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SUMMARY OF
COMMERCIAL AGENCY/DISTRIBUTORSHIP LAW
IN
JORDAN

1. Applicable Law

The primary Jordanian law governing commercial agency and commercial intermediation is Law No. 28 of 2001 (the "Commercial Agency Law"). In addition, the Jordanian Civil and Commercial Codes contain some provisions generally applicable to commercial agency. Jordan has also enacted special regulations governing commercial agency and distributions in some specific industries (e.g., pharmaceuticals) that are beyond the scope of this summary.

2. Definitions

Article 2 of the Commercial Agency Law defines "commercial agency" as:

A contract between the principal and the agent, obliging the agent to import the products of its principal, or the distribution, sale or display of such products, or providing commercial services within the Kingdom, or for its own account on behalf of the principal.

For purposes of the Commercial Agency Law, the term "commercial agent" generally includes distributors and the term "commercial agency" generally includes distributorships.

The Commercial Agency Law also defines "commercial intermediary" as a person undertaking commercial intermediation between two parties (one of those parties, registered abroad, being the producer, distributor or exporter), paid for the conclusion or facilitation of a contract, without being affiliated with either of those parties. Many, but not all, of the provisions of the Commercial Agency Law apply both to commercial agents and commercial intermediaries.

3. Qualifications for Commercial Agents

Article 3 of the Commercial Agency Law imposes a nationality requirement on the commercial agent. The commercial agent must either be a Jordanian national (if a natural person) or a Jordanian registered company. In general, foreign companies may not undertake commercial agency or intermediation work in Jordan for other foreign companies.

4. Direct and Exclusive Relationship

The Commercial Agency Law does not require a commercial agent to have a direct relationship with the principal in the country where the goods originated, i.e., regional distributors or other intermediaries may be interposed between the principal and the Jordanian commercial agent.

Similarly, the Commercial Agency Law does not contain any express requirement that a Jordanian commercial agent be appointed on an exclusive basis. In general, we understand that exclusivity is considered to be a matter of negotiation between a foreign principal and its Jordanian commercial agent, and primarily governed by the terms of the parties' agreement.

5. Mandatory Use of Commercial Agents

In general, Jordanian law does not require the use of an authorized commercial agent for the importation, sale and distribution of foreign products. In most cases, for example, any person registered as a trader in Jordan, and with an appropriate import license, can import foreign products directly from the producer, manufacturer, or distributor abroad.

Foreign companies may sell directly to the Jordanian government without the use of a local commercial agent or intermediary, although the use of such agents or intermediaries

in government contracting is generally common and proper, with some significant exceptions discussed below.

6. Restrictions on Use/Payment

Article 11 of Regulation No. 50 (1994), concerning the Higher Authority for Government Purchases, states:

Regardless of provisions in any other legislation, all contracts pertaining to supplies, procurement and services as determined by the Council of Ministers and pertaining to the Jordanian Armed Forces, the Security Services and Royal Jordanian [Airlines] should be carried out directly with the manufacturers, producers or suppliers without any intervention from agents, commercial intermediaries or consultants. The Council of Ministers has the right to include any [government] department under these provisions of this article.

Article 12 of the Commercial Agency Law contains a more elaborate restriction:

A. Notwithstanding the provisions of this Law or any other legislation, Jordanians and non-Jordanians are prohibited from performing commercial agency or commercial intermediation activities in the importation or sale of arms, spare parts therefor, parts used to supplement or develop such arms (including maintenance of such arms and spare parts and the warranty thereof), or ammunition supplied to the Jordanian Armed Forces and security organizations.

B. Upon the recommendation of a competent authority, the Council of Ministers may prohibit the performance of commercial agency or commercial intermediation activities, or the intervention of commercial agents and commercial intermediaries, in any contracts concerning the importation of supplies, equipment, materials, machines, and replacement parts for the Jordanian Armed Forces and security organizations. Such prohibition may also cover maintenance of these materials or warranty therefor, and any other services that may be offered pertaining to same.

A violation of the prohibition is punishable by a jail sentence and fines, including forfeiture of the commission/compensation paid, agreed or promised.

We are unaware of any general legal limit or ceiling on sales commissions or fees in either the private or public sector (except where agents and intermediaries are prohibited, as discussed above). In general, therefore, sales commissions or fees are primarily subject to the agreement of the parties. However, Article 13 of Regulation No. 50 (1994) states, in part:

Any commission or compensation paid to any commercial or consulting agent or intermediary should not exceed a fair and reasonable limit, and in exchange for a legally permissible service.

Regulation No. 50 does not provide any explicit guidance upon the concept of "reasonable" commission or fee.

In July 1997, the Jordanian Central Bank removed all restrictions as to the movement of Jordanian and foreign currency into or out of Jordan. As a matter of Jordanian law, therefore, the principal and commercial agent may agree on payment outside Jordan -- although this would not relieve the Jordanian commercial agent from the requirement to report income to the Jordanian tax authorities.

7. Registration Requirements for Commercial Agents

The Jordanian Commercial Agency Law requires Jordanian commercial agents and intermediaries to register in special registries at the Ministry of Industry and Commerce. According to Article 6 of the Commercial Agency Law, a commercial agent must submit its registration application with, among other things, a duly authenticated copy of the commercial agency agreement.

Article 5 of the Commercial Agency Law states that no person shall undertake commercial agency or commercial intermediation in Jordan unless registered in the proper registry. In addition, Article 10(A) provides that an unregistered commercial agent shall not be entitled to any privilege granted by law. (However, third parties have the right to take legal action based on an unregistered agency if it was proven that such agency existed in fact.) Moreover, Article 10(B) states that an unregistered commercial intermediary is not permitted to sue any party to a concluded contract for which the intermediary conducted intermediation activities.

The Jordanian Council of Ministers issued a decision (on 1 July 1999) that requires foreign suppliers to disclose, in their contracts and/or bids with the Jordanian government, details on

local commercial agents and commission payments. The Council of Ministers' decision was reported in local newspapers, but not published in the official gazette. Consequently, that Council of Ministers decision might lack the binding force of law -- although the specified clauses could be contractually binding on a foreign contractor, for example, if included in the terms and conditions of the procurement contract. According to that Council of Ministers decision, if a foreign contractor fails to disclose such payments, then the Jordanian government is entitled to terminate the foreign contractor's contract and assess a penalty calculated at twice the value of the undisclosed payment.

8. Termination or Non-Renewal

Article 14 of the Commercial Agency Law states:

If the principal cancels the commercial agency before the expiration of its term without fault by the agent, or for any illegitimate reason, the agent shall have the right to claim compensation from the principal for damages incurred and for lost profit.

This legal provision is generally interpreted to mean that a principal is not liable to pay any special termination compensation to its Jordanian commercial agent if the commercial agency agreement simply expires according to its terms, i.e., non-renewal rather than termination.

In the event that the principal is found to have terminated a commercial agency agreement for "unjustifiable" reasons, the Jordanian courts may award the commercial agent a termination indemnity or compensation for specific losses or damages suffered as a direct result of termination, as well as reimbursement for the expenses and costs incurred by the commercial agent on behalf of its principal, and an amount equal to "lost profits". Each case is decided on its own merits, however, and there are no general rules for determining the amount of termination indemnities which shall be awarded by the local courts.

Article 15 of the Commercial Agency Law also provides that the principal and the replacement commercial agent shall be liable, jointly and severally, to purchase relevant inventory held by the former commercial agent, at purchase price or local market price, whichever is less, and to fulfill all obligations to third parties arising from the former commercial agency.

Article 16(B) of the Commercial Agency Law contains a statute of limitations, stating that legal claims arising from a

commercial agency agreement shall not be heard after three years from the expiration of the agreement or its termination for any reason whatsoever.

9. Choice of Law and Dispute Resolution

Jordanian law generally permits contractual parties to agree on foreign (non-Jordanian) arbitration to resolve their disputes. Moreover, Jordan has acceded to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, Article 16(A) of the Commercial Agency Law instructs Jordanian courts to take cognizance of all disputes regarding protected commercial agency agreements. This rule might be considered a matter of Jordanian public policy and, if so, Jordanian government ministries, departments and courts might refuse to enforce foreign arbitration clauses as conflicting with such public policy.

The Commercial Agency Law is silent on whether a foreign governing law clause would be respected. However, Jordanian courts have decided that -- where a contract contains a non-Jordanian governing law clause -- the provisions of that foreign law should apply even if the foreign governing law provisions materially differ from the corresponding provisions of Jordanian law. The only exception to this rule is that Jordanian courts will not apply a foreign law if it conflicts with matters regarded as Jordanian public policy. Jordanian courts might be most inclined to view the "dealer protections" favoring the Jordanian commercial agent (such as the rules of Articles 14 and 16(A) of the Commercial Agency Law) as public policy to be applied irrespective of the foreign governing law.

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