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**REGISTRATION OF  
COMMERCIAL AGENCY AND DISTRIBUTOR AGREEMENTS  
IN THE ARAB MIDDLE EAST**

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Your company has just entered into a commercial agency or distributorship agreement with a local party in the Arab Middle East. The local party is now claiming that the agreement must be registered with local government authorities. Is this true? If so, what are the implications of such registration?

**1. Registration Requirement.** Most Arab countries have enacted special legislation governing commercial agencies (often defined to include buy-resell distributorships), and describing certain qualification requirements, including a requirement to register the commercial agency agreement within a short time after execution, usually with a special registrar at the Ministry of Commerce in the relevant country.

Therefore, strictly speaking, a commercial agent conducting business under an unregistered commercial agency agreement in any of these countries is technically in breach of the relevant local commercial agency law.

(In some instances, the local commercial agent may be seeking to register the agency agreement with a local chamber of commerce or with a particular local government customer. Such registration is usually less problematic for your client than registration under the local commercial agency law.)

**2. Enforcement.** Arab commercial agency law usually states that a person performing commercial agency in violation of the law's requirements (including the requirement to register the agreement) shall be subject to a fine and, in some circumstances, the closing of its business.

Although local commercial agency law may require all commercial agencies to be registered, in practice many agreements are not registered. Local government authorities in most Arab countries are not actively tracking down or punishing unregistered commercial agents, at least not those that satisfy the other requirements of the applicable commercial agency law (e.g., the commercial agent must be a local national or a local company wholly-owned (in some cases, only majority-owned) by local nationals). In addition, Arab commercial agency laws generally do not impose any direct penalties on a foreign principal who works through a local commercial agent under an unregistered agreement.

**3. Non-registration and Government Customers.** In some instances, local customers in the Arab Middle East (particularly local government ministries and public sector departments) will only transact business with commercial agents and distributors registered under the local commercial agency law. For example, Saudi Arabia has enacted regulations requiring government ministries and public sector entities to purchase products only from commercial agents and distributors properly registered under the local commercial agency law. However, these government tendering procedures are not always strictly enforced. Moreover, these procedures would not be likely to adversely impact a foreign company that primarily sells its products through an unregistered commercial agent to the private sector in the Arab Middle East.

**4. "No Claims" Heard on Unregistered Agreements.** There is another potentially significant disadvantage of operating through an unregistered commercial agency. Some commercial agency laws in the Arab Middle East state that no claims will be heard on unregistered agreements. In theory, this provision might be interpreted broadly to mean that no claims of any nature will be heard on unregistered agreements.

For example, Article 3 of the UAE Commercial Agency Law instructs local courts not to hear any claims brought under an unregistered UAE commercial agency. For a number of years, local legal advisors debated whether the UAE courts would (or should) enforce Article 3 broadly - i.e., no claims would be heard of any nature under an unregistered commercial agency, in effect denying even the contractual enforceability of the parties' agreement. A number of UAE court decisions did in fact broadly interpret Article 3. (In Oman, where the commercial agency law contains a similar provision, at least some local lawyers believe that the Omani courts may also reject any claim based on an unregistered commercial agency agreement.)

In one reported case, a foreign supermarket franchisor sold product on credit to a UAE franchisee, and later sued in the UAE

courts for payment. The UAE franchisee counter-claimed, alleging losses suffered by the franchisor's mismanagement. However, the UAE court concluded that, according to the UAE Commercial Agency Law, no claims could be heard relating to unregistered commercial agencies, the foreign franchisor's relationship with the UAE franchisee (and their respective claims for payment) arose from an unregistered commercial agency, and therefore the court dismissed both claims in their entirety.

Despite the literal language in Article 3 of the UAE Commercial Agency Law, some members of the UAE legal community supported a more equitable interpretation of that text, i.e., it should be interpreted to mean that an unregistered commercial agent would not enjoy the statutory 'dealer protections' available under the UAE Commercial Agency Law, but otherwise that the unregistered commercial agency should be treated as an enforceable agreement under general principles of UAE contract law.

Recent UAE court decisions have adopted this more equitable interpretation. That interpretation has led to an interesting dichotomy: the notion that two types of commercial agencies exist under UAE law: registered agencies and unregistered agencies. Anecdotal evidence suggests that it is becoming increasingly common for foreign principals to structure their commercial sales activities in the UAE (and elsewhere in the Arab Middle East, such as in Qatar) through unregistered commercial agencies - thereby placing the relationships outside the dealer protections of the local commercial agency law.

In other Arab countries, however, the failure to register the commercial agency will not affect the parties' rights to raise claims under the commercial agency law. For example, the Kuwaiti commercial agency law also states that an unregistered commercial agency agreement shall not "be recognized and no case pertaining to such agency shall be heard" in the Kuwaiti courts or government departments. Despite that provision, the Kuwaiti Court of Cassation has ruled that registration is not a condition to a commercial agent's entitlements under Kuwaiti law - including a commercial agent's claim for compensation upon the foreign principal's termination or non-renewal of the arrangement without just cause.

**5. Documentary Requirements for Registration.** Under most Arab commercial agency laws, a number of supporting documents must accompany the application for registration, including a copy of the commercial agency agreement, legalized by the embassy or consulate in your company's country of residence.

If the agreement is drafted in a foreign language, it must be accompanied by an Arabic translation. Preparing this Arabic translation might be particularly costly if the parties' agreement is lengthy. However, if the agreement is subsequently submitted to a local government body (such as a local court in the event of a dispute), the agreement would need to be translated into Arabic. Therefore, some parties prefer to translate the agreement into Arabic at the time of execution and registration, to create an Arabic version agreed-upon by the parties, to avoid future disagreements about the translation itself.

In some Arab countries, the local registrar will undertake a substantive review of the parties' agreement submitted for registration, and might reject certain terms and conditions deemed to conflict with local law. For example, the Saudi Arabian Ministry of Commerce has issued a "model" commercial agency contract. Although Saudi registration officials take the position that the use of the model contract is not mandatory, they have sometimes refused to register agreements which include provisions contravening the "spirit" of the model contract. Similarly, the Egyptian registrar has previously refused to register commercial agency agreements that do not contain a specific undertaking by the foreign principal to inform the proper Egyptian embassy or consulate (located in the principal's country of residence) of any amendments to the agreement.

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This memorandum is intended to summarize some general legal principles of commercial agency and distributorship 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).

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