

Recent Changes to Commercial Agency Laws in Oman, Kuwait and Qatar

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Commercial Agency Laws in the Middle East

Many countries in the Middle East have a commercial agency legal framework set out in law, regulation and practice, that acts to protect local agents. Typical protections for local agents include (1) reserving the business of commercial agency for local nationals, (2) a registration system for agents, (3) agent exclusivity granted by law, and (4) protection from termination or non-renewal.

Oman, Kuwait and Qatar are three of the six countries of the Gulf Cooperation Council (GCC) that have amended their commercial agency laws in recent years, and an explanation of the changes are outlined below. The changes differ by country, but are linked to competition protection laws and international treaty obligations required by the World Trade Organization (WTO).

Oman

The Sultanate of Oman introduced significant changes to its commercial agency law with Royal Decree 34/2014, effective from 21 July 2014, which amended the original commercial agency law promulgated by Royal Decree 26/1977. The original law contained typical agent protection provisions, but Oman had a comparatively liberalized commercial agency regime since 1996, when it amended the law to allow for multiple agents appointed on a non-exclusive basis.

The latest amendments to the law introduce four major changes:

- **Compensation for registered agents is no longer expressly provided for by law.** Parties to commercial agency agreements are now free to decide the terms of renewal and termination of those agreements, and compensation is no longer expressly provided for by law. However, an agent can still make a claim for breach of contract.
- **A registered agent no longer has rights to claim commission from parallel imports.** The change in law also abolished the prohibition on the foreign principal from selling or distributing its goods or services itself or through a third party. Linked to this, the agent no longer has a right to demand commission from the principal. This effectively may put the registered agent in the position of having a statutory obligation to provide the original manufacturer's guarantee and after sale services as required by the law, but loses the protection to claim commission from other sales that do not go through the agent.
- **The Minister of Commerce & Industry no longer has the statutory authority to ban the import of goods.** Previously, the Minister had the statutory authority to ban imports of goods where the

agency was the subject matter of a dispute between the registered agency and the principal, if the principal cancelled the agency without cause. (In practice, this provision was not enforced pursuant to WTO treaty obligations, so the change in law does not change any existing practice.)

- **New anti-monopoly powers are granted to the Council of Ministers.** The Council of Ministers may, acting on the recommendation of the Public Authority for Customer Protection, break up monopolies over specific types of goods and services which may lead to a negative impact on market prices or the supply and demand of such goods.

Kuwait

The State of Kuwait had one of the oldest commercial agency laws in the Gulf region, as the original law (Law No. 36 of 1964) was more than fifty years old. As of 13 March 2016, this law was replaced by a new Commercial Agency Law, Law No. 13 of 2016.

In view of the fact that the contractual relationship between the commercial agent and the principal is still governed by the Kuwaiti Commercial Code, and that the Commercial Agency Law mainly deals with registration issues, the changes with the amendment to the law are rather limited:

- **Registered agents do not have to be exclusive.** The original law was silent as to exclusivity, but in practice, until recently it was common for the Commercial Agents Registrar at the Ministry of Commerce and Industry to refuse to register more than one agent for one company, regardless of whether or not the contract was exclusive. The new law expressly states that the principal may appoint more than one agent. Exclusive contracts are not prohibited by the new law.
- **Franchises are expressly covered within the scope of the law.** This is a codification of ongoing practice prior to the passing of the amendment. Similarly, distributorship agreements and dealership agreements may also be registered as commercial agency agreements.
- **Registered agents cannot block the import of goods.** Previously, registered agents had avenues to pursue through the customs authorities and courts to try and stop the import of parallel imports. The new law clarifies that any local company may import goods and services regardless of whether there is a registered and exclusive agent for such goods and services.
- **There is (still) no express provision for compensation for termination.** The new law is – as was the old law – silent on claims for compensation. However, agents can still make a claim for compensation under the commercial code.
- **Only registered agents may benefit from the law.** The new commercial agency law states that only those commercial agencies registered with the Ministry of Commerce and Industry will be considered and heard by the courts of Kuwait. It will need to be seen whether agents will no longer be permitted to bring such compensation cases to the Kuwaiti courts if their agency arrangements are not registered. The old commercial agency law contained a similar provision, but courts allowed claims from unregistered agents under the commercial code, which was passed after the old commercial agency law, and which did not contain such a registration requirement.

Qatar

Law No. 2 of 2016 was passed in April 2016 which amended the original commercial agency law, Law No. 8 of 2002. The amendment introduced four major changes.

- **The protection of the Commercial Agency law is expanded to distributors.** Before the amendment, the Commercial Agency Law and its protection applied to commercial agents, but not to distributors. However, protection and registration is still limited to exclusive arrangements.
- **Certain goods may be exempted:** The Council of Ministers may exempt certain goods and services from the application of the law.
- **No commission for parallel imports:** Before the amendment, the law provided that the registered agent may claim commission on sales by other importers. This provision was deleted.
- **Workshops may be licensed to provide service to products subject to an exclusive agency arrangement.** The right to offer after-sale services for products is no longer covered by the exclusive scope of the law.

However, other protections for registered agents, such as the right to claim compensation for termination or non-renewal, remain.

Another amendment to the law significant increased the criminal penalties for violations or repeat violations of the law, which includes fines and also imprisonment, although it is not clear what violations of the law would be subject to such penalties.

In Closing

In all three jurisdictions, amendments to the commercial agency laws aim at liberalizing the market for goods that are subject to a (registered) agency. Even registered and exclusive agent are generally not able any more to block import of such goods, irrespective of their disputes with the principal. Except for Oman, where the statutory right to claim compensation for termination has been abolished, the contractual situation between agent and principal for existing contracts will not be materially affected by the amendments. For new contracts, the recent changes should be noted and considered when drafting and negotiating.

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