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**RECENT CHANGES TO COMMERCIAL AGENCY LAW
IN THE ARAB MIDDLE EAST**

In the aftermath of the Arab Spring and the break-down of government control in a number of Arab Middle Eastern countries (such as Libya, Syria, and Yemen), many multinational companies are re-focusing their commercial interests in a smaller regional map, with the increasingly important guidance and support of local commercial agents and distributors.

In 2004 and 2008, 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 some significant subsequent changes to commercial agency and distributorship laws in the region.

1. Egypt

Like many legal issues in Egypt, the question of dealer protection rights is somewhat confusing, and subject to separate but overlapping laws. When originally enacted, the Egyptian Commercial Code (1999) granted a contract agent the right to claim compensation in the event the foreign principal terminated (Article 188) or simply decided not to renew (Article 189) the parties' agreement. More recently, the Egyptian Supreme Constitutional Court struck down Article 189 as unconstitutional, violating the general principle against perpetual contracts. Therefore, it is now possible for a foreign principal to allow a contract agency agreement to expire at the end of its fixed term and not be liable to the contract agent for compensation under Article 189 of the Commercial Code.

The Egyptian Commercial Agency Law (1982) did not contain any dealer protections, whether for termination or non-renewal of commercial agencies. However, implementing regulations issued by Ministry of Economy and Foreign Trade Decree No. 342 (1982) were amended in 2005 to allow a registered commercial agent to claim compensation in the event that its foreign principal terminated (Article 13 bis (2)) or chose not to renew (Article 13 bis (3)) the commercial agency without fault by the commercial agent. The Egyptian courts have not decided whether the Supreme Court's ruling striking down Article 189 of the Commercial Code also struck down Article 13 bis (3) of Egyptian Ministerial Decree No. 342.

Technically speaking, Egyptian Ministerial Decree No. 342 was issued under the Commercial Agency Law rather than the Commercial Code. Therefore, one could argue that the Constitutional Court's judgment on a provision of the Commercial Code should not automatically be extended to a similar provision relating to an entirely different law. However, the contrary argument would be that Article 13 bis (3) of Egyptian Ministerial Decree No. 342 has lost its legitimacy since it also violates the general principle against perpetual contracts. This question has not yet been tested before the Egyptian courts.

Another amendment in 2005 to Egyptian Ministerial Decree No. 342 (Article 15 (1) bis) allows the Commercial Agency Register to refuse to register another commercial agent until the terminated or non-renewed commercial agent has received due compensation and settled any disputes it may have with its principal. There is currently a case pending before the Constitutional Court challenging the constitutionality of this provision.

2. Iraq

Iraq has enacted a new Commercial Agency Law, Law No. 79 of 2017, repealing the Saddam-era commercial agency law, Law No. 51 of 2000. (The Kurdistan region of Iraq has not yet considered this new law, and which therefore remains subject to prior commercial agency law rules.)

Iraqi Law No. 79 expands the definition of commercial agency to which the new law applies, including contracts in which a foreign party authorizes an Iraqi party to sell goods, products or services in Iraq as a commercial agent, a distributor or a franchisee.

Iraqi Law No. 79 requires a commercial agent to obtain a special license in order to conduct commercial agency activities, and to register its commercial agencies in a special Commercial Agency Register maintained by the Ministry of Trade. To obtain a license, Article 4 of Iraqi Law No. 79 requires the applicant to satisfy various requirements, including: (i) either be an Iraqi national (if a natural person) or an Iraqi company wholly-owned by Iraqi nationals, (ii) have a business office in Iraq; and (iii) be a member of an Iraqi chamber of commerce.

Article 13 of Iraqi Law No. 79 prohibits the import of goods and products, and the provision of a foreign company's services, by the Ministry of Trade (General Company for Exhibitions and Commercial Services) and the Ministry of Finance (General Customs Authority), except through a commercial agent with a commercial agency contract registered in its name for that foreign company with Iraq as its territory. Prior to Iraqi Law No. 79, imports were not required to be made through registered commercial agents, and there is currently some debate locally about the implications of this new rule, e.g., whether it will be strictly enforced, or whether a foreign company will be permitted to appoint multiple non-exclusive commercial agents.

Prior Iraqi law did not contain any special statutory "dealer protection" governing termination (or expiration) of a commercial agency. In general, such termination (or expiration) was governed by the agreement of the contractual parties, and general Iraqi legal rules. For example, Article 946 of the Civil Code states that an agency ends when the fixed period for the agency has expired, when the principal or agent dies, or when the work that is the subject matter of the agency agreement is finished. Article 20 of Iraqi Law No. 79 has now added some uncertainty to the situation, stating (in my unofficial translation from the Arabic):

The principal is not permitted to terminate the agency contract, or to not renew it, unless there is a reason justifying its termination or non-renewal. The agency contract may be terminated by mutual consent between the agent and the principal, or according to an agreement concluded between the parties on the basis of which the arbitral rules and authority, and the applicable law, are determined.

The Iraqi courts have not yet had occasion to interpret this provision of Iraqi Law No. 79. However, it appears that the parties to an Iraqi commercial agency contract have some latitude

to agree on the terms and conditions for termination/non-renewal (and any resulting compensation), including through dispute resolution (arbitration) and choice of governing law clauses.

3. Kuwait

The previous and long-established (1964) Kuwaiti commercial agency law has been replaced by a new Commercial Agency Law, Law No. 13 of 2016.

Among the more significant features of Kuwaiti Law No. 13, the definition of commercial agency is expanded to expressly include distributors and franchisees. Article 1 defines commercial agency as

every agreement in which a party holding the legal right entrusts a merchant or company in Kuwait to sell, promote, or distribute goods or products, or provide services, in the capacity of an agent, distributor, franchisee or licensee of the producer or the original supplier in exchange for a profit or commission.

Under Article 2 of Kuwaiti Law No. 13, a foreign company is permitted to have non-exclusive commercial agency agreements, and Article 4 further allows parallel imports of goods and products even if there is an existing exclusive commercial agent or distributor for such goods/products. However, unless otherwise explicitly agreed by the parties, Article 278 of the Kuwaiti Commercial Code still seems to entitle an exclusive commercial agent to remuneration when transactions are concluded directly by the principal or a third party within the agent's product line and territory, even if such transaction was not concluded as a result of the agent's efforts.

Article 9 of Kuwaiti Law No. 13 states that the principal may not terminate the commercial agency without a breach thereof by the commercial agent, and otherwise the principal shall be liable to compensate the agent for the damage it incurred as a result of such termination; any agreement to the contrary is expressed to be null and void. This provision appears to broaden the specific "dealer protections" contained in the Kuwaiti Commercial Code, such as Articles 281 and 282 applicable to contract agents and exclusive distributors.

Finally, Article 20 of Kuwaiti Law No. 13 re-confirms existing law, to the effect that all judicial lawsuits arising

from the application of the Commercial Agency Law must be heard by the Kuwaiti courts. However, Article 20 also allows the parties to agree to arbitration for the settlement of any disputes.

4. Oman

The Oman Commercial Agencies Law, Royal Decree No. 26 (1977) as amended, is the primary Omani law governing the relationship between a foreign principal and an Omani commercial agent. (The Commercial Code, promulgated by Royal Decree No. 55 (1990), also contains provisions relevant to commercial agency arrangements.) The most recent amendments to the Omani Commercial Agencies Law, enacted by Royal Decree No. 34 (2014), significantly liberalized certain aspects of commercial agency in the country, and opened the Omani market for increased free trade and competition.

For example, until the 2014 amendments, the Omani Commercial Agencies Law had stated that if a foreign principal terminated a registered Omani commercial agency agreement without justifiable cause, the commercial agent was entitled to "suitable compensation". (The same rule applied to a principal's decision not to renew a fixed term commercial agency, if the commercial agent could also demonstrate that it was successful in distributing and promoting the relevant products, and that it would have been deprived of the expected benefit of its efforts as a result of the non-renewal.) The 2014 amendments repealed Article 10 of the Omani Commercial Agencies Law, thereby eliminating that express right to such compensation. The parties are now free to negotiate the terms of renewal and termination of the commercial agency.

However, the 2014 amendments did not change Article 18 of the Omani Commercial Agencies Law, which states that the local courts shall decide all disputes between an agent and principal regarding the agency contract, and may decide on appropriate compensation depending on commercial and local practices (unless the parties have agreed to arbitrate their dispute).

The 2014 amendments also repealed Article 5 of the Omani Commercial Agency Law, which had allowed the Minister of Commerce to ban the import of goods into Oman that were the subject of a registered commercial agency if the principal had unilaterally cancelled the commercial agency without justifiable cause.

Finally, the 2014 amendments repealed Article 7 of the Omani Commercial Agencies Law, which had prohibited a foreign principal from selling or distributing its goods itself or through a third party, and gave the registered commercial agent a right to claim commission from the principal for any such parallel imports.

5. Qatar

Qatari Law No. 2 (2016) amended the existing Qatari Commercial Agency Law, Law No. 8 (2002). Among the most significant changes, the Qatari Commercial Agency Law is now expressly applicable not only to commercial agents but also to exclusive buy-resell distributors. Prior to the 2016 amendments, the Qatari Commercial Agency Law was applicable only to registered commercial agents who were exclusively authorized to negotiate and conclude contracts for the relevant goods or services on behalf of a principal.

The 2016 amendments also revise the rules applicable to parallel imports. A registered Qatari commercial agent is no longer entitled to claim commission from third parties who import products covered by the registered agreement. The registered agent has recourse to its principal for commission on such parallel imports, in accordance with the agreement between them. (The text of this provision seems to allow the principal and agent to agree to a reduced commission, or no commission at all, for such parallel imports.) In all cases, no commission will be owed to the registered commercial agent for parallel imports intended strictly for the importer's personal use, or for re-export outside Qatar.

Unfortunately, the 2016 amendments did not address the strict "dealer protections" available to registered commercial agents (and exclusive distributors) in the event that the foreign principal decides to terminate (or not renew) their agreement. Provisions in both the Qatari Commercial Agency Law as well as the Qatari Commercial Code (2007) entitle qualified commercial agents to make claims for compensation in the event of such termination or non-renewal.

Many of the new commercial agency laws (as well as the recent amendments to such laws) in various Arab countries seek to restrict the formation of monopolies, encourage free trade and foster competition, and secure the availability of goods and services at reasonable prices. In that sense, this legislation is encouraging a liberalization of local markets. In many instances, however, these new laws and amendments have also expanded the range of commercial arrangements (agency, distributorship, franchise) that are subject to "dealer protection" rights entitling local parties to compensation in the event of termination or non-renewal of their agreements.

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 us know if you have any questions or comments regarding the background information in this summary, or if we might assist in connection with any other Middle Eastern commercial law matter(s).

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