from the former agent's activities. Such obligations are common in many other Middle Eastern commercial agency laws.

Article 16(a) of the new Jordanian Commercial Agency Law expressly grants jurisdiction to the Jordanian courts over any dispute arising from a Jordanian commercial agency arrangement and/or the application of the Commercial Agency Law. In addition, Article 16(b) adds a statute of limitation (three years from termination or expiration of the agreement), after which no claim shall be heard concerning the commercial agency contract.

5. Qatar

Qatari Law No. 8 (2002), the new Commercial Agency Law, has repealed and replaced an earlier (1986) law governing commercial agencies. The new Qatari Commercial Agency Law retains the prior requirement for all commercial agencies to be registered in the Ministry of Economy and Commerce's Commercial Agency Register. Among the other qualification requirements that remain unchanged, the commercial agent must be a Qatari national or a wholly-Qatari-owned local company.

Under the new Qatari Commercial Agency Law, however, Qatari merchants are now allowed to commercially import products already covered by another party's registered commercial agency agreement. In those circumstances, the registered Qatari commercial agent is entitled to commission on such imports (up to a maximum 5%, as determined by rules in a ministerial decree) -- unless the

products were imported from the principal, in which case the commercial agent may seek recourse from its principal (in accordance with their contractual agreement).

Article 8 of the new Qatari Commercial Agency Law states that a fixed term commercial agency expires at the date specified in the parties' contract, unless the parties subsequently agree otherwise. Article 9 of the new law states that an indefinite term commercial agency agreement shall only be terminated upon mutual agreement. A Qatari commercial agent is entitled to seek compensation upon the expiration or termination of a commercial agency agreement in many (if not most) circumstances, and notwithstanding any contrary contractual provision.

6. Saudi Arabia

Saudi Arabian Royal Decree M/2 (1978), the so-called "Service Agency Regulations", generally required a foreign company to appoint a Saudi service agent when entering into a contract to perform in-Kingdom services for a Saudi government ministry or department. However, Royal Decree M/2 (1978) prohibited foreign companies from using any agent or intermediary in connection with the Saudi government's armament procurement contracts (and services related thereto), and in government-to-government contracts (such as United States Foreign Military Sales ("FMS") transactions). In addition, Royal Decree M/2 (1978) prohibited a foreign contractor in other Saudi government procurement transactions from paying its service agent more than 5% of the value of the relevant contract.

Royal Decree M/2 (1978) was repealed, in its entirety, in August 2001. As a practical matter, foreign contractors are still well-advised in some circumstances to use the services of a Saudi sales agent, partner or the like. For example, a number of recent Saudi Arabian government tenders (issued after Royal Decree M/2 (1978) was repealed) require foreign parties to submit joint bids with Saudi "associates". Similarly, foreign contractors should be very cautious about the appointment of a sales agent in connection with armament contracts to the Saudi Arabian government. The prohibition against agency and commissions in the Saudi Arabian government's armament procurement contracts pre-dates Royal Decree M/2 (1978), and was first contained in Saudi Council of Ministers Resolution No. 1275 (1975). That earlier resolution has not been expressly repealed. Moreover, the Saudi government may be continuing to include "no intermediary/no commission" clauses in its armament procurement contracts.

7. Syria

According to Syrian Legislative Decree No. 15 (4 July 2001), foreign contractors may only transact business with the Syrian public sector through a registered agent or branch in Syria. In general, therefore, all foreign parties intending to conclude contracts with the Syrian public sector must appoint a commercial agent or establish a branch office that is registered with the Department of Foreign Companies and Agencies, within the Ministry of Economy and Foreign Trade.

Despite this general requirement, Syrian Decision No. 25 (19 June 2002) contains a list of contracts that are specially excluded from the application of Decree No. 15. That list includes eleven types of contracts that a foreign party may conclude with the Syrian government without the need for a Syrian agent or branch office, for example, contracts concluded for Syrian military purposes, and contracts valued up to Syrian Pounds 5 million (approx. US\$95,000).

The Syrian government has also recently liberalized some aspects of trade with the Syrian private sector. Previously, each import license granted by the Ministry of Economy and Foreign Trade needed to specify whether an agent had been appointed for the products imported. Syrian tax authorities relied on this statement, which names the foreign company's local agent, in order to impose relevant taxes. Decision No. 1,169 (15 September 2002) lifts that requirement, stating:

Importers shall not be obliged to present a statement from the foreign company regarding the existence of a Syrian agent, and they shall be allowed to import without being bound by the agent condition. Public sector agencies shall not be covered by this decision.

Any Syrian resident may now import goods without the approval of the local commercial agent -- even if the agent has been appointed on an exclusive basis. However, in those circumstances where the principal has sold product to the third party in Syria, an exclusive commercial agent is entitled to claim commission.

8. Yemen

In recent years, the Yemeni government has implemented an increasingly broad set of economic reforms, including the liberalization of foreign trade rules. In that context, Yemeni

Law No. 16 (1999) cancelled Articles 15 and 19 of the Yemeni Commercial Agency Law, Law No. 23 (1997).

Before being cancelled, Article 15 of the Yemeni Commercial Agency Law had generally required a local commercial agent's approval for third party import of products covered by the commercial agency. By cancelling this requirement, the Yemeni government is permitting other parties to import products covered by an existing registered commercial agency.

Before being cancelled, Article 19 of the Yemeni Commercial Agency Law had prohibited the Ministry of Supply and Trade from registering a foreign principal's new commercial agent until all disputes between the principal and its prior commercial agent were resolved amicable or by court decision. By cancelling this prohibition, the Ministry may register a foreign principal's 'replacement' commercial agent -- thereby ensuring the continuing flow of product into the Yemeni market -- even while disputes remain unresolved between the principal and former commercial agent. (According to Article 20 of the Yemeni Commercial Agency Law, the Yemeni courts "shall be considered the only competent courts" to resolve disputes arising from the commercial agency agreement.)

If you have questions or comments regarding the background information in this summary, or concerning any other Middle Eastern commercial law matter(s), please write to Howard@Stovall-Law.com.

HLStovall/ah
1March2004