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**"Short Form" Agreements under Arab Commercial Agency Law:
Some Legal and Practical Issues**

In general, Arab businessmen tend to prefer shorter agreements than their Western (e.g., U.S. or European) counterparts. This preference also seems to apply to local commercial agency agreements. The specific preference in the Arab Middle East for shorter commercial agency agreements might be attributed, at least in part, to local registration requirements under Arab commercial agency laws.

When Western businessmen propose their longer form commercial agency agreements to Arab parties, the latter often counter with their own standard short form agreements. Sometimes, the Arab commercial agent will sign the Western principal's long form agreement on the condition that the parties also execute a short form commercial agency agreement.

This memorandum briefly discusses some of the implications of using such short form commercial agency agreements.

1. Registration Requirements

Most Arab countries have enacted special legislation governing commercial agencies, and describing certain qualification requirements, including a requirement to register the commercial agency within a special registry at the Ministry of Commerce in the relevant country.

As part of the registration process, the commercial agent usually must submit a copy of the parties' commercial agency agreement. The commercial agency agreement must be drafted in Arabic or accompanied by an Arabic translation. Preparing this Arabic translation could be relatively costly if the parties' commercial agency agreement is lengthy, and a local commercial agent would usually prefer to avoid incurring this translation cost.

In some Arab countries, the local registrar will undertake a substantive review of the parties' agreement submitted for registration, and might reject certain terms deemed to conflict with local law. As a result, many local commercial agents will prefer to keep their agreements simple, short and basic, to avoid the scrutiny (and possible rejection) by registration officials. More recently, however, most registration officials have significantly reduced their scrutiny of commercial agency agreements submitted for registration.

Strictly speaking, a commercial agent conducting business under an unregistered commercial agency agreement is in breach of the relevant local commercial agency law. 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) will be subject to a fine and, in some circumstances, the closing of its business. In practice, however, many agreements are not registered; local government authorities in most Arab countries are not actively tracking down or punishing unregistered commercial agents.

2. Alternate Approaches to Registration

In light of the above, a local commercial agent is faced with certain alternatives, e.g., operating under a unregistered long form commercial agency agreement, incurring the expense of translating that long form to register it under the commercial agency law, and/or convince its foreign principal to sign a short form agreement that can be registered without incurring those translation costs.

A Western principal should usually insist that its Arab commercial agent sign an agreement that fully and thoroughly addresses the rights and obligations of the parties. Such an agreement is customarily reflected in the Western principal's standard long form agreement -- with any amendments negotiated by the parties to reflect their particular relationship and jurisdiction.

If a Western principal should nonetheless contemplate the use of a short form commercial agency agreement for registration, at least such a short form should contain the most crucial and important provisions of the parties' agreement, including territory, products, exclusivity, commission rate, no authority to bind the principal, effective term, just cause for termination, compliance with law, governing law and dispute resolution. Such a short form agreement should also be

consistent with any unregistered long form commercial agency agreement executed by the parties.

In some instances, local customers in the Arab Middle East (particularly local government ministries and public sector departments) will only transact business with authorized commercial agents. However, some of these customers are willing to accept a short "To Whom It May Concern" letter on the Western principal's letterhead, confirming that the local commercial agent is duly authorized to assist the Western principal in its product promotion and sales. Of course, such a short form letter should accurately reflect the substance of the parties' underlying detailed commercial agency agreement, and also contain an explicit cross-reference along the following lines:

Commercial Agent is authorized to act in accordance with the terms and conditions of our International Commercial Agency Agreement dated [specific date], which reflects the detailed contractual relationship between Commercial Agent and Principal, including Commercial Agent's rights and responsibilities in this regard.

Such a provision should serve as a safeguard to significantly reduce the risk that the short form letter, by itself, would be deemed the entire "agreement" between the parties.

3. "Dealer Protections"

Many Arab commercial agency laws are known for the "dealer protections" offered to local commercial agents, most notably the right to claim compensation in the event the foreign principal decides to terminate (or not renew) the commercial agency without fault by the commercial agent.

For a local commercial agent in some Arab jurisdictions (such as the UAE and Qatar), there is a potentially significant disadvantage of operating through an unregistered commercial agency -- an unregistered commercial agent would not enjoy the statutory dealer protections available under the local commercial agency law. Otherwise, the unregistered commercial agency should be treated as an enforceable agreement under general principles of contract law.

This has led to any interesting dichotomy in those jurisdictions: the notion that two types of commercial agencies exist under local 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 these countries through unregistered commercial agencies -- thereby placing the relationships outside the dealer protections of the local commercial agency law.

In other Arab countries, the failure to register the commercial agency will not affect the parties' right to raise "dealer protection" claims under the commercial agency law. For example, 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 unjustified termination or non-renewal of the arrangement.

4. Some Short Form Practices to Avoid

A Western principal should be particularly concerned if provisions in a registered short form commercial agency agreement are contrary to, or substantially inconsistent with, the provisions of the parties' related but unregistered long form agreement. For example, a company might not be able to rely on a 'non-exclusivity' clause in an unregistered commercial agency agreement if the registered agreement provides for exclusivity.

(Under civil code principles in many Arab countries, when contracting parties hide an actual (e.g., non-exclusive commercial agency) contract behind an apparent (e.g., exclusive commercial agency) contract, the actual contract will bind the contracting parties. However, third parties acting in good faith may rely on the apparent contract.)

Egypt is a jurisdiction giving rise to a number of short form commercial agency requests. For example, many Egyptian commercial agents present short one-page documents to their Western principals, requesting a signature and full legalization from the latter. Although these one-page letters barely address any of the commercial aspects of the relationship, they usually include a specific undertaking by the principal "to inform the proper Egyptian embassy or consulate located in the principal's country of residence of any amendments to the agreement". Such specific language, which is a unique requirement under the Egyptian Commercial Agency Law, indicates that the Egyptian commercial agent is seeking to register that short form agreement in the local commercial agency register.

In recent years, Egyptian registration officials have accepted registration applications from commercial agents but not from distributors. This has given rise to some short form

agreements in which an Egyptian distributor attempts to re-characterize the parties' arrangement as a commercial agency. (The primary advantage of registration in the Egyptian Commercial Agency Register is that the registered agent may be entitled to certain "dealer protections" in the event of termination or non-renewal.)

We have also seen Egyptian commercial agents propose short form agreements intended for registration that state the commercial agent's commission as a low percentage (say, 1%) of Product sales price, while the unregistered long form commercial agency agreement actually states that the commission would be a significantly higher percentage. Such a misstatement of commission in the registered agreement would pose risks not only vis a vis government officials within the Egyptian commercial agency register, but conceivably with other government departments as well -- such as an Egyptian government customer of the Western principal, or Egyptian income tax authorities.

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This memorandum is intended to summarize some general legal principles of commercial agency law 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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20 May 2016