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**SUMMARY OF
COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW
IN
QATAR**

1. Applicable Law

The primary Qatari law governing commercial agencies is Law No. 8 of 2002 (the "Commercial Agency Law").

2. Definitions

The Commercial Agency Law contains a broad definition of the term "commercial agent":

... anyone who is solely licensed, to the exclusion of others, to distribute goods and products, to display for sale or circulation, or to provide certain services within the scope of agency on behalf of its principal in return for profit or commission ...

This definition appears to encompass both commercial agents and buy-resell distributors. However, the Qatari Court of Appeal has recently decided that the Commercial Agency Law does not apply to distributors (which the Court described as 'mere' importers or re-sellers). The Court of Appeal viewed the nature of commercial agency as essentially involving the agent's representation of the principal; in contrast, the appellant's distributorship contract stated that the appellant would only act in its own name and account. Although the Qatari legal system does not have a doctrine of binding judicial precedent (and court decisions are not formally published), in practice lower courts generally follow decisions of the Court of Appeal.

In other contexts, the Qatari courts have treated distributors as similar to commercial agents. Moreover, in at least some instances the Ministry of Economy and Commerce (the "Ministry") has registered distributors under the terms of the Commercial Agency Law. In that light, references to "commercial agents" or "commercial agencies" in this summary should be read as possibly also encompassing "distributors" and "distributorships".

3. Qualifications for Commercial Agents

Under the Commercial Agency Law, only Qatari nationals or wholly-Qatari-owned companies may act as commercial agents. (The Qatari Foreign Investment Law, Law No. 13 of 2000, prohibits foreign investment in the field of commercial agency.) In addition, all commercial agencies must be registered in a special Commercial Agency Registry at the Ministry. Every commercial agent must also hold a valid commercial registration, with registered business "purposes" sufficient for the activities being undertaken. Qatari nationals must be at least 21 years old, and not convicted of a crime of honor or trust (unless rehabilitated), in order to act as commercial agents.

4. Direct and Exclusive Relationship

The Commercial Agency Law does not expressly require that the commercial agent have a direct contractual relationship with the foreign manufacturer, or otherwise be authorized directly by the manufacturer to act as a commercial agent in Qatar.

Under the Commercial Agency Law, a foreign company may limit the Qatari commercial agency to specific product lines and/or services; the principal could then appoint a different commercial agent(s) for different products and/or services in Qatar. However, Articles 2 and 3 of the Commercial Agency Law effectively require a Qatari commercial agent's appointment to be exclusive for the specified product lines and/or services and territory -- for these purposes, the Qatari market cannot be split geographically. The Ministry has refused to register a principal's appointment of multiple non-exclusive commercial agents for the same product lines or services.

The Commercial Agency Law allows other Qatari merchants registered as importers to 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 import (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 contract. The commercial agent is neither entitled to any commission on products intended for an importer's personal use, nor to any commission on products imported by others for the purpose of re-export.

The Commercial Agency Law obliges the commercial agent and its principal to provide consumers with spare parts and any maintenance required for the relevant products, at suitable prices.

5. Mandatory Use of Agents

A foreign company does not need a Qatari commercial agent to simply sell its products into the Qatari market. However, Qatari government ministries, departments and public corporations require overseas suppliers to conduct business through a duly registered commercial agent. In accordance with Article 15 of the Commercial Agency Law, the Ministry will issue certificates confirming the registration of commercial agents in the Registry.

6. Restrictions on Use/Payment

Qatari law does not contain any general prohibition on the use of, or payments to, commercial agents. More specifically, Ministry of Defense regulations do not generally prohibit a defense contractor's use of, or payment to, an agent in Qatari military procurement contracts.

However, there may be particular case-by-case restrictions based on Qatari customer requirements and/or local public policy. For example, there is in Qatar some sensitivity to the use of a sales agent or intermediary in contracts of national importance. The Ministry of Defense generally does not like to deal with intermediaries, and has occasionally discouraged a defense contractor from using a particular Qatari agent. The Ministry of Defense's actions in this regard might be based on a prohibition included in a particular tender, or on general principles of Qatari "public policy".

Furthermore, the Qatari Court of Appeals has previously declared void a commission arrangement between a foreign company and a local intermediary, on the basis that the object of the contract was contrary to Qatari public policy. That case related to a Qatari oil sale, but the Court of Appeals went on to comment (as obiter dicta) that contracts of a sensitive nature should be negotiated directly with the relevant government department without the intervention of a sales agent or intermediary for the

foreign supplier. Purchasers in crude oil sales by the Qatari government are required to sign a declaration to the effect that no third party has been involved in the transaction and that no commission has been paid to any third party. At least to date, the Ministry of Defense does not appear to have extended this requirement to suppliers of military equipment.

Qatari law does not contain any general ceiling or restriction on the commission paid to a Qatari commercial agent in connection with sales to private or public sector customers. However, there are selective maximum mark-up restrictions in connection with resale of some products to customers in Qatar.

Qatar has not enacted any general foreign exchange control regulations restricting transfers of funds in or out of Qatar, and Qatari nationals or companies may maintain bank accounts abroad. Qatari nationals and companies wholly-owned by Qatari nationals are not subject to Qatari income tax. Thus, these laws would not prohibit commercial agency commissions from being paid outside Qatar and in any currency.

7. Registration Requirements for Commercial Agents

As mentioned above, Qatari law requires commercial agencies to be registered in a special Commercial Agency Registry at the Ministry. The commercial agent should submit a completed application form to the Ministry, together with a duly legalized copy of the commercial agency agreement. (An Arabic translation may be required, if the agreement is not drafted in Arabic.)

The Commercial Agency Law requires inclusion of certain provisions in a commercial agency agreement submitted for registration. Most of these provisions are customary, such as a description of the products covered under the agency, its territory and duration. One statutorily required provision is less customary: a contractual provision expressly obliging the commercial agent to provide spare parts and necessary maintenance for products sold into the market.

The Ministry has the authority to refuse a registration request, presumably if an agreement violates Qatari law or does not contain requisite information. According to Article 16 of the Commercial Agency Law, any commercial agency not registered in the Commercial Agency Registry shall be treated as non-existent, "and any dispute or difference resulting therefrom shall not be heard from whomever had breached the obligation of registration".

8. Termination or Non-Renewal

The Commercial Agency Law provides that a fixed term commercial agency expires at the date specified in the commercial agency agreement, unless the parties subsequently agree otherwise. However, if the principal unilaterally withdraws from a fixed term commercial agency before the end of its term, then the commercial agent may claim compensation for the resulting damage suffered. In addition, and notwithstanding any provision to the contrary in the commercial agency agreement, a commercial agent is entitled to seek compensation upon the expiration of a fixed term agreement if the commercial agent's activities led to an apparent success in the marketing of the principal's products or increased the number of its customers, and the commercial agent was unable to earn fees to which it was otherwise entitled as a result of the principal's failure to renew the agreement.

The Commercial Agency Law also provides that an indefinite term commercial agency cannot be terminated unilaterally by the principal, but rather by mutual agreement (*e.g.*, a negotiated settlement) or an arbitral/court decision. If one of the contractual parties unilaterally terminates an indefinite term commercial agency, the other party may claim compensation for the resulting damage suffered. In addition, and notwithstanding any provision to the contrary in the agreement, a commercial agent is entitled to seek compensation upon the principal's termination of an indefinite term agreement if the commercial agent's activities led to an apparent success in the marketing of the principal's products or increased the number of its customers, and the commercial agent was unable to earn fees to which it was otherwise entitled as a result of the principal's failure to continue the agreement.

If the principal terminates (or refuses to renew) the commercial agency agreement without legal reason, Qatari government departments may prohibit the importation into Qatar of the relevant products. In most instances, the Qatari government will allow products to enter the country during arbitration or litigation related to termination or non-renewal of the commercial agency. However, the Qatari government may ban the products from entry if the principal terminated an indefinite term agreement in contravention of the Commercial Agency Law, or if the public interest is served by such a import ban.

There is no standard formula for calculating termination or non-renewal compensation under the Commercial Agency Law. Compensation will depend on the facts of each case. Compensation can include estimated loss of future income, based on the commercial agent's average yearly profit over a period of years. The commercial agent might also be compensated for unamortized

expenses and the like. The Commercial Agency Law also imposes certain obligations on a successor commercial agent, such as a duty to purchase usable inventory from the former commercial agent.

9. Choice of Law and Dispute Resolution

Qatari law states that the contract is the law of the contracting parties. On that basis, the Qatari courts' practice is to uphold a foreign choice of law clause in a commercial agency agreement, at least if there is some connection between the parties or the subject matter and the governing law chosen. However, the Qatari courts would not uphold any provision of the foreign law that is contrary to mandatory provisions of the Commercial Agency Law (such as the termination and compensation provisions) or to Qatari public order/morals.

The Qatari courts have sometimes been reluctant to enforce contractual parties' choice of a foreign judicial forum to resolve disputes. However, the Qatari courts should uphold a provision in a commercial agency agreement to settle disputes by arbitration, including in a foreign situs. Notably, the Commercial Agency Law grants jurisdiction to the Qatari courts "provided there is no agreement otherwise," and also states that "any arbitral award in a dispute arising out of the agency agreement shall be deemed final". Qatar has recently become a party to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

10. Boycott Matters

Over the years, foreign companies have faced various problems relating to Qatar's participation in the Arab boycott of Israel. However, the difficulties faced when entering into a Qatari commercial agency agreement have varied from time-to-time. Qatar continues to enforce a primary boycott of Israel, e.g., no goods of Israeli manufacture may be imported into such a boycotting country. A few years ago, however, Qatar (together with a number of other Arab Gulf countries) suspended its secondary and tertiary boycott of Israel.

In general, the principal should include a clause in the commercial agency agreement providing that the commercial agent is an independent contractor and does not have authority to act on behalf of the principal in any matter not expressly authorized in the commercial agency agreement. Such a contractual provision will weaken any assertion to the effect that the commercial agent has authority to furnish boycott-related certifications to the

local boycott office or otherwise comply with boycott requirements on the principal's behalf.

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This summary is based on information currently available in our Chicago law office, including correspondence with legal counsel in Qatar. The purpose of this summary is to highlight selected aspects of Qatari commercial agency law, but it is not intended to provide legal advice on any specific question of local law.

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