

Recent Revisions to Commercial Agency Law in the United Arab Emirates

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Abstract

The United Arab Emirates—despite its general reputation for free trade and limited government regulation of business—has had (for over two decades) the most onerous ‘dealer protection’ law in the Middle East.

Very recently, however, pro-competition (or anti-monopoly) sentiment within certain UAE government circles resulted in enactment of a new federal law and two UAE Ministry of Economy resolutions that collectively reflect a weakening of those dealer protections. For example, Minister of Economy Sheikha Lubna Al Qasimi observed:

The new amendments will certainly boost the competitive economic climate in the UAE. . . . This law was promulgated out of the desire to enhance and maintain stability in prices and ensure that agencies are not manipulated to increase prices.¹

The following summary highlights some of the more significant aspects of current UAE commercial agency law, including a look at those recent amendments. (I have prepared an English translation of the UAE Commercial Agency Law, including the 2006 amendments, listed as Appendix 1 at the end of this article.)

Keywords

Commercial agency, distributorship, Abu Dhabi, Dubai, Emirates, termination, non-renewal

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¹ “Lubna hails commercial agency law” (18 June 2006), posted at the UAE Interact web-site, www.the-emirates.com.

1. Background

Most analyses of UAE commercial agency law begin with the enactment in 1981 of Federal Law No. 18, the “Commercial Agency Law”. In light of the recent changes to the Commercial Agency Law, we might benefit from a brief look at the legal rules applicable to UAE commercial agencies *before* 1981.

The Emirate of Abu Dhabi enacted Law No. 17 in 1969, entitled the Law Organizing Commercial Agencies. Based on preliminary research, I believe that Abu Dhabi Law No. 17 (1969) was the initial effort to regulate commercial agencies in that emirate, with a primary focus on import and export activities conducted by commercial agents. (Interestingly, Article 4(1) of Abu Dhabi Law No. 17 (1969) emphasized that “no person is allowed to conduct any commercial activity except upon obtaining a license in accordance with the Commercial License Law of 1969”. The Abu Dhabi government’s inclusion of such a rudimentary provision, only indirectly related to commercial agency law, might indicate the challenges that the government was facing at that time in implementing the basic regulation of commercial activities.)

Abu Dhabi Law No. 17 (1969) was repealed four years later, with the enactment of Abu Dhabi Law No. 11 (1973), also entitled the Law Organizing Commercial Agencies. Unlike the 1969 law, however, Abu Dhabi Law No. 11 (1973) did not broadly address general matters of commercial registration, import or export—but rather limited its focus to the operation and regulation of commercial agency activities. In that regard, Abu Dhabi Law No. 11 (1973) bears a closer resemblance to ‘modern’ Arab laws governing commercial agency. For example, Law No. 11 (1973) imposed local nationality and other qualification requirements for commercial agents working in Abu Dhabi; required that the commercial agent have a direct relationship with the original principal; and described various rules for registration of commercial agents in a special Registry at the Abu Dhabi Ministry of Economy and Commerce—including a rule that no claims would be heard on unregistered commercial agency agreements. (We will examine similar provisions in the current UAE Federal Commercial Agency Law, further below.)

Abu Dhabi Law No. 11 (1973) contained some notable differences from the UAE Federal Commercial Agency Law that was ultimately enacted in 1981. For example, the 1973 Abu Dhabi Law did not state that commer-

cial agents would be deemed to have exclusive rights to the products and territory constituting the subject matter of the parties' commercial agency agreement. Consequently, the 1973 Abu Dhabi Law did not prevent a principal from appointing multiple commercial agents in Abu Dhabi for the same products. Notably, the 1973 Abu Dhabi Law did not contain any 'dealer protection' provisions allowing a qualified commercial agent to claim special compensation in the event the principal terminated (or failed to renew) the agency without adequate justification.

The Dubai government was not as quick to enact commercial agency regulations, particularly regulations like those in Abu Dhabi that restricted commercial agency activities to local nationals. Even decades ago, the Dubai economy had a lively re-export and entrepot trading tradition, and Dubai's ruler (Shaikh Rashid) welcomed foreign businesses. However, the enormous growth in economic activity witnessed by the UAE in the late 1970s (largely attributable to increased regional oil wealth) flooded the federation with more foreign businesses, and even the well-established Dubai trading families became more inclined to seek legislative protection.² Explaining the change in local attitudes at that time, a U.S. Embassy official opined: "The motive here is not simple greed, but the desire to foster the development of an [indigenous] managerial and entrepreneurial class which can control the country's economic future".³

Even in that changing business environment, there was not monolithic local support for broad 'dealer protection' legislation in the UAE. For example, when the UAE Federal Ministry of Economy and Commerce recommended mandating UAE-wide exclusivity for commercial agents and the products subject to their agreements, the Abu Dhabi Chamber of Commerce reportedly opposed that recommendation, believing that such

² To some extent, "foreign businesses" for these purposes included nationals of other Arab Gulf states. One published report after enactment of the 1981 Commercial Agency Law had this to say: "Bahraini and Kuwaiti merchant barons are particularly incensed. The Zayanis, Kanoos, Jalals and other potent merchant families, many of whom had been doing business in the emirates long before oil turned up, see the possibility of all valuable agencies here being picked off by eager U.A.E. nationals." See "New Agency Law To Be Vigorously Enforced", *Middle East Executive Reports* (May 1982), at p. 26.

³ American Embassy (Abu Dhabi) Unclassified "Airgram", Message Reference No. A-61 (12 October 1975); copy on file in the author's Chicago office.

a proposal would give monopoly rights to a commercial agent and result in higher prices for imported commodities.⁴

2. Current Commercial Agency Law

The current UAE Commercial Agency Law was enacted by Federal Law No. 18 (1981), and subsequently amended on a few occasions over the years—including by Federal Law No. 13 (2006). In addition, the UAE Commercial Transactions Code (1993) contains various provisions on the operation of commercial agencies, and the UAE courts look to these provisions if the Commercial Agency Law fails to address a particular issue. More generally, the UAE Civil Transactions Code (1985) contains provisions on agency arrangements, to which the courts might refer in particular matters concerning commercial agencies.

Under the UAE constitution, federal law supersedes inconsistent emirate law. As a result, Abu Dhabi Law No. 11 (1973) was effectively repealed by enactment of the Commercial Agency Law in 1981.

The Commercial Agency Law defines the term “commercial agency” as representation “for *distribution*, sale, display or provision of any commodity or service” (emphasis added). Therefore, the Commercial Agency Law has been applied to distributors as well as commercial agents.

Although franchises and commercial agencies share a few common features, many local legal advisors believe that a franchise agreement should *not* be deemed subject to the provisions of the Commercial Agency Law. However, some UAE government officials have reached a different conclusion, and at least one lower court has decided that franchises do fall within the definition of “commercial agency”.

3. Qualification Requirements

Article 2 of the Commercial Agency Law states that commercial agency business shall be conducted only by UAE nationals, whether natural persons or companies wholly-owned by UAE natural persons.

⁴ See Choudhury, “Proposed Federal Agency Rule Unlikely To Be Accepted; Agency Law Reviewed”, *Middle East Executive Reports* (August 1979), p. 4.

In addition to the UAE nationality requirement, a commercial agent should have a valid and appropriate commercial license in each emirate intended to be within the commercial agent's territory. The commercial agent should also be registered with the Chamber of Commerce in each relevant emirate.

4. Direct and Exclusive Relationship

Article 4 of the Commercial Agency Law requires a direct relationship between a UAE commercial agent and the foreign principal, without any intervening regional or multi-country sales agent. An exception is made for an authorized exporter or sole distributor of a foreign principal—when the latter does not conduct its own marketing.

Article 5 of the Commercial Agency Law states that a qualified commercial agent will be deemed exclusive in its territory, but allows a foreign company to appoint a separate commercial agent for each emirate or combination of emirates, or one commercial agent for the entire UAE. In practice, it has been possible for a foreign principal to appoint different commercial agents for different “product lines”, or even different brands or types/models of the same general product.

Additional provisions of the 1981 Commercial Agency Law bolstered a qualified UAE commercial agent's exclusive right to market designated products within its territory. For example, Article 7 of the Commercial Agency Law entitled a qualified UAE commercial agent to commission for all sales made within its territory, regardless of how these sales were made. Moreover, Article 23 of the Commercial Agency Law generally prohibited the importation into the UAE of any products covered by a registered commercial agency, except with the approval of the commercial agent or the Ministry of Economy and Commerce.⁵

UAE Federal Law No. 13 of 2006 has amended Article 23, eliminating the right of a UAE commercial agent to block imports in certain categories of goods specified by decision(s) of the UAE Council of Ministers. One

⁵ Historically, the UAE has been much more active than other Arab Gulf states in enforcing the exclusivity rights of a qualified local agent. For example, in the mid-1980s (shortly after enactment of the Commercial Agency Law), Dubai municipality required new applicants for trade licenses to execute a written undertaking not to directly import products that were the subject of a registered commercial agency agreement. “Dubai: Protection for Agencies”, *U.S.-Arab Commerce* magazine (June 1985), at p. 19.

such Council of Ministers' decision had already been issued in 2005—allowing traders to freely import various categories of basic foodstuffs.⁶

Some UAE government officials described that 2005 decision as directed against manipulation of prices by “exclusive agents or monopolists”. However, price increases alternately could be attributed to the inflationary pressures that have broadly existed in the UAE for many years. In addition, over a decade ago, the UAE courts had rejected a law suit challenging commercial agency exclusivity as violative of anti-monopoly principles that exist within Islamic law.⁷ But when UAE government officials began to attribute high prices to the statutory exclusivity rights granted to local commercial agents, then most observers expected changes to the Commercial Agencies Law, regardless of the countervailing arguments.

In the early 1980s, a generally similar scenario unfolded in Lebanon, as a populace weary of civil war also become frustrated with high prices for basic commodities. In 1983, Lebanon enacted a decree stating that only distributors of “luxury” products (to be defined in implementing regulations) would be entitled to enforce exclusivity rights against third parties. Another Lebanese decree subsequently defined ‘non-luxury’ products to include foodstuffs (for human and animal consumption), medicine, detergents and other cleaning products. For these products, therefore, a distributor’s exclusivity rights would not be effective against third party importers.⁸

5. Registration Requirements

The UAE Commercial Agency Law requires all local commercial agents to register with the Ministry of Economy. A number of supporting docu-

⁶ The UAE Council of Ministers' decision, enacted on 3 October 2005, allows traders to directly import staples such as milk powder and condensed milk; canned and frozen vegetables; fish, poultry, and meat products; pasta, rice and wheat; tea, coffee and sugar; all types of cheese; and baby formula and disposal diapers. See “UAE cabinet allows direct import”, Hilal & Associates *Newsletter* (October 2005), p. 1.

⁷ See, e.g., “Agencies Law Do Not Encourage Monopoly”, *Trade & Industry* magazine (March 1994), prepared by the Legal Affairs Department Director at the Dubai Chamber of Commerce & Industry, and which describes the UAE Supreme Court (Constitutional Division) ruling in Claim No. 1 of Judicial year 20.

⁸ “Lebanon cancels exclusive commercial representation for consumer goods”, *Sawt al-Kuwait* newspaper (12 March 1993), p. 9 (in Arabic). The restriction on exclusive commercial representatives was contained in Article 15 of Legislative Decree No. 73 of September 1983 (addressing various economic and anti-trust matters).

ments must accompany the application for registration, including a copy of the commercial agency agreement, legalized by the UAE embassy or consulate in the foreign principal's country and translated into Arabic.

Although the Commercial Agency Law requires all commercial agencies to be registered, in practice many are not. A commercial agent conducting business under an unregistered commercial agency agreement is technically in breach of the Commercial Agency Law. (Article 22 of the Commercial Agency Law states that a person performing commercial agency in violation of the law's requirements shall be subject to a fine of not less than UAE Dirhams 5,000—approximately US\$ 1,350.) In practice, however, an otherwise qualified commercial agent's failure to register does not result in prosecution. In addition, the Commercial Agency Law does not impose any direct penalties on a principal who works through a local commercial agent under an unregistered agreement.

Article 3 of the Commercial Agency Law instructs the UAE courts *not* to hear *any* claims brought under an unregistered UAE commercial agency. A similar provision had appeared in Abu Dhabi Law No. 11 (1973), and the intent of the provision in both laws appeared to be obvious: the creation of a powerful incentive to encourage registration of commercial agencies. For a number of years following enactment of the 1981 Commercial Agency Law, local legal advisors debated whether the UAE courts would (or should) enforce Article 3 strictly—*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 strictly interpret Article 3.⁹ In one reported case, for example, 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 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.¹⁰

⁹ See, *e.g.*, Abu Dhabi Court of Cassation Judgment No. 227 & 315/18 (31 May 1998), as reported in Price and Al Tamimi, *United Arab Emirates Court of Cassation Judgments 1998-2003* (Kluwer, 2005), at pp. 9-10.

¹⁰ "Franchise Held To Be Agency Agreement", *Middle East Executive Reports* (July 1994), p. 6.

As a result of the analysis reflected in that court decision, foreign principals were cautioned to carefully structure their unregistered commercial agency agreements to avoid the need for recourse to the UAE courts—for example, by requiring payment in advance, by letter of credit, or at least minimizing the amount of product sold ‘on account’.

Despite the literal language in Article 3 of the 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 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 (and apparently persuasive) UAE court decisions have adopted this more equitable interpretation.¹¹

Such an equitable, less stringent interpretation of Article 3 was almost certainly not anticipated by the UAE legislator when the Commercial Agency Law was enacted in 1981. That interpretation has led to any interesting dichotomy: the notion that two types of commercial agencies exist under UAE law, registered agencies and unregistered agencies. Various UAE legal counsel regularly advise on this distinction between registered and unregistered commercial agencies, seen to exist not simply as a matter of UAE practice but also as a matter of UAE law. (Of course, customary practice is recognized as a source of law under both the UAE Commercial Transactions Code and the UAE Civil Transactions Code.)

This more equitable interpretation of Article 3 has begun to ‘get traction’ in recent years, not only within the legal community but perhaps also within UAE government circles. And anecdotal evidence suggests, perhaps not coincidentally, that it is becoming increasingly common for foreign principals to structure their commercial sales activities in the UAE through unregistered commercial agencies—thereby placing the relationships outside the dealer protections of the Commercial Agency Law. (There are still limits on what a foreign principal might accomplish in the UAE market through an unregistered commercial agency. For example, some UAE government purchasers insist on dealing through *registered* commercial agents.)

¹¹ See Abu Dhabi Court of Cassation Judgment No. 484/19 (26 October 1999), as reported in Price and Al Tamimi, *United Arab Emirates Court of Cassation Judgments 1998-2003* (Kluwer, 2005), at pp. 23-25.

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.¹²

6. Termination or Non-Renewal

The judicial and administrative protections granted to a qualified UAE commercial agent under the Commercial Agency Law are generally considered to reflect local public policy and, as such, may not be waived in advance through provisions in the commercial agency agreement or otherwise.

The UAE Commercial Transaction Code and Civil Transactions Code do not provide for any such dealer protections in connection with unregistered commercial agency agreements. In the latter case, the unregistered commercial agent must substantiate its claim for compensation in the event the relationship is terminated—in other words, unlike the rule under the Commercial Agency Law, an unregistered commercial agent does not have a presumptive extra-contractual right to claim compensation under general principles of UAE law.

(a) *Commercial Agencies Committee*

In 1981, Articles 27 and 28 of the Commercial Agency Law established a Commercial Agencies Committee empowered to settle any dispute arising from a commercial agency in the UAE. Paradoxically, Article 6 of the Commercial Agency Law was amended in 1988 to also grant jurisdiction to the UAE courts over any dispute between a commercial agent and principal arising from their commercial agency. (As amended, Article 6 went on to state that no effect shall be given to any contrary agreement.)

¹² Although Ministry officials have not confirmed that any particular dispute provided the impetus for Resolution No. 168, there is an uncanny congruence of timing and fact pattern reflected in *John Hopkins Health System Corporation v. Al Reem General Trading*, 374 F. Supp. 2d 465 (D. Md. 2005).

Over the years, the Commercial Agencies Committee would often take initial jurisdiction over commercial agency disputes coming to the attention of the Ministry; and if either party disagreed with the Committee's eventual findings, recourse could be obtained by filing a law suit before the UAE courts. The UAE Ministry of Justice's Department of Opinion and Legislation issued an opinion to the effect that any dispute between a registered commercial agent and its principal (including the commercial agent's claim for compensation) should be submitted initially to the Committee, prior to instituting a law suit in the UAE courts. This opinion ran counter to a judgment of the Dubai Court of Cassation (No. 54 of 17 November 1991), in which the court concluded that the disputants may resort directly to the UAE courts without first submitting their matter to the Committee.¹³

The 2006 amendments to the Commercial Agency Law included a complete repeal of Articles 27 and 28, thereby eliminating the Commercial Agencies Committee and its role in resolving UAE commercial agency disputes.

(b) *Compensation*

Article 8 of the Commercial Agency Law states that a principal may not terminate the commercial agency contract unless there is a valid reasons justifying its termination. Similar textual provisions in other Arab commercial agency laws, and statements by various Arab Gulf government officials over the years, might create the impression that "it is not possible" for a foreign principal to unilaterally terminate a commercial agency. In fact, the Commercial Agency Law does *not* entitle a terminated commercial agent to specific performance, *i.e.*, there is no right to demand continuation of its relationship with the principal. Rather, the principal has the power to terminate the commercial agency, subject to the legal consequences of the protective legislation.¹⁴ Thus, Article 9 of the UAE Commercial Agency Law states that if *termination* of the commercial agency results in damage to either of the contractual parties, that party may claim compensation for the damages sustained.

¹³ Legal Report, "Judicial Jurisdiction in Trade Agencies Disputes", *Trade & Industry* magazine (undated page), at p. 33; copy on file in the author's Chicago office. The opinion of the Department of Opinion and Legislation is published (in Arabic) in *Al-Adalah* (January 1992), pp. 141-42.

¹⁴ See, *e.g.*, Dubai Court of Cassation Case No. 126/2003.

Until recently, 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 2006 amendments, a foreign principal is no longer subject to special statutory rules on compensation to its UAE commercial agent upon the *expiration* of the commercial agency agreement.

Although the Commercial Agency Law does not contain guidelines on the compensation payable to the commercial agent in the event of the principal's unjustified termination of the relationship, experience has shown that the compensation is generally likely to include (i) either a requirement for a foreign principal to repurchase inventory, or damages to reflect the commercial agent's outlay for such inventory; (ii) other investments, expenses or costs undertaken by the commercial agent in promoting the principal's business; and (iii) a multiple of the annual profits from the commercial agency (usually a multiple of between two to five years), as a form of "lost profits" suffered by the commercial agent.

(c) *Administrative Protections*

The Commercial Agency Law has historically restricted the circumstances in which the Ministry might de-register a commercial agent and allow the registration of a successor appointed by the principal.

Prior to the 2006 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 not only upon the parties' mutual agreement to terminate the relationship, or upon the issuance of a final court judgment cancelling the commercial agency, but also 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.

Article 1 of Ministerial Resolution No. 381 (2006) reads as follows:¹⁵

¹⁵ My unofficial English translation from the original Arabic text.

A commercial agency agreement shall be de-registered from the Ministry's Commercial Agency Registry in the following cases:

- (1) Submission of a notarized and authenticated letter providing notification of the cancellation of the commercial agency contract upon the agreement of the two [contractual] parties.
- (2) Issuance of a court judgment for the de-registration of the commercial agency contract.
- (3) Expiration of the commercial agency registration, or expiration of the renewal thereof, without agreement between the two parties to extend its effective term during the year before that expiration.
- (4) Submission of the request for de-registration form prepared by the Ministry, signed by the commercial agent or one legally authorized on its behalf, to effect the de-registration.
- (5) Before the date specified in the agreement for renewal, submission of a notarized and authenticated letter from the principal, expressing its desire not to renew the commercial agency.
- (6) The passing of one year after expiration of the agency without the agent submitting a request for renewal of its registration in the Commercial Agency Registry.
- (7) Issuance of a Council of Ministers resolution allowing the importation of products that are the subject to a commercial agency registered with the Ministry.

In practice, the Ministry now proceeds more readily than in the past with de-registration of commercial agencies that have expired, or when the principal does not wish to renew or to continue the relationship. In any specific case, however, the Ministry may proceed slowly in response to a principal's request for de-registration, and routinely allows the registered commercial agent to submit a statement in opposition to de-registration. Until a commercial agency is de-registered, any successor commercial agent appointed by the principal will not be able to register with the Ministry. Importantly, de-registration does not extinguish the right of the commercial agent to seek recourse before the UAE courts, by claiming damages for wrongful termination.

Under Article 23 of the Commercial Agency Law, UAE customs authorities should refuse to clear goods encompassed by a registered commercial agency (for example, attempts to import the relevant products by a principal's successor commercial agent), unless upon the agreement of the regis-

tered commercial agent or the Ministry. (As mentioned above, the UAE Council of Ministers is authorized to issue exceptions to a commercial agent's exclusive import rights, and the UAE Council of Ministers has already opened some categories of products to be freely imported.)

7. Choice of Law and Dispute Resolution

UAE law generally will respect the parties' contractual choice of foreign law to govern their commercial agreement, so long as that foreign law does not conflict with UAE public policy. Thus, the UAE courts would not recognize a choice of foreign law clause in a commercial agency agreement to the extent that special 'dealer protection' provisions of the Commercial Agency Law are applicable. For example, the UAE courts would not apply a foreign governing law clause if the principal would thereby avoid its obligation to compensate the UAE commercial agent upon termination of the agreement.

Similarly, in many instances UAE law would *not* respect the parties' contractual choice of a foreign forum to resolve commercial agency disputes. Article 6 of the Commercial Agency Law empowers the UAE courts to resolve disputes arising under a UAE commercial agency agreement, and "no effect shall be given to any agreement contrary hereto." Based upon this provision, a UAE court would likely exercise jurisdiction over any such dispute presented to it.¹⁶

Nonetheless, provisions in a UAE commercial agency agreement referring to foreign governing law or to a foreign dispute resolution forum might be useful for "defensive" purposes, if disputes are litigated outside the UAE (for example, if a UAE commercial agent attempts to enforce a UAE judgment in the courts at the foreign principal's home jurisdiction). In this context, the UAE has acceded to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention).

¹⁶ See, e.g., Abu Dhabi Court of Cassation Judgment No. 221/14 (20 March 1994), as reported in Price and Al Tamimi, *United Arab Emirates Court of Cassation Judgments 1989-1997* (Kluwer, 1998), at pp. 243-44. This case is also discussed in a brief note by Michel Chaloub, "Agency and Arbitration", 1998 *International Arbitration Law Review* (Issue 6), p. N-103.

8. Conclusion

According to at least one report, the number of commercial agencies de-registered from the Ministry's Commercial Agency Registry in the twelve months following enactment of the 2006 amendments almost quadrupled in comparison to the prior twelve month period.¹⁷ As a result of vociferous protests by the UAE commercial agency community, the Ministry has more recently been notifying commercial agents upon receipt of de-registration requests from their principals—allowing a commercial agent time to protest (and initiate a lawsuit before the UAE courts). As in the past, such disputes between the local commercial agent and foreign principal might result in products being blocked from entering UAE markets during the (often lengthy) litigation.

Many UAE commercial agents protest that the 2006 amendments to the Commercial Agency Law went too far toward market liberalization. Meanwhile, many foreign principals complain that the 2006 amendments did not go far enough. At least one local legal observer expressed the view that, given the dissatisfaction expressed by both local commercial agents and foreign principals, perhaps the 2006 amendments to the Commercial Agency Law struck the correct balance between the parties' conflicting interests.¹⁸

In my view, the 2006 amendments should not be measured by that benchmark. Elsewhere in the Arab world, as well as (I am told) in Europe and Latin America, local courts are empowered to resolve disputes concerning a principal's termination of a commercial agency agreement, in the process assessing both the principal's alleged justifications and the commercial agent's alleged damages. But very few countries also entitle a commercial agent to prevent a principal's products from entering the market during the pendency of the litigation, an entitlement that is almost universally seen as unfairly favoring the commercial agent, not only to the detriment of the foreign principal, but ultimately (and perhaps more importantly) to the detriment of local consumers.¹⁹

¹⁷ "Top legal firm urges overhaul of commercial agency law process", www.ameinfo.com/140634.html.

¹⁸ UAE lawyer Essam Al Tamimi recognizes that "both sides may feel that the [2006] revision does not meet their wishes and expectations." Al Tamimi, "Impact of the Amendment to the UAE Commercial Agencies Law", *Law Update* (August 2006), p. 12.

¹⁹ The trend away from statutorily mandated exclusive import rights (and the related statutory right to block another's imports of the relevant products) is evident in recent amendments to other Arab Gulf 'dealer protection' laws—such as in Bahrain, Oman, and

Another way we might measure the 2006 amendments to the UAE Commercial Agency Law: to what extent does UAE law and procedures now allow the foreign principal and its UAE commercial agent to operate without undue involvement by the Ministry of Economy or UAE administrative officials generally?²⁰ By this benchmark, the 2006 amendments have taken us quite a distance down the road, but I do not believe that we have yet reached our final destination.

Appendix 1

UAE COMMERCIAL AGENCIES LAW

Federal Law No. 18 (1981), as amended by
Federal Law No. 14 (1988) and Federal Law No. 13 (2006)

[Unofficial English translation prepared by Howard L. Stovall, Law Office of Howard L. Stovall (Chicago), from the Arabic text published on the web-site of the Abu Dhabi Chamber of Commerce and Industry, www.adcci.gov.ae]

Article 1

In applying the provisions of this Law, the following words and expressions have the meanings indicated respectively:

The State: The United Arab Emirates.

The Ministry: The Ministry of Economy and Commerce.

The Competent Authority: The competent local authority in the Emirate concerned.

The Committee: The Commercial Agencies Committee formed in accordance with Article 27 of this Law.

Commercial Agency: Representation of a Principal by an Agent for the distribution, sale, offer or supply of a good or service within the State in consideration for a commission or profit.

Qatar—where a qualified local agent nonetheless retains the statutory right to claim damages for a principal's unjustified termination of the commercial agency agreement.

²⁰ Al Tamimi, *supra* note 18, at p. 15.

Principal: A producer or manufacturer, domestically or abroad, or the exporter or exclusive distributor authorized by the producer provided that the producer does not perform marketing activities itself.

Agent: A natural person having UAE nationality, or a juristic person wholly owned by UAE natural persons/citizens, and who has authority pursuant to an Agency contract to act within the scope of the Agency but not to exceed its limits.

Article 2

The performance of Commercial Agency activities in the State shall be restricted to UAE nationals whether individuals or companies that are wholly owned by UAE natural persons/citizens.

Article 3

Commercial Agency activities may not be performed in the State except by one whose name is registered in the Commercial Agents Register maintained for such purpose at the Ministry. Any Commercial Agency not registered in this Register shall not be recognized and no claim in respect thereof shall be heard.

Article 4

The validity of the Agency for registration shall require the Agent to be directly linked to the original principal pursuant to a written and notarized contract.

Article 5

The original Principal may employ the services of a single Agent in the State as a single territory, or it may employ a single Agent in each Emirate, or in a number of Emirates, provided that distribution of the goods and services subject to the Agency shall be exclusive within the territory of such Agency.

An Agent may employ the services of a distributor in an Emirate or in a number of Emirates included within its Agency.

Article 6

The Commercial Agency contract is considered to be for the mutual benefit of the two contracting parties, and the courts of the State shall have jurisdiction to consider any dispute between the Principal and the Agent arising from the performance thereof. No effect shall be given to any contrary agreement.

Article 7

An Agent shall be entitled to commission for transactions concluded by the Principal itself or through any third party in the territory designated for the Agent's activity, even if such transactions were not concluded as a result of the Agent's efforts.

Article 8

A principal may not terminate the Agency contract unless there is a reason justifying such termination. Moreover, an Agency may not be re-registered in the Commercial Agents Register in the name of another agent except after the expiration of its term without the two parties' agreement to renew, or after its cancellation by agreement between them, or after the issuance of a final court judgment for its de-registration.

A fixed-term Commercial Agency shall be considered to have expired on its expiration date, unless the two parties thereto agree to extend its effective term during the year prior to such expiration.

Article 9

If termination of an Agency causes harm to either of the two parties, the injured party may claim compensation for the damages that are sustained.

Article 10

An application for registration in the Commercial Agents Register shall be submitted to the Ministry on the form prepared therefor. An application for registration shall include the name of the Agent and the Principal, the

nationality and address of each, the goods and services that are the subject of the Commercial Agency, the territory of the Agent's activity, and the Agency contract's date of commencement and date of expiration.

If the Commercial Agent is a commercial company, the application for registration shall include the particulars set forth in the preceding paragraph as well as the company's name, type, the amount of its capital, and the address of its headquarters and its branches in the State.

An application for registration must be accompanied by supporting documents, and in particular the following:

- 1- The Agent's trade license and certificate of registration in the Commercial Register, with the two documents issued by the relevant departments in the Emirates concerned, as well as a photocopy of each document.
- 2- The Agency contract notarized and authenticated by the official authorities, and a photocopy thereof.

The original of the document shall be returned to the concerned party after review and verification of the copy with the original.

Article 11

The Ministry shall issue its decision with respect to an application for registration within fifteen days from the date of its submission. In the event the application is accepted, the Agent shall be issued an official certificate evidencing its registration therein. The decision accepting registration and the details relating thereto shall be published in the Official Gazette, and notification thereof shall be sent to the Municipalities, Customs Departments, the Federation of Chambers of Commerce and Industry, and the relevant Chamber of Commerce and Industry.

Article 12

If the conditions for registration specified in this Law are not fulfilled, the Ministry may reject the registration application submitted to it, provided that it shall indicate the reasons on which it has relied for such rejection. It must notify the concerned party of its rejection decision within one month of the date that the application (with conforming documents)

was submitted. Such notice shall be by registered letter or by direct delivery. Failure to respond within such month shall be deemed a rejection decision. Subject to the provisions of Article 16 of this Law, any person whose application has been rejected may appeal such decision to the relevant civil court within sixty days from the date being notified of the rejection, or after one month from submission of the application without a response.

Article 13

The Commercial Agent, or its legal representative, or the heirs in case of death, shall apply to the Ministry for an entry in the Register concerning any change or amendment affecting the information specified by this Law and in accordance with the specific circumstances. Such application must be submitted within no more than sixty days from the occurrence of such change or amendment.

A resolution accepting the application mentioned in the preceding paragraph shall be published, along with the relevant details, in the Official Gazette. The Municipalities, the Customs Departments, the Federation of Chambers of Commerce and Industry, and the Chambers of Commerce and Industry shall be notified thereof.

Article 14

Upon the cancellation or expiration of an Agency contract, the Commercial Agent, or its legal representative or heirs in case of death, shall submit to the Ministry an application accompanied by the necessary supporting documents for de-registration of the Agency from the Commercial Agents Register, within no more than sixty days from the date of cancellation, death or expiration.

If the Ministry determines that there is a reason for de-registration of an Agency, the Ministry may effect such de-registration after notifying the concerned parties by registered letter, to appear at a date no later than sixty days, to hear their objections to the reason necessitating de-registration. Upon failure to appear, they shall be re-notified in the same manner to appear on a date no later than another sixty days. If they again fail to appear, the Ministry may unilaterally de-register the Agency after taking the opinion of the Competent Authority.

Article 15

If any of the conditions specified in this Law ceases to exist, the Commercial Agent shall submit an application to the Ministry for de-registration from the Commercial Agents Register within no more than sixty days from the occurrence of the reason for de-registration; and the Ministry shall effect de-registration from the Register. The Ministry is authorized to delete a registration on its own motion whenever it determines that there are reasons therefor, in accordance with the circumstances specified in the second paragraph of the preceding article.

Article 16

An application for registration, amendment or de-registration must be accompanied by supporting documents. The Ministry may accept such applications while requiring the applicant to furnish the necessary documents.

Article 17

The Ministry shall notify the Municipalities, Customs Departments, the Federation of Chambers of Commerce and Industry, and the Chambers of Commerce and Industry in the State, of the names of the Commercial Agents registered with it in the Commercial Agents Register, and of any change, amendment or de-registration, within thirty days from the date of such registration, amendment or de-registration.

Article 18

Any interested party may obtain from the Competent Authority an extract from the ledger in the Commercial Agents Register. Likewise, an interested party may obtain a certificate that no registration has been effected.

Article 19

The implementing regulations for this Law shall determine the fees payable for a registration application in the Commercial Agents Register, an application for an entry in the Register concerning an amendment or change of details, as well as the fees payable to obtain an official extract from the registration ledger.

Article 20

Commercial Agents existing at the effective date of this Law must submit an application for registration in the Register pursuant to the rules and conditions contained herein within six months from the effective date. Those who do not fulfil the conditions prescribed by this Law must adjust their status in accordance with the provisions of this Law within one year from its effective date.

If a Commercial Agency does not comply with the prescribed conditions within the period specified in the foregoing paragraph, it shall be considered terminated by force of law.

Article 21

Commercial Agents shall provide sufficient and necessary spare parts, materials, components, and accessories to maintain the durable goods that they import.

Article 22

Any person who performs Commercial Agency activity in violation of the provisions of this Law shall be punished with a fine of not less than five thousand Dirhams. Immediately upon issuance of a judgment, the court clerk shall notify the Ministry, the Competent Authority, the Federation of Chambers of Commerce and Industry, and the Chamber of Commerce and Industry in whose area the Agent conducted its activities.

Article 23

A party may not import goods, products, manufactured items, materials or other property that is subject to any Commercial Agency registered with the Ministry under the name of another, with the intent of trading through channels other than the Agent. Customs departments shall not release such imports entering through channels other than the Agent except with the approval of the Ministry or the Agent. At the Agent's request to the Ministry, customs departments and the Competent Authorities, each within its jurisdiction, must impound such imports and deposit same in the ports warehouses or the importer's warehouses until the dispute is settled. An exception from this rule shall apply to trading in materials that is freely allowed by virtue of a Council of Ministers' resolution. The Ministry shall

de-register from the Commercial Agents Register those Commercial Agencies connected with such material.

Article 24

Without prejudice to any more severe punishment specified in the Penal Code or in any other criminal law, any person who actually commits any of the following acts shall be punished with a fine of no less than five thousand Dirhams:

- (a) Intentionally submitting to the Competent Authority, or to any other official entity, false information concerning registration, de-registration, or an entry in the Commercial Agents Register. Where the consequence of such false information is a registration, de-registration or entry in violation of the provisions of this Law, the court shall, in addition to pronouncing the prescribed punishment, order de-registration, cancellation of such entry, or revocation of de-registration as the case may be. The court judgment shall be published in the Official Gazette.
- (b) Falsely claiming—through the use of printed matter, correspondence pertaining to commercial activities, or by publication through any means of dissemination—to be a Commercial Agent for a natural or juristic person, or an Agent for marketing, selling or distributing goods, products, materials, or other property. In all cases, the court shall order the correction of the information in accordance with the rules and on the dates it specifies. The court judgment shall be published in the Official Gazette.

Article 25

[Repealed by Federal Law No. 14 of 1988]

Article 26

In addition to the penalties set forth in this Law, the relevant court is empowered to order the closure of the premises in which the Commercial Agent carries out its activity. The Competent Authority may order the reopening of

such premises based upon a request by the concerned parties upon the elimination of the reasons for such closure or for purposes of liquidation.

Article 27

[Repealed by Federal Law No. 13 of 2006]

Article 28

[Repealed by Federal Law No. 13 of 2006]

Article 29

Employees of the Ministry and the Competent Authorities in charge of supervising the implementation of the provisions of this Law shall have the right to review documents and papers relating to the establishment of an Agency and its registration in the Register to prove any violation of the provisions of this Law and the resolutions issued in implementation hereof, and to refer matters to the Competent Authorities for investigation and judicial proceedings. The Commercial Agent shall submit to the above-mentioned employees such information, data and documents as they request to perform their work. Police departments in the Emirates shall enable these employees, in the performance of their duties, to examine and prove any violations of the provisions of this Law or the resolutions issued in implementation hereof.

Article 30

The Minister of Economy and Commerce shall issue a resolution specifying the names of the employees referenced in the preceding article. The resolution issued in this regard shall specify the procedures that must be followed to prove violations of the provisions of this Law. Such employees shall be prohibited from divulging any matter that they review by virtue of their positions, if that matter is of a confidential nature. Anyone who violates this prohibition shall be subject to disciplinary punishment, without prejudice to civil or criminal liability.

Article 31

Any provision conflicting with the provisions of this Law is hereby repealed.

Article 32

The Minister of Economy and Commerce shall implement this Law and shall issue the resolutions and regulations necessary for such implementation.

Article 33

This Law shall be published in the Official Gazette and shall be effective six months after the date of its publication.