

The New UAE Commercial Agencies Law

February 9, 2023

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The longstanding UAE Commercial Agency Law (Federal Law No. 18 of 1981 Regulating Commercial Agencies, as amended) (the “**Current Law**”) is set to be replaced by the newly issued UAE Commercial Agency Law (Federal Law No. 3 of 2022 Regulating Commercial Agencies) (the “**New Law**”) which is due to come into force in June 2023.

The New Law brings about several material changes to the Current Law that go some way to re-balancing the relationship between a principal and its commercial agent. That said, these changes do not automatically apply to existing agency agreements, given the timeframes for the application of the New Law to the same- as more particularly set out in this client alert.

The following is a non-exhaustive list of certain key changes implemented under the New Law. Accordingly, we note as follows:

Parties acting as Agents Article 2(2) of the New Law, provides that the UAE Cabinet may (based on a recommendation of the UAE Minister of Economy) allow any international company (presumably with a corporate presence in the UAE) to practice the business of commercial agency for its own products in the UAE provided that: (i) they do not have a commercial agent within the UAE; and (ii) the agency is new and not previously registered in the UAE. This is marked change from the Old Law which limited the conduct of commercial agency activities to UAE nationals or corporate entities wholly owned by UAE nationals.

In addition, Article 2(3) of the New Law provides that UAE public joint stock companies with at least 51% of its shareholding held by UAE nationals may engage in commercial agency activities.

Expiry and Termination

Under the Old Law, principals had limited rights to end an agency relationship without a 'fundamental reason' (a term that was not defined under the Old Law) to do so. In practice this led to circumstances under which (for example) an agency agreement could not simply be terminated where its term had expired.

Under Article 9 of the New Law, an agency agreement will (subject to the exceptions set out below) end where: (i) the agreement expires and either party (or both) does not wish to renew it; or (ii) a party exercises a right to terminate the agreement pursuant to its terms e.g. termination for breach.

Article 9(2) of the New Law deals specifically with how any products held by an agent (at termination) are to be dealt with in terms of transfer and pricing.

Importantly, Article 30(1) of the New Law provides that the provisions of Articles 9(1)(a) and (b) shall not apply to commercial agency agreements that are in force (noting comments on Article 30(2) below) as of the issuance of the New Law and shall only apply after two years following the date on which the New Law comes into force i.e. June 2025.

In addition, Article 30(2) of the New Law states that those commercial agencies that have been registered with the same agency for ten years or more or where the agent's investment in the agency exceeds AED 100m (such value to be determined by standards to be issued), shall not be subjected to the New Law for a period of ten years following the date on which the New Law comes into force i.e., June 2033.

Contract Term

Article 6 of the New Law provides that where the agent establishes a sales centre or maintenance and repair facilities in support of the principal's products, the contract shall be five years unless otherwise mutually agreed. It is unclear if the five year term will be a minimum requirement in such circumstances.

Notice of Termination

Under Article 10 of the New Law, a party wishing to terminate an agency agreement must adhere to strict notice periods when exercising their right to terminate. Again this will be subject to the provisions of Articles 30(1) and 30(2).

Compensation for Termination

Article 11 of the New Law specifies circumstances under which the agent or the agent and principal may claim compensation at termination, firstly the agent may claim if the agreement is terminated prior to its term expiring or, secondly the agent or the principal may claim where the agreement terminates for cause.

Period of Dispute	During a dispute, under Article 9 of the New Law, the principal may continue bringing goods into the UAE temporarily pursuant to the Ministry of Economy's approval and provided that the principal remains liable to the agent for any compensation due to them in respect of the sale of such goods. It is not clear whether during such dispute, the principal will be free to register a new agent.
Arbitration	Under the Old Law, the UAE Courts (subject to the Commercial Agencies Committee) had exclusive jurisdiction over disputes and any agreement to the contrary was void, the New Law permits the contracting parties to determine any dispute to arbitration, albeit it is unclear if any dispute would first need to be dealt with under the Commercial Agencies Committee (Articles 23 and 24 of the New Law).

Whilst the changes brought about under the New Law do give rise to a significant modernisation of the laws governing the appointment of agents in the UAE, particularly the market for new entrants into the UAE wishing to appoint agents post issuance of the New Law, the existence of Article 30(2) means that for the majority of significant longstanding agency relationships in the UAE (which covers a significant number of important economic sectors) it is very much a case of maintaining the status quo.

Going forward, we await publication of the New Law's Executive Regulations which will likely clarify several points. Consequently, once published, we will report on the impact of the same.