



Some Key Considerations for Businesses Wishing to Appoint a Commercial Agent in Bahrain

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Franchising, sole distributorships and commercial agencies are the common choices considered by foreign companies wishing to conduct business in the Kingdom of Bahrain without having a direct legal presence in the country. Whether a pure commercial agency relationship (where the agent contracts on the foreign principal's behalf and earns a commission on its sales) or, alternatively, a distribution relationship (where the distributor acquires the products from the foreign principal and sells them in its own name) is more appropriate will need to be carefully considered on a case-by-case basis. This Article aims to discuss some of the key legal considerations to be aware of when using a commercial agent in Bahrain.

1. Commercial agencies are governed by the Commercial Agency Law and must be registered in the Commercial Agencies Register at the MOIC

A commercial agency relationship between a foreign principal and its local agent in Bahrain is governed by the Law No. 10 of 1992 on Commercial Agency, as amended, (**the Commercial Agency Law**) as well as the general agency provisions in the Law of Commerce No. 7 of 1997, as amended, and the Civil Code No. 19 of 2001.

Under the Commercial Agency Law, only Bahraini nationals (or companies with a majority of at least 51% Bahraini national shareholding) can act as commercial agents.

The commercial agent must register the commercial agency in the Commercial Agencies Register at the Ministry of Industry and Commerce (**MOIC**). Any amendment, renewal or cancellation of the commercial agency must also be registered. The application for the registration of a new commercial agency or the amendment, renewal, or cancellation of a commercial agency is made online through the MOIC's Commercial Registration Portal.

Registration is for a term of two (2) years and, if the registration is not renewed within 2 months of the expiry of the registration, the agency will be automatically cancelled. It is worth highlighting here, the commercial agent is normally able to renew registration without a requirement of a written renewal agreement or written approval of the principal or other document or information from the principal. Therefore, a well drafted commercial agency agreement must have clear and effective terms and conditions for renewal.

2. The Commercial Agency Law is protective of registered Bahraini Agents

The Commercial Agency Law prescribes a number of significant statutory protections to the agent that may override the terms of the written agreement between the parties.

Unlike commercial agencies, Bahrain does not have specific legislation for distribution or franchise arrangements. To ensure a distribution or franchise agreement is not captured by the provisions of the Commercial Agency Law, it is important to ensure that the contract is drafted in clear terms consistent with the nature of the contract and the provisions of the laws of Bahrain.

3. Registered agencies may be exclusive or non-exclusive

Agency agreements are not exclusive by default and a principal may appoint multiple agents in Bahrain for the same product. If an exclusive commercial agency is intended it must be expressly agreed. The registration details of the commercial agency in the Commercial Agencies Register will specify if the agency is exclusive or non-exclusive.

4. It is often difficult for a foreign principal to terminate a registered commercial agency and, in certain circumstances, compensation may be payable by the principal to the commercial agent, even upon the expiry of a fixed-term agency agreement

Article (8)(a) of the Commercial Agency Law provides that a fixed-term commercial agency may be terminated upon the expiry of its term, unless the term is renewed by the mutual agreement of the parties. Notwithstanding the expiry of a fixed-term commercial agency agreement, Article (8) goes on to provide under its paragraph (d) that the agent will be entitled to claim compensation for damages suffered as a result of the expiry of the agreement and non-renewal by the principal if the agent can prove that its activities succeeded to achieve the promotion of the principal's product or the increase of its customers in Bahrain and the principal's refusal to renew deprived the agent from profiting from that success. The parties cannot agree to the contrary.

A fixed-term registered commercial agency agreement may be terminated before the expiry of its term by the mutual agreement of the parties. A principal is unable to terminate the commercial agency agreement before its expiry, except by court order or pursuant to the provisions of the Commercial Agency Law and the terms and conditions agreed in the commercial agency agreement (i.e., exercising contractually agreed termination rights). Based on judiciary precedent, the bar to satisfy reason for lawful termination is high.

Either party may claim compensation for the damages suffered as a result of termination.

There is no statutory formula for calculating compensation and the court will exercise discretion taking into consideration the circumstances of the case, including, without limitation, the duration of the commercial agency, the capital investment by the agent, the agent's contribution to the principal's success, the losses suffered as a direct and natural consequence, including loss of anticipated future profits, etc. It is therefore advisable to agree in the commercial agency agreement a formula or basis for the calculation of compensation and a limit on the types of losses and/ or the compensation amount that may be claimed. This must be carefully drafted by legal counsel in Bahrain to ensure validity and enforceability.

5. Parties are free to agree the governing law and the jurisdiction to resolve agency disputes, including through arbitration

In accordance with the Law No. 6 of 2015 on Conflict of Laws in Civil and Commercial Matters with a Foreign Element Law (the **Law on Conflict of Laws**), Articles (4), (5) and (21), a commercial agency contract shall be subject to the law of the domicile of the agent, unless otherwise agreed by the parties, or the circumstances show that they had intended another law to be applied. Parties are also free to agree their preferred dispute resolution forum and may agree to refer disputes to the jurisdiction of the courts in Bahrain or another country or, alternatively, the parties may agree to have their disputes resolved by arbitration.

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