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RECENT CHANGES TO
COMMERCIAL AGENCY AND DISTRIBUTORSHIP LAW
IN THE ARAB MIDDLE EAST

In the face of increasing tensions within the Arab Middle East, many multinational companies are re-discovering that their commercial interests are often best protected with the guidance and support of local commercial agents and distributors.

In 2004, I circulated a summary of important developments in commercial agency and distributorship law in the Arab Middle East. The following summary provides an up-date on subsequent changes to other commercial agency and distributorship laws in the region. For example, both **Libya** and the **United Arab Emirates** (the "UAE") have recently liberalized local legislation, while **Egypt** continues to run counter to this regional trend, with the Egyptian Minister of Foreign Trade & Industry expanding the 'dealer protections' initially introduced in Egypt's 1999 Commercial Code. In **Oman**, a narrow revision to commercial agency law apparently seeks to discourage defense contractors from using sales agents in connection with Omani military procurement contracts.

1. **Egypt**

Egyptian commercial agency law is primarily contained in: (a) the Commercial Agency Law, Law No. 120 (1982); (b) the Commercial Code, Law No. 17 (1999); and (c) Ministry of Foreign Trade Decree No. 362 (2005).

(a) **Commercial Agency Law.** The Commercial Agency Law specifies various qualification and registration requirements for the conduct of commercial agency activities in Egypt. The Egyptian Commercial Agency Law does not contain any so-called 'dealer protections', e.g., statutory rights to compensation for the commercial agent in the event its principal terminates or fails to

renew the parties' relationship. Under a strict textual interpretation, the Commercial Agency Law does not apply to independent buy/re-sell distributorships. However, the Egyptian Ministry of Foreign Trade has registered distributorship agreements submitted pursuant to the registration procedures described in the Commercial Agency Law.

(b) Commercial Code. The Commercial Code addresses the general legal relationship between a commercial agent and principal, and contains 'dealer protections' in favor of certain types of commercial agents. For example, Article 188 of the Commercial Code states that a "contract agency" agreement is for the joint interest of the parties, and that the principal therefore may not unilaterally terminate the contract agency agreement unless "upon the agent's error [e.g., fault or breach]". Contract agent (وكيل العقود) is defined as a commercial agent who undertakes to continuously promote, negotiate and conclude transactions in the name and for the account of a principal. If the principal terminates the contract agency agreement and the contract agent has not committed an error, the principal may be obliged to compensate the contract agent for the harm suffered by the latter as a result of the termination.

Under Article 189 of the Commercial Code, in the event the principal chooses not to renew a contract agency agreement, the contract agent is entitled to "compensation to be determined by the judge" if (i) the contract agent has not failed or committed any error in carrying out the contract agency agreement, and (ii) its activities have resulted in evident success in promoting the products covered by the contract agency or in increasing the number of customers. Article 189 further states that "[i]n estimating the compensation, due consideration shall be given to the harm cause to the agent and the benefit accruing to the principal from the agent's efforts in promoting sales of the products and increasing the number of customers".

Article 163 of the Egyptian Commercial Code provides some other (albeit weaker) dealer protection rights to commercial agents who are not deemed "contract agents". Such a commercial agent may claim compensation if its principal either (i) terminates an indefinite term agreement without prior notice or at an unsuitable time, or (ii) terminates a definite term agreement before expiration of its term without serious and reasonable cause.

(c) Ministerial Decree No. 362. Decree 362 amends the implementing regulations to the Commercial Agency Law, and in essence entitles all registered commercial agents (not merely contract agents) to the termination and non-renewal protections

contained in Articles 188-89 Of the Commercial Code. (There are some internal inconsistencies within Decree 362 that are beyond the scope of this summary.)

Decree 362 also allows a registered commercial agent (upon termination or non-renewal of its agency) to block the registration of a successor commercial agent, pending settlement of the former commercial agent's claim for compensation from its principal.

Decree 362, like the Commercial Agency Law, literally applies only to commercial agencies, not independent buy/re-sell distributorships. As mentioned earlier, however, the Ministry of Foreign Trade has registered at least some distributorship agreements under the Commercial Agency Law. Until that Ministry and/or the Egyptian courts provide some further guidance, there is a risk that Egyptian dealer protections could be applied to distributorship agreements registered with the Ministry under the Commercial Agency Law.

2. Libya

The 2004 Libyan Commercial Agency Law was designed, in part, to open commercial agency activity to the private sector. However, under Article 8 of that law, the General People's Committee for Economy and Trade ("GPCET") is empowered to confine commercial agency activity to specific juridical persons in the case of products that are of particular strategic importance, as well as in the case of products that "yield large profits". Implementing regulations are to clarify such limitations on commercial agency activity. Under previous Libyan law, state-owned entities were granted exclusive right to commercial agencies for a number of products and services. Moreover, in the past, multinational companies have been advised not to use commercial agents in transactions with the National Oil Corporation or other Libyan public sector entities in the oil sector.

General People's Committee Decree No. 83 (2006) also limited the number of commercial agencies that a Libyan party could acquire, based on a list of product categories described in that decree. However, earlier this year, the General People's Committee enacted Decree No. 315 (2008), which repeals GPC Decree No. 83 (2006). Although the 2008 Decree similarly seeks to limit the number of distributorship and distribution agency relationships that a Libyan party may obtain, the 2008 Decree contains an additional requirement - i.e., importation and distribution of listed items must be performed through one or more local distributor or distribution agent. In other words, the 2008 Decree appears to generally require (rather than prohibit) the use of local distributors and distribution agents. The earlier Decree No.

83 (2006) did not contain this requirement. (The earlier decree also did not use the "distributor and distribution agent" terminology, but rather sought to regulate "commercial agencies".)

As an exception to this new requirement, Article 4 of the 2008 Decree empowers the GPCET to specify those "foodstuffs and construction materials" that may be imported into Libyan without the manufacturer needing to have a local distributor or distribution agent.

3. Oman

Article 7 of the Omani Commercial Agency Law has been amended to address a specific aspect of the relationship between a defense contractor and an Omani commercial agent. Before that amendment, Article 7 of the Omani Commercial Agency Law broadly required a foreign principal to sell products through its Omani commercial agent, and entitled the latter to exclusivity and compensation:

Throughout the effective term of the agency contract, the Principal may not sell or distribute its products, goods or services by itself or by an intermediary in the Sultanate other than through the Agent. In case of a contravention, the Agent shall be entitled to the profit or commission agreed upon in the agency contract on the transaction that the Principal concludes itself or through an intermediary, even if the Agent did not exert effort towards the conclusion of such transaction.

The amendment to the Omani Commercial Agency Law adds the following equally broad exception to Article 7:

... with the exception of contracts for the purchase of weapons or ammunition or all types of military equipment entered into by military or security bodies directly with the Principal.

This amendment to the Omani Commercial Agency Law does not explicitly prohibit a defense contractor's use of a commercial agent in connection with Omani Ministry of Defense ("MOD") procurement contracts. However, the amendment appears designed to make the Omani Commercial Agency Law consistent with Omani MOD policy -- a policy that in recent years has sometimes discouraged (or sometimes even prohibited) defense contractors from using sales agents and intermediaries in particular Omani MOD procurement contracts.

4. United Arab Emirates

Commercial agencies (and distributorships) are governed in the UAE by Federal Law No. 18 (1981), as amended. The UAE Commercial Agency Law has historically granted substantial judicial and administrative 'dealer protections' to qualified UAE commercial agents. In recent months, however, the UAE government has softened some of these dealer protections.

(a) Revised Rule on Non-renewal. The UAE Commercial Agency Law states that if the commercial agency is terminated "at an inappropriate time" or for any reason beyond the commercial agent's control, the commercial agent may claim compensation for damages suffered. The UAE Commercial Agency Law gave a similar entitlement to the commercial agent if its principal failed to renew their agreement. In probably the most significant liberalization among the recent amendments to the UAE Commercial Agency Law, a foreign principal is no longer presumptively liable to pay special compensation upon the expiration of the UAE commercial agency.

(b) Revised Rules on Registration. Prior to recent amendments, the UAE Commercial Agency Law stated that -- unless the parties' commercial agency terminated or expired by mutual agreement, or UAE officials found justifiable reason for the termination/expiration -- a principal's new commercial agent would not be permitted to register under the UAE Commercial Agency Law. As a result of amendments to the Commercial Agency Law in 2006, as well as Ministry of Economy Resolution No. 381 (2006), the Ministry now has slightly broader (or more explicit) authority to de-register a commercial agency, including upon expiration of the registration without the parties' consent to renew, or upon receipt of a letter from the principal stating that it is unwilling to renew the relationship.

A somewhat different aspect of registration practice was addressed by the UAE Ministry of Economy's Resolution No. 168 (2006), permitting registration of a commercial agency agreement only if the agreement contains a clause evidencing the parties' consent to such registration, or the commercial agent attaches a letter from the principal evidencing such consent. Ministerial Resolution No. 168 seeks to remedy prior instances where a UAE commercial agent registered its agreement without the principal being aware of that registration and/or the UAE legal implications of registration.

(c) Revised Rule on Importation. The UAE Commercial Agency Law has deemed a qualified UAE commercial agent to have exclusive rights to market its designated products within its territory. Article 7 of the UAE Commercial Agency Law bolstered the exclusivity requirement, by entitling a qualified UAE commercial agent to commission for all sales made within its territory, regardless of how these sales were made. Moreover, under Article 23 of the UAE Commercial Agency Law, customs authorities were generally instructed to obtain approval from a commercial agent before clearing goods encompassed by a registered commercial agency agreement. In 2005, the UAE government eliminated the exclusive import rights of local commercial agents in certain categories of goods (like basic foodstuffs). Some observers expect further reductions in the future to the UAE commercial agent's right to block imports of products from entering the UAE market.

(d) Elimination of Disputes Committee. When initially enacted in 1981, the UAE Commercial Agency Law provided for establishment of a special Commercial Agency Disputes Committee (formed under the UAE Ministry of Economy) to hear all disputes arising from registered commercial agencies. In subsequent years, there was some disagreement among UAE judicial and administrative officials on whether the commercial agent and its principal might resort directly to the UAE courts without first submitting their dispute to the Committee. That Committee has been abolished under the recent amendments to the Commercial Agency Law, and therefore future commercial agency disputes may be submitted directly to the UAE courts.

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This memorandum is intended to summarize some general legal principles of commercial agency laws in the Arab Middle East, 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 I might assist in connection with any other Middle Eastern commercial law matter(s).