

Client Alert: Iraq's New Commercial Agency Law and Implications for Multinational Companies

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Iraq has passed a new commercial agency law that creates new protections for businesses that are wholly-owned by Iraqis. While it is yet to be seen how the law is enforced, as written, the new law may result in the disruption of existing foreign investment in Iraqi import businesses, and also restrict freedom of contract for foreign companies that supply products to Iraq through distributors, dealers, franchises and agents.

Iraq's Old Commercial Agency Law

Iraq followed in the legislative footsteps of many Arab countries by passing its first commercial agency law with Law No. 51 of 2000 (the “**Old Law**”). The Old Law supplemented existing civil and commercial codes to create a legal framework for the registration of Iraqi businesses as the commercial agents of foreign goods and services imported into and sold in Iraq.

The Old Law did not grant exclusivity to registered commercial agencies, although we are aware of some instances where the Ministry of Trade did not permit new commercial agent registration, on the grounds that there was an existing registered commercial agent.

The Old Law was never strictly enforced. Following its enactment during the final years of the Saddam Hussein era, through the second Iraq War, and to the present day, in practice any Iraqi business could import goods and services so long as it was properly licensed to import.

New Commercial Agency Law of 2017

The Iraqi Parliament approved a new commercial agency law in August 2017. Following presidential approval on 1 November 2017 and publication in the Official Gazette on 13 November 2017, the new commercial agency law was published as Law No. 79 of 2017 (the “**New Commercial Agency Law**”). The New Commercial Agency Law is effective from its date of publication in the Official Gazette and repeals the Old Law but it gives businesses a year to come into compliance with its requirements.

The principal changes introduced by the New Commercial Agency Law can be summarized as follows:

- Goods for trading purposes may only be imported through a registered commercial agent (Article 13).
- Foreign principals may not terminate or refuse to renew a contract with a commercial agent unless the termination or non-renewal is for a “reason that justifies” (Article 20).
- Commercial agent registration must be renewed annually.

- The New Commercial Agency Law extends the definition of “commercial agency” to cover distributor and franchise arrangements, in addition to agency relationships, a significant expansion when compared to the scope of the Old Law.
- The limit under the Old Law on a maximum of three agencies for each business is abolished.
- The restriction on public sector entities trading with commercial agents is abolished.

The changes in Article 13 and Article 20 may substantially impact businesses operating in Iraq and are explained in further detail below.

Restriction on Foreign-Investment Importers in Iraq (Article 13)

Article 13 contains a provision which empowers the State Company for Fairs (under the Ministry of Trade) and the Customs Authorities (under the Ministry of Finance) to prohibit the import of goods for trading purposes unless such import is through a commercial agent.

If implemented as written, this provision will mean that the import of goods to Iraq will only be permitted through a registered commercial agent. Therefore, as a registered commercial agent must be an Iraqi national or a company wholly-owned by Iraqi nationals, any existing Iraqi company with non-Iraqi shareholders that presently imports and distributes goods and services into Iraq may have to restructure its business.

Commercial Agent Protection from Termination and Non-Renewal (Article 20)

Article 20 of the New Commercial Agency Law introduces protections for commercial agents from termination or non-renewal without the principal having “a reason that justifies” (a material reason). There is no guidance as to what reasons could qualify for this standard, and it is also not established if termination without such a material reason results in a claim of compensation from the terminated commercial agent, or an invalid termination.

We can expect that this protection will apply to all new and existing contracts that fall under the scope of the law. Additionally, Iraqi companies that currently have valid agency contracts with foreign principals, including contracts that were previously outside the scope of commercial agency registration, such as distributor, dealer and franchise agreements, may be able to register themselves and benefit from this new statutory protection.

Iraqi Kurdistan

The New Commercial Agency Law is not currently being reviewed by the Iraqi Kurdistan Parliament in Erbil and will, therefore, not be applicable to commercial agency relationships in the territories controlled by the Government of Iraqi Kurdistan. Commercial agency relationships in Iraqi Kurdistan will continue to be subject to the previous legal framework, which is technically within the scope of the Old Law, but in practice the civil code and commercial code.

Next Steps

Foreign investors with investments in companies in Federal Iraq that import and distribute goods and services should understand how the New Commercial Agency Law may impact their business.

Companies that sell products and services into Iraq should review their contracts with existing dealers, distributors, franchises and agents and consider what changes are required.

As there is a year for businesses to come into compliance with the new law, and given the number of variables regarding how the law may be enforced by the various agencies of Iraq’s government, there is time for businesses to evaluate the practical implementation of the New Commercial Agency Law.

An English translation of the law is available to our clients and friends upon request.

If you would like more information about this topic then please contact us.

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