

Turning the clock back on principals' rights?



By Takamasa Makita

Commercial agents in the United Arab Emirates (UAE) enjoy protection from termination and are entitled to compensation under the legislation governing this area of law, as defined by the Federal Decree No. 18 of 1981 and as amended by Decree No. 14 of 1988 (Commercial Agency Law). To qualify for protection, agreements between agents and their principals must be registered in the Commercial Agents Register at the Ministry of Economy (Commercial Agents Register). The Commercial Agency Law provides that only registered agents may carry out commercial agency activity within the UAE, and that only exclusive agreements between foreign principals and UAE nationals are registrable.

The situation shifted somewhat in 2006 with Decree No. 13 of that year, which allowed principals to exercise termination rights under agreements with agents and apply to the Registrar to de-register the agreement from the Commercial Agents Register without the consent of the agent or a court order, thus enabling principals to freely appoint another agent.

However, actions were subsequently brought against the Ministry of Economy by disgruntled agents, and the Registrar has since refused to de-register agreements at a principal's request, meaning in effect that a court order is now required if the agent does not consent to the de-registering of an agreement.

It appears that the position of agents may be strengthened officially in the near future, with reports surfacing that at the end of 2009 the Minister of Economy, Sultan Al Mansouri, approved changes to the Commercial Agency Law. These changes provide that a new agency may only be registered if the previous

agreement between a principal and agent is terminated by mutual agreement, has expired without renewal, or is terminated with a 'justifiable cause'. UAE courts have previously interpreted 'justifiable cause' as meaning gross negligence or dealings with competing products or services by the agent, as well as breaking conditions of the agreement or failing to meet sales targets. It is anticipated that these proposed changes will have the effect of following the current practice adopted by the Registrar and the Ministry, and thus afford protection to the agent in their arrangements.

The term 'agent' applies to distributors and franchisees, so all forms of agreements for sale through third parties are likely

to be caught by the proposed changes. Accordingly, before making any commitments regarding an arrangement with a prospective agent, principals should consider whether such an agreement is the best way of achieving its business objectives, and seek legal advice in the UAE. The principal should particularly consider:

- (i) whether the agreement should be exclusive;
- (ii) whether the terms relating to termination are clear and definite;
- (iii) ensuring that the agency agreement is for a fixed term and that it is not automatically renewed, in order that it naturally terminates at a given time; and
- (iv) the enforceability of the agreement.

And, of course, care should also be taken in the choice of the agent.

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