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& PARTNERS**

**THE NEW COMMERCIAL AGENCIES LAW: WHAT IT
ENTAILS AND HOW CAN BE PREPARED FOR IT?**

Presentation by Dr. Sara Corradi

Dubai, 25th April 2023

WHO ARE WE?

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OUR EXPERTISE

- Corporate/Commercial Law throughout the Middle East
- Incorporation of Companies/Branch Offices
- Offshore Legal Services (Agents for JAFZA and RAKICC)
- Registration of Trademarks, Patents, Copyrights throughout the Middle East
- Advising on Family Law and Inheritance Law Matters
- Registration of DIFC and Abu Dhabi (ADJD) Wills
- Assistance in Buying, Owning and Selling of Real Estate, and any Real Estate Dispute
- Advising on UK Trusts and Wills
- Advising on Taxation and Double Taxation Treaties

WHAT TO EXPECT

- Federal Law no. 3 of 2023 enacted on 15th December 2022 and regulating Commercial Agencies (“New Commercial Agency Law”) will come into force on 15 June 2023 repealing and totally replacing UAE Federal Law no. 18 of 1981 regulating Commercial Agencies (“Old Commercial Agency Law”);
- The New Commercial Agency Law introduces important reforms to the commercial agencies regime under the Old Commercial Agency Law;
- The New Commercial Agency Law adopts a more balanced approach between principal and agent;
- How UAE Courts will apply the reforms?

AGENDA

1. DEFINITION OF PRINCIPAL

2. DEFINITION OF AGENT

3. AGENCY RELATION

4. TERMINATION

5. EFFECTS ON EXISTING AGENCIES

6. Q&A

1. DEFINITION OF PRINCIPAL

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1. DEFINITION OF PRINCIPAL

Old Commercial Agency Law

The “Principal” is “the producer or manufacturer in the State or abroad, the exporter or the exclusive distributor authorized by the producer provided that the producer does not practice marketing by himself”.

New Commercial Agency Law

“The producer or manufacturer owning the commodity or service inside or outside the State”.



2. DEFINITION OF AGENT

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2. DEFINITION OF AGENT

Old Commercial Agency Law

A natural or legal person representing a Principal under a commercial agency contract.

New Commercial Agency Law

The natural or legal person to whom, under the Commercial Agency contract, the representation of the Principal is entrusted.



2. DEFINITION OF AGENT

WHO CAN BE AGENT?

Old Commercial Agency Law

UAE nationals individuals or companies wholly owned by the following:
National natural person;
Public legal person;
Private legal person owned by public legal person;
PJSC if UAE nationals hold at least 51% (since 2020).

New Commercial Agency Law

Additionally the Cabinet may allow any **International Company** to practice the Commercial Agency business for the products it owns, under the conditions and within the limits it deems appropriate and if they meet the following requirements:

- The Commercial Agency does not have a commercial Agent inside the State;
- The Commercial Agency is new and not previously registered in the State.

3. AGENCY RELATION

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3. AGENCY RELATION

Old Commercial Agency Law

“Commercial agency” means “the representation of the Principal by an Agent pursuant to a contract of agency, distribution, sale, **display, franchise** or offer of a commodity or service inside the state in return for a commission or profit”

New Commercial Agency Law

“Commercial Agency” means “the representation of the Principal by an Agent under a contract of agency, distribution, sale, offer, or **concession**, or the provision of a commodity or service within the State in return for a commission or profit”

3. AGENCY RELATION

Effects of Registration

- Access to public procurement procedures;
- Mandatory for certain categories of products (i.e. fire detection systems);
- Only Agent can carry out the activities of commercial agency in the State

4. TERMINATION

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4. TERMINATION

TERMINATION OF AGENCY – OLD AGENCY LAW

- Mutual consent
 - **Fundamental reasons** behind the termination of the agency or the non-renewal of the term that convince the committee or subsequent to the issuance of a decisive court judgment to write-off said agency
 - End of the contract term is not a fundamental reason for the termination of the commercial agency
- In the previous regime the term “*fundamental reason*” was not defined and was determined by the court of Commercial Agencies Committee at their discretion

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW

- If the contract requires the Agent to establish display buildings, commodity stores, or maintenance or repair facilities, there will be a **contract term** of five years unless otherwise agreed between the parties;
- The Commercial Agency contract shall expire in any of the following cases:
 - Upon expiry of the contract term unless this term is renewed by the agreement of the contracting parties;
 - According with the terms of the contract;
 - By mutual agreement of the contracting parties before the end of the contract term;
 - By court order

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW



ASSETS DEVOLUTION:

In case of termination and unless otherwise agreed, the assets of the old Agent shall be transferred to the Principal or the new Agent at fair value as long as the following conditions are met:

- The assets including commodities, goods, materials, spare parts, machinery and else must be subject to the Commercial Agency contract;
- The assets must be agreed upon and in the possession of the old Agent at the time of expiration of the Commercial Agency contract and there must be no restriction on the transfer of their ownership.

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW

BRINGING GOODS AND SERVICES INTO THE STATE DURING THE PERIOD OF DISPUTE

- Goods or services may, subject to the approval of the Ministry be brought into the State from exclusive sources, provided that the Principal is liable throughout this period towards the old Agent for compensation;
- The Ministry shall, by a ministerial decision, organize the terms and conditions for admission for the aforementioned temporary period.

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW

PROCEDURE FOR TERMINATION

The party wishing to terminate the Commercial Agency Contract based on the terms and conditions of the contract shall:

- Send a notice to the other party of their wish to terminate the contract, provided that the notice period is not less than one year prior the date set for the termination or prior to the lapse of one half of the contract term, whichever is less, unless the two parties agree otherwise and...
- Either party may submit a detailed report prepared by a specialized professional body on the settlements of dues, guarantees of non-interruption of after-sales services from the markets of the State, estimation of assets and expected damages and other details.

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW

PROCEDURE FOR TERMINATION

- The party non accepting the termination of the contract may resort to the Committee to challenge the request for termination;
- Either party may provide the Committee with the report prepared by the professional body;
- The Committee shall decide on the challenge request within a period of 120 days from the date of recording it, provided that the lapse of the aforementioned period without a decision having been issued is deemed a rejection of the challenge.

4. TERMINATION

TERMINATION OF AGENCY – NEW AGENCY LAW

CLAIM FOR COMPENSATION

- Unless an express agreement, the Agent may claim from the Principal compensation for the damage they have incurred as a result of the expiration of the contract.
- If the termination causes harm to either party thereto, the affected party may claim compensation for the damages they have incurred, and the Agent shall be entitled to compensation, if it proves that their legitimate activity has contributed to the achievement of visible and significant success of the products of the Principal and has led to the promotion of such products or the increase in the number of customers and that the termination of the contract has led to depriving the Agent of their lost profit regarding this success.

4. TERMINATION

Old Commercial Agency Law

The Commercial Agency Committee (Committee) had exclusive competence to determine any disputes between the Parties; the decision of the Committee may be appealed before the competent court within 30 days from the date of notification of the decision of the committee, otherwise the decision of the Committee shall be deemed final and unappealable.

New Commercial Agency Law

The Committee is still responsible for hearing disputes between the Parties at the first instance but the Parties are then free to refer any dispute that may arise to arbitration. If the Agent or the Principal resorts to arbitration after the issuance of the Committee's decision within 60 days after the notification, the decision issued by the Committee shall neither have any effect or give rise to any consequences.

5. EFFECTS ON EXISTING AGENCIES



5. EFFECTS ON EXISTING AGENCIES

WHAT WILL HAPPEN TO COMMERCIAL AGENCIES REGISTERED BEFORE THE ISSUANCE OF THE NEW LAW?

- Provisions of termination of art. 9,1, a and b (expire of the contract term and will of the Principal or Agent based on contracts T&C) will not apply to contract in force at the time of issuance, except after the lapse of **two years** from the date of its entry into force;



EXCEPTION:

termination **after 10 years from the date of its entry into force** if the Commercial Agencies has been registered with the same Agent for more than 10 years or in the event that the Commercial Agencies in which the volume of the Agent's investment exceeds AED 100 million.

Q&A

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