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COMMERCIAL AGENCIES IN THE KINGDOM OF BAHRAIN

Reem Al Rayes, December 2, 2012

Bahrain attracts an increasing number of foreign investors and its economy is ranked the freest in the Middle East and North Africa (MENA) region by the 2012 Index of Economic Freedom published by the Wall Street Journal and the Heritage Foundation.

Establishing a business presence in Bahrain is generally straightforward. Foreign investors can own up to 100% of the business in all sectors, with a few exceptions reserved for nationals of Gulf Corporation Council (GCC) countries or Bahrainis. The Bilateral Investment Treaty (BIT) and the Free Trade Agreement (FTA) with the U.S.A., guaranteeing national treatment for U.S. investments, has attracted an ever increasing number of American investors to Bahrain. American investors interested in selling goods and/or services in Bahrain are not required to appoint a commercial agent although many opt to do so anyway. A commercial agency arrangement enables foreign investors to penetrate the market without having to establish a direct presence in Bahrain. This paper highlights some of the legal issues that foreign investors, who wish to appoint a commercial agent in Bahrain, or wish to amend their existing commercial agency arrangement, should consider.

The law governing the agency relationship between the Bahrain agent and foreign principal is the Commercial Agencies Law promulgated by Legislative Decree No. 10 of 1992 as amended by Legislative Decree No. 8 of 1998 and Legislative Decree No. 49 of 2002 (the '**Agency Law**') and its Implementing Regulations, Ministerial Order No. 2 of 1993.

The Bahrain Commercial Agent

Under the Agency Law, commercial agents must be Bahraini individuals or Bahraini companies with at least 51% Bahraini ownership. Appointing an agent requires great care. Due diligence, including legal due diligence, should be carried out.

If the commercial agent is a natural person he/she must:

- i. be a Bahraini national;
- ii. not have been convicted of a felony relating to honor or integrity or any economic crime unless he/she has been reinstated; and
- iii. not have been adjudged bankrupt unless he/she has been reinstated.



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If the commercial agent is a corporation it must:

- (a) be validly incorporated and registered in accordance with the applicable laws, rules and regulations in the Kingdom of Bahrain;
- (b) be licensed to carry out of all or some of the business activities under the Agency Law and the activities covered by the agency agreement;
- (c) be a majority-owned Bahraini company (no less than 51%);
- (d) have its main office address in the Kingdom of Bahrain; and
- (e) hold a valid commercial registration with no pending violations.

The Agency Agreement

The Bahrain commercial agent must register any agency agreement with the Commercial Agencies Register, the Directorate of Company Affairs at the Ministry of Industry and Commerce (the '**MOIC**'). The agent is required to renew the registration within two months from the end of every two years. Any unregistered agency agreement shall not be governed by the Agency Law.

The agency agreement must be written and must include, without limitation, the names and nationalities of the parties, the goods and/or services covered by the agency agreement, the term of the agreement, the respective rights and obligations of the parties, termination procedure, and any special terms and conditions agreed upon by the parties.

It is worth noting that agency agreements are not necessarily exclusive. A principal is free to appoint multiple agents for the same goods and/or services in Bahrain. If the agency is exclusive this must be made clear in agency agreement and confirmed to the Commercial Agencies Register.

There is no formula for calculating compensation in the event of the termination or non-renewal of the agency agreement. It is good practice therefore to expressly agree in the agency agreement the compensation amount, or the basis for the calculation of compensation, in order to avoid a future disagreement or dispute. This should be carefully drafted to ensure it is enforceable, as the courts will not necessarily enforce the compensation provision and award the full amount agreed between the parties.

Generally, the agent may claim compensation if an agency agreement entered into for a fixed term is terminated before the expiry of the term where the termination was not the result of any breach or default by the agent. If the agent terminates the agency agreement before its expiry the principal may claim compensation for damages



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incurred. It is worth noting that the agent may, under limited circumstances, claim compensation if an agency agreement that has expired is not renewed by the principal without good reason irrespective of any agreement otherwise.

An agency agreement entered into for an indefinite term may be terminated either by the mutual agreement of the parties, or by either party, by making an application to a special committee appointed by the Minister of Commerce. The party prejudiced by the termination may claim compensation for damages incurred.

The agency agreement should be drafted carefully to ensure that it is in the best interests of a party and that it complies with the provisions of the Agency Law.

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