

## **Doing Business In The Middle East: The Potential Pitfalls For Foreign Companies Regarding Local Agency Agreements**

Many countries in the Middle East, such as Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates, have mandatory laws that apply to agency agreements for doing business in these countries. Generally, foreign companies have the option of doing business in the Middle East without the establishment of a permanent business presence in the host country, through (1) direct sales from abroad to local customers (for example through an order made by a client directly to the foreign company or to a “travelling salesperson” employed by the foreign company) or (2) sales through a commercial agent who is a national of the host country (or a company wholly owned by nationals of the host country). The appointment of a commercial agent establishes a contractual relationship that is subject to the mandatory laws applicable to agency agreements. Of particular significance to foreign companies is that agency agreements can be very difficult to terminate (even when the agency agreement provides for a limited duration of effect and even when the agency agreement provides it may be terminated at any time for any reason and without notice). Agency agreements can also bind foreign companies to significant obligations even when the written agency agreement provides otherwise. It is therefore very important to understand the impact of the mandatory laws applicable to commercial agency relationships before consummating the relationship and before signing an agency agreement. Otherwise, the foreign company might be stuck with the agency relationship for a long period of time, or run the risk of having to pull out of the foreign market.

The mandatory laws applicable to agency as well as exclusive distribution agreements in the Middle East are considered matters of public policy that cannot be waived or contracted away. Hence, notwithstanding contractual clauses to the contrary, foreign companies typically must: (1) show “proper cause” for the termination of the agreement with the national; (2) subject themselves to the jurisdiction of the local courts for the resolution of any dispute despite contractual choice of forum provisions to the contrary; (3) provide for payment of “just compensation” to the national upon termination (even when termination is for “proper cause”); and (4) run the risk of potential exclusion from the local market (and/or significant fines) if the foreign companies violate any of the foregoing. Consequently, agency agreements are fraught with unforeseen risk because of the mandatory laws that apply to these agreements.

We will address in more detail some of the specific pitfalls with agency agreements in future updates and suggest some tips that would help foreign companies avoid the harsh consequences of granting distribution and agency rights to local nationals without adequate consideration for the mandatory rules of those countries.

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