

Company & Commercial - United Arab Emirates

Recent changes to Commercial Agencies Law

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The UAE federal government recently published in the *Gazette* Federal Law 2/2010, which amends certain provisions of the Federal Law Regulating Commercial Agencies (18/1981). The amending law varies the termination and renewal provisions of the Agencies Law and establishes a committee to hear disputes that arise in respect of commercial agencies.

Commercial agencies and the Agencies Law

The Agencies Law is the primary regulatory law on commercial agencies in the United Arab Emirates. It defines a 'commercial agency' as "the representation of a principal by an agent for the purpose of distributing, selling, offering or providing merchandise or services inside the UAE for a commission or profit". A principal may be either "the producer or manufacturer" of the relevant product or the "exclusive accredited exporter or representative of the producer".

The Agencies Law makes no distinction between commercial agency agreements, agreements regarding distributorships, franchises, commission arrangements and other forms of sales representative or sales agency relationship. All these forms of business arrangement may qualify as a 'commercial agency' under the Agencies Law.

The Agencies Law will apply if the following requirements are satisfied:

- The commercial agent is either a UAE national or an entity incorporated in the United Arab Emirates and wholly owned by UAE nationals;
- The commercial agent is registered with the Ministry of Economy and Commerce to engage in commercial agency activities;
- The agency agreement between the agent and principal is registered with the Ministry of Economy and Commerce; and
- The relationship between the agent and principal is exclusive in terms of territory or in respect of specified products.

Under the Agencies Law, registered commercial agents are afforded certain protections which relate, among other things, to termination and renewal of the agency agreement.

Until 2006, it was difficult for a principal to terminate a commercial agency, as Article 8 of the Agencies Law provided that a principal may neither terminate nor refuse to renew an agency agreement without "justified cause", even if the agency agreement provided for a fixed term. During this period, establishing justified cause for termination before the Commercial Agency Committee, which was set up under the Agencies Law, or the court was a difficult task, even in cases where the agent failed to perform.

2006 amendments

In 2006 an amendment to the Agencies Law was passed, pursuant to which the revised Article 8 provided that commercial agency contracts of a fixed term would expire at the end of that term, unless both parties agreed to extend such term within one year of the expiration date. The amendment further provided that if the termination of an agency agreement caused damage to either party, the aggrieved party could claim compensation for the damage suffered (thus providing both the principal and agent with a statutory right to claim compensation). The amendment also abolished the Commercial Agency Committee, leaving recourse to the courts as the only means of

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dispute resolution.

While the 2006 amendment did not permit a principal to terminate an agency agreement before the end of the term without justified cause, it made it easier for principals to terminate an agency agreement on the expiry of a fixed term, as there was no longer a requirement to provide a reason justifying such termination. As a result, a number of fixed-term agency agreements were terminated following this amendment.

The 2010 amendments to the Agencies Law changed this position again in respect of termination and renewal of commercial agency agreements and reinstated the Committee of Commercial Agencies, which was abolished by the 2006 amendment.

2010 amendments

The latest amendments to the Agencies Law provide that a principal may not terminate or refuse to renew an agency agreement unless there is a "material reason" for termination or non-renewal, which is established and subsequently determined to be satisfactory by the Committee of Commercial Agencies. Therefore, these amendments no longer permit a principal to terminate an agency agreement at the expiry of a fixed term; instead, "a material reason" must be established to justify the termination or non-renewal of an agency agreement.

The 2010 amendments go further than previous amendments to provide that even if an agency agreement is for a fixed term, it cannot be re-registered in the name of a new agent unless:

- the previous agency agreement was terminated by mutual consent of the principal and agent;
- the committee is satisfied that there is a material reason to justify the termination or non-renewal of the agency agreement; or
- a competent court passes judgment to cancel the agency.

The Committee of Commercial Agencies has been re-established to hear disputes that arise in respect of commercial agencies. The law now provides that a dispute must be taken to the committee before it can proceed to court. The committee is obliged to hear disputes within 60 days of the date of application to the committee, and its decision is considered final and binding unless challenged before a competent court within 30 days of the committee's decision date.

Comment

It has always been important for parties to an agency agreement to ensure that the termination provisions of the agreement are clear and unambiguous and provide for particular instances when the principal will have justified cause to terminate the agreement. Nevertheless, the 2010 amendments highlight the importance of this for principals, especially as a material reason is required to terminate an agency agreement on the expiry of a fixed term.

A material reason for termination of an agency agreement may be determined by the committee or a court as a failure to comply with any of the material provisions of the agency agreement, including pricing, competition, restrictions on sale or key performance indicators or targets, or as repeated and consistent breaches of the terms of the agency agreement. Failure to address the termination issue satisfactorily in the wording of the agency agreement could leave a principal in the invidious position of having to continue working with an agent with which the commercial relationship has broken down or being unable to proceed with a new agent.

For further information on this topic please contact [Sarah Standish](#) at Taylor Wessing (Middle East) LLP by telephone (+97 14 332 3324), fax (+97 14 332 3325) or email (s.standish@taylorwessing.com).

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