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I. INTRODUCTION

This article examines the agency laws of Algeria, Egypt, Iraq, Jordan, Kuwait, Saudi Arabia and the United Arab Emirates. These countries were chosen because they are representative of the different legal approaches to the regulation of agents in the Middle East. For example, Algeria and Iraq, which have state controlled economies, severely restrict the use of agents.\(^1\) Egypt has significantly relaxed state controls on its economy during the last decade and, in general permits the use of agents while retaining a few restrictions on their use in the sale of certain commodities.\(^2\) Saudi Arabia's free enterprise economy is dominated by public sector procurements, and requires the use of local agents for all government purchases except armaments.\(^3\)

The term "agent," as used in the Middle East, encompasses a tender agent who lobbies on behalf of his principal to obtain a particular contract in return for a commission or fee, and a distributor, who purchases goods from his supplier for resale in his territory. Foreign companies doing business in the Middle East will find, in general, that a properly chosen agent will be a key factor in achieving success in that region. Not only are agents essential in most Middle East countries to promoting the sale of their principal's products, but they also perform a multiplicity of other functions for their principals, ranging from the procurement of visas and customs clearances to providing support and assistance in contract negotiations and local government relations.

Agents, needless to say, must be chosen with great care. Many

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1 See infra notes 4-32, 65-85 and accompanying text.

2 See infra notes 35-63 and accompanying text.

3 See infra notes 204-248 and accompanying text.
foreign companies have, unfortunately, had unsuccessful relationships with their local agents because of a poor understanding of expectations and the capabilities of both parties. Litigation is often not a viable solution for disputes because practically speaking, the foreign principal may have to litigate in the courts of the agent's country. The logistical problems involved in prosecuting a case in a foreign country make this difficult and time consuming. Furthermore, the business communities in many of the Middle Eastern countries are tight knit and the political damage from a protracted dispute with the local agent can have long term adverse affects on the foreign businessman's reputation.

As an aid to those who conduct business in countries of the Arabian Peninsula and North Africa, this article provides an overview of the salient characteristics of agency laws and principal/agent relationships. For each country, the general policies regarding agency law is described and practical guidelines for the use of agents is presented.

II. ALGERIA

One of the most sweeping laws against the use of intermediaries exists in Algeria. The proscription includes tender agents, distributors and marketing representatives, whether located inside or outside of Algeria. This law has created a state monopoly on foreign trade by reserving the import and export of goods and services exclusively for state enterprises. Although agents have effectively been banned from participating in Algerian government contracts since 1968, the newest law criminalizes violations and rationalizes all prior laws and regulations.

A. Intermediary Defined

The use of intermediaries, directly or indirectly, is expressly prohibited. An intermediary is defined as:

... any individual or legal entity who, in connection with the preparation, the negotiation, the conclusion or the performance of an order or a contract, receives or attempts to receive, directly or indirectly, a remuneration or an advantage, of any kind whatsoever, in exchange for an inter-

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4 Law No. 78-02 of February 11, 1978 (Algeria). In contrast to the situation in Algeria, in Kuwait or the United Arab Emirates agents who are not nationals or residents of those countries and who undertake agency activities outside of them are not subject to their respective agency laws.

5 Id. art. 1.


7 Law No. 78-02, supra note 4, art. 9.
vention, of any kind and in whatever form, tending to favor the conclusion of an order or contract to the benefit of the non-Algerian party which is paying.  

Upon enactment of the law, all Algerian privately held import/export companies were automatically dissolved, leaving only state enterprises to act as commercial representatives for foreign firms. By decree, each state enterprise is exclusively responsible for the importation of a specific category of goods and services. Further, the government is responsible for approval of an annual program for import and export activities to be carried out by each such enterprise.

**B. Prohibited Activities**

Prohibited activities include any intervention on behalf of the foreign principal with any state enterprises, any attempt by an Algerian to persuade his foreign principal that he can influence a state enterprise, and the obtaining or attempt to obtain confidential information to influence the award of the contract to the principal from the state enterprise. Algerian nationals, no matter where they reside, cannot participate in Algerian commercial transactions, except pursuant to their recognized professional activity. A foreign company accordingly cannot use a non-Algerian company as its Algerian distributor if it is owned wholly or in part by Algerians. Foreigners who have relatives in the state enterprise are also precluded from participating in commercial transactions with that state enterprise.

All contracts between state enterprises and foreign suppliers must contain a prohibition against the use of intermediaries. Otherwise the

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8 *Id.* art. 10.  
9 *Id.* arts. 15, 18.  
10 *Id.* arts. 4, 5.  
11 *Id.* art. 7.  
12 A state enterprise is defined as, "... any public organization of a national character and, generally speaking, any socialist enterprise at the national level, including public offices and establishments of an industrial and commercial nature or of an administrative nature." Law No. 78-02, *supra* note 4, art. 3.  
13 *Id.* art. 10.  
14 *Id.* art. 11.  
15 *Id.* art. 17.  
16 The exclusion of intermediaries clause reads:  
Algerian law expressly prohibits the recourse to intermediaries. The intervention of an intermediary and the recourse to any intermediary are expressly prohibited by law, in particular by the provisions of Law Number 78-02 of February 11, 1978 regarding the State monopoly on foreign trade, and are subject to the penalties set forth in Articles 128, 242, 243 and 423 of the Penal Code.  
*Id.* art. 12.
contract may be considered null and void.\textsuperscript{17} Companies and individuals, wherever located, are banned from profit-sharing or exclusive dealing agreements of any nature relating to a foreign company's business with Algeria.\textsuperscript{18}

Foreign suppliers can retain individuals to assist them in the preparation, negotiation, and performance stages of a contract.\textsuperscript{19} These individuals must, however, fall within recognized professions, such as lawyers or technical consultants.\textsuperscript{20} The statute recognizes that suppliers may use "professionals" as agents in disguise and expressly prohibits such attempts.\textsuperscript{21} For example, the payment of a consultant's fee that significantly exceeds the customary consultant fee, tends to indicate the use of a disguised agent. Thus, consultants' compensation must be proportionate to the services rendered.\textsuperscript{22}

C. Selling Directly from Abroad

Foreign companies in Algeria exclusively working for the Algerian government may sell directly to Algeria without having to deal through the state enterprises, as long as they establish an Algerian office managed by a salaried executive of the same nationality as the parent company.\textsuperscript{23} For example, only American nationals could manage an American company's Algerian office. Algerians are expressly excluded from acting in this capacity regardless of the parent company's nationality.\textsuperscript{24} Further, the foreign company can open an Algerian office only with the Ministry of Commerce's authorization.\textsuperscript{25}

Foreign companies can import goods into Algeria pursuant to a contract with a state enterprise.\textsuperscript{26} Under this rule, a foreign company with a contract to construct a power plant in Algeria may import the necessary equipment and materials for that plant. Similarly, an exception allows Algerian private companies to import products into Algeria, but only if the government has not designated an importing agency for the particular products, and if the importing firm transforms or processes the goods.\textsuperscript{27}

\textsuperscript{17} Id. arts. 12, 13.
\textsuperscript{18} Id. art. 16.
\textsuperscript{19} Id. art. 17.
\textsuperscript{20} Id. arts. 12, 21.
\textsuperscript{21} Id. art. 21.
\textsuperscript{22} Id.
\textsuperscript{23} Id. art. 20.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id. art. 22.
\textsuperscript{27} Id.
D. Penalties

Violators of Algerian Law 78-02 are subject to criminal and civil penalties.\textsuperscript{28} For purposes of determining the applicable criminal penalty, violators are classified into five categories: individuals forming a private company whose primary or secondary purpose is to participate in foreign trade; individuals who perform intermediary functions while claiming to fit within the exception for recognized licensed professionals; Algerians residing outside Algeria acting as intermediaries, either in their individual capacity or through companies they own in whole or in part and whose activities relate to foreign trade with Algeria; Algerian nationals acting on behalf of private interests who claim they have the capacity to exercise influence on Algeria's foreign trade; and, all other violators including Algerian government employees and their accomplices.\textsuperscript{29}

The criminal penalties consist of fines ranging from 500 to 50,000 Algerian dinars and prison terms lasting from five months to ten years.\textsuperscript{30} Any illicit payments to intermediaries are automatically seized.\textsuperscript{31} In the event the payments cannot be seized, the violator must pay a penalty equal to the payment plus interest from the time of its receipt until its collection by the Algerian authorities.\textsuperscript{32}

III. EGYPT

During the last decade, Egypt has relaxed most of the restrictions governing the use of agents.\textsuperscript{33} This development follows Egypt's "Open Door Policy" and is designed to encourage private enterprise.\textsuperscript{34}

A. Agency Qualifications

Law No. 93 of 1974 gave Egyptian nationals the right to represent foreign companies in Egypt subject to certain requirements.\textsuperscript{35} Egyptian nationals must have Egyptian fathers, and must have resided in Egypt for five years prior to their application to register as an agent in the Commercial Registry.\textsuperscript{36} Companies may also act as agents if they com-

\textsuperscript{28} Id. arts. 25, 27.
\textsuperscript{29} Id. arts. 24, 25.
\textsuperscript{31} Law No. 78-02, supra note 4, art. 27.
\textsuperscript{32} Id.
\textsuperscript{33} Checklist of Agency Regulations, MIDDLE EAST EXECUTIVE REPORTS, January 1981, at 5, 6.
\textsuperscript{34} Id.
\textsuperscript{35} Law No. 93 of 1974 (Egypt). Between 1961 and 1974, agency activities were the exclusive monopoly of the public sector trading companies.
\textsuperscript{36} Presidential Decree No. 1906 of 1974, art. 1(B)(1), (2)(Egypt).
ply with certain preconditions. For example, the company’s principal office must be in Egypt and the Company must be 51% Egyptian owned. All directors and managers of joint stock companies, partnerships limited by shares, and limited liability companies must be Egyptian. Also, all managers of partnerships and limited partnerships must be Egyptian. In each case, the company’s by-laws must allow for the performance of agency activities.

Agents must be experienced in the agency’s field of activity as a prerequisite to registration. A certificate from the Egyptian Chamber of Commerce or the relevant professional syndicate can be used to substantiate this experience. Individuals must not have worked for the Egyptian Government for at least two years prior to registering as an agent. Also, persons who are related in the first degree of consanguinity and senior government officials are barred from acting as agents. These requirements apply to commission agents but probably not to distributors who import and resell in their own name.

B. Registration

Agents acting on behalf of foreign principals must register in the Commercial Register in the local governorate or town where their head office and branch offices are located. The foreign principal is normally free of any legal sanctions for the agent’s failure to register unless the principal knowingly engaged an agent who would not register. The foreign principal could, however, be damaged commercially if his agent were prosecuted for failing to register.

A trade agent must obtain a license from the Chamber of Commerce along with the commercial registration. Any changes or modification in the data contained in the commercial registration must be filed within one month of the change. In addition, registrations must be renewed every five years. The Commercial Register can serve as a

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37 Id. art. 1(B)(1), (2).
38 Id. art. 1(B)(3).
39 Id.
40 Id. art. 1(B)(4).
41 Id. art. 1(A)(3).
42 Id.
43 Id. art. 1(A)(5).
44 Id. art. 1(A)(7).
45 Law No. 34 of 1976, arts. 1, 2 (Egypt).
46 Id. art. 3.
47 Id.
48 Id. art. 6.
49 Id. art. 9.
useful tool to the foreign principal because judicial actions, bankruptcy judgments, attachments, criminal judgments and similar decrees are recorded therein. Any party may obtain the extract of the agency registration from the Commercial Register.

Acceptance of the application at the Commercial Register is conditional upon the agent obtaining an agency agreement either with the foreign manufacturer or the first tier distributor for the foreign manufacturer. In addition, the foreign principal cannot appoint a private sector agent if it already has a government agent.

C. Allowable Activities

The importation of most commodities, subject to the Egyptian Government’s budget requirements, is allowed by both private and public companies. Nonetheless, the importation of certain essential commodities such as oil, coal, and defense equipment is limited to the public importing companies. Government customers are forbidden to accept offers from foreign companies unless the offer was presented through a public sector company or private Egyptian agent duly registered in the Commercial Register. This prohibition, however, does not apply to the importation of strategic materials for military production as defined by the Minister of Military Production. Another restriction applies to certain mechanical and electrical goods, such as air conditioners, refrigerators, and agricultural machinery that cannot be imported into Egypt unless the Egyptian agency has a service center in Egypt for servicing these goods.

D. Exclusivity and Commissions

Private agents must be exclusive for the products covered by their agency. An agent’s exclusivity can, however, be limited to a certain

50 Id. art. 7.
51 Id. art. 12.
52 Id. art. 2.
53 Id.
54 Decision of the Minister of Trade, No. 1336/1975, art. 1, implementing Executive Regulation of Law No. 118 or 1975 (Egypt).
55 Id. art. 3.
56 Id. art. 4. See also Ministerial Decree No. 733 of 1975 and No. 947 of 1976 (Egypt). U.S. companies are exempted from using an agent on U.S. AID financed contracts. U.S. companies may, however, be required to use an agent for post award procurement under AID’s Commodity Export Program. Checklist of Agency Regulations, supra note 33.
57 Decision of the Minister of Trade, supra note 54, art. 11.
58 Ministerial Decree No. 633 of 1977 (Egypt).
59 Decision of the Minister of Trade, supra note 54.
territory within Egypt or by a particular product as long as these are well defined. An agent is often required to obtain a statement from his foreign principal that he is the exclusive agent for the particular product covered by the agency agreement in order to register at the Commercial Register.

Egyptian law does not specify any commission ceilings. Commissions paid to agents normally vary from two percent to five percent.

IV. IRAQ

Iraq has curtailed the use of agents in commercial transactions, although not to the extent of the restrictions currently in force in Algeria.

A. Agency Defined

An agency is defined by Law No. 208 of 1969 as:

every commercial activity carried out in Iraq by a person as agent to a foreign natural or juridical person or establishment, whether it be a commercial agency, on a commission basis, commercial representation or brokerage and all other agencies mentioned in the Code of Commerce and the Commercial Companies Law.

B. Prohibited Activities

Because Iraq follows a policy of strict state control over the economy, it is not surprising that the use of agents in Iraq is substantially restricted. Agents, or agents disguising themselves as engineering, technical, export or commercial counselors, generally are prohibited from participating in contracts with government or quasi-government customers. All government purchasers must deal directly with the foreign supplier or its duly registered Iraqi branches, or through the foreign or Iraqi commercial attaches. Only in cases of absolute necessity are state organizations allowed to deal through an intermediary.

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60 Id.
61 Id.
62 Id.
63 Burton, Marketing in Egypt, OVERSEAS BUSINESS REPORTS, September 1978, at 45.
64 See supra notes 4-32, 66-85 and accompanying text.
65 Law No. 208 of 1969 (Iraq).
67 Instruction No. 1 for Law No. 8, art. 16 (Iraq).
68 Id.
69 Id. art. 17.
State organizations are also forbidden to deal with intermediaries who are former employees. The prohibition against agents, however, does not apply to government entities acting as agents such as the Iraq State Trading Company.

C. Agency Qualifications

Agents must either be Iraqi nationals or nationals of another Arab country having reciprocity with Iraq. Either individuals or companies can act as agents as long as they are Iraqi residents. Agency commissions must be paid to the agent through a licensed Iraqi bank, but, as in Egypt, the size of the agent's commission is not regulated by law.

Any firm using an agent for its transactions with the State of Iraq, must inform the Directorate General of Trade Supervision of the name of the agent. All state organizations must report any violations of the ban of agent participation in government contracts to the Directorate General of Trade Supervision, who submits a recommendation on how to handle the matter to the Ministry of Trade.

D. Registration

Any agent in Iraq who conducts intermediary services for public contracts must register with the Directorate General of Trade Supervision. To register, the agent must submit with his application authorization from the foreign principal, details of the agency’s products or services, the rate of commission, the term of the agency agreement, and a guarantee by the principal to be liable for any damages caused by the agent while fulfilling his agency agreement. This guarantee is deemed an inseparable part of the agency contract. Thus, the principal should be especially careful in defining the agent's duties and authority under the agency contract.

Registration also requires an agent to procure a seven-point Israeli

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70 Id.
71 Id. art. 19.
72 Law No. 208, supra note 65, art. 2.
73 Id.
74 Id. art. 6.
75 Instruction No. 1 of 1977, art. 1 to Decision No. 171 of the Trade Regulation Council (Iraq).
76 Id. art. 4.
77 Id. art. 7.
78 Id. art. 8.
79 Id.
boycott certificate from his foreign principal.\textsuperscript{80} The certificate must contain the following assurances:

(a) We do not have a manufacturing branch in Israel;
(b) We do not have an assembly plant in Israel directed by us or on our behalf;
(c) We have no general agencies or central offices for the Middle East in Israel;
(d) We do not grant the right to use our name in Israel;
(e) We are not partners in any Israeli factories or companies;
(f) We do not advise or provide experts to Israeli companies.
(g) Our firm is neither boycotted by Arab countries nor has any relations in Israel.\textsuperscript{81}

E. Penalties

Penalties for violations of the agency laws in Iraq are severe. Foreign principals who use an agent on contracts with state organizations without the knowledge of the Iraqi authorities are blacklisted.\textsuperscript{82} Individual agents can be sentenced for up to a life term in prison.\textsuperscript{83} Corporate violators are fined not less than 10,000 Iraqi Dinars and are liquidated.\textsuperscript{84} Government employees who act as agents on government contracts are sentenced to death or life imprisonment.\textsuperscript{85}

V. JORDAN

Jordan’s approach to the use of agents is fairly liberal. As in many Arab countries with similarly liberal policies, agents are only subject to certain nationality and registration requirements.\textsuperscript{86} Like Saudi Arabia, Jordan only restricts the use of agents in armaments contracts.\textsuperscript{87}

A. Agency Defined

The Commercial Agents and Intermediaries Law of 1974 is the basic agency law in Jordan ("the 1974 Law").\textsuperscript{88} The 1974 Law includes in its definition of a commercial agent:

The commission agent or the agent who distributes to his own account, or

\begin{itemize}
  \item Law No. 8 of 1976 (Iraq).
  \item Id. See also Regulation No. 1 of 1976 (Iraq). American companies are prohibited from answering this questionnaire by the Export Administration Act, 50 U.S.C. § 2401 et seq. Iraqis are not known to waive the requirement for the boycott questionnaire.
  \item Id. art. 1.
  \item Id. art. 3.
  \item Id.
  \item Id. art. 4.
  \item See infra notes 91-95 and accompanying text.
  \item See infra notes 96-100, 209-210 and accompanying text.
  \item Law No. 20-74, Official Gazette No. 2488, May 1, 1974 (Jordan).
\end{itemize}
the agent who distributes to the account of a foreign company, or to the
account of a merchant whose head office is outside [Jordan] or any other
agent who carries on similar commercial dealings and transactions, in-
cluding a publicity or advertising agent.89

A commercial middleman is defined as:

... any person who carries on the profession of mediation with a view to
concluding or facilitating the inclusion of commercial dealings and trans-
actions and all that may arise therefrom, in return for a fee provided that
such a person is not an employee or a deputy of either one of the two
parties to such commercial dealings and transactions.90

B. Agency Qualifications

An individual agent must be a Jordanian national and resident, be
at least twenty years old, have a commercial office in Jordan, and be
duly registered at the Commercial Registry of the Ministry of National
Economy.91 Partnerships acting as agents must be Jordanian, with ma-
ajority Jordanian ownership, and have an office in Jordan.92 A corpora-
tion must also be Jordanian and a majority of its board of directors
must be Jordanian nationals.93 All agents, whether individuals, part-
nerships or corporations, must be members of either the Jordanian
Chamber of Commerce or the Jordanian Chamber of Industry.94 In
addition, an agent must have a direct relationship with his principal
that is subject to verification by the Minister of National Economy.95
This requirement appears to prohibit the use of sub-agents.

C. Arms and Ammunition Prohibitions

Agents are explicitly prohibited from participating in transactions
with the Jordanian Armed Forces that deal with arms, spare parts for
arms, or ammunition.96 The Prime Minister, in a September 15, 1979
statement, elaborated on the scope of the prohibition by referring to the
Law of Arms and Ammunition No. 34 of 1952 that defined “arms” as
including the firearms of every type.97 He went on to distinguish
“arms” from other military supplies, which would include cars and

89 Id. art. 2.
90 Id.
91 Id. art. 4.
92 Id.
93 Id.
94 Id.
95 Id. art. 8.
96 Provisional Law No. 23 of 1979 published 6th of Rajab 1399 H (June 1, 1979), art. 2
(Jordan).
97 Memo from Prime Minister to Minister of Trade and Industry, quoted in “Arms and Spare
Parts” Terms Clarified for Agency Law, MIDDLE EAST EXECUTIVE REPORTS, March 1980, at 6.
clothing. "Spare parts" for purposes of the prohibition against agents includes parts that can be used to make or repair firearms. The prohibition, according to the Prime Minister, should be narrowly construed to avoid its extension to supply contracts with the Armed Forces for nondestructive support material.

D. Registration

All domestic and foreign commercial agents, except for agents involved in the export of agricultural products, must register at the Registrar of Commercial Agents of the Ministry of National Economy. Similarly, commercial middlemen must register in the Commercial Middlemen Registry of the Ministry of National Economy. Applications for commercial agents must contain the agent's name, age, nationality and residence, and the name, head office, nationality, and place of residence of the principal. The agent must also provide a certified copy of the agency agreement (along with a certified translation if it is not in Arabic).

The Under Secretary of the Ministry of National Economy, on the advice of the Registrar, recommends whether to register the agency. If there are any changes in the agency relationship, agents must apply to the Registrar to amend the registration within two months of such a change. In so doing, the agent must affix his registration number to all correspondence and documents.

The agency registration will be cancelled if the agent violates the 1974 Law, if the application contained false statements, or if the agency agreement has expired or been terminated. Duly registered agents may, with the Government's approval, form a union and establish their own rules and regulations subject to approval by the Minister of National Economy. All agency registration materials are kept confidential and cannot be viewed without a court order.

98 Id.
99 Id.
100 Id.
101 Law No. 20-74, supra note 88, art. 5.
102 Id. art. 6.
103 Id. art. 5.
104 Id.
105 Id. art. 9.
106 Id. art. 10.
107 Id. art. 11.
108 Id. art. 15.
109 Id. art. 16.
110 Id. art. 17.
E. Obligations

Importers' correspondence with the government relating to commercial transactions and import licenses must disclose the agent's name and the agency registration number. According to law, contractors with the Jordanian Government must also disclose their agent's name and commission in their contracts. Despite this requirement, the government's own terms and conditions do not always require the contractor to disclose the agent's name and commission.

F. Commissions

In the event that commissions are paid outside Jordan, the agent must remit such commissions to Jordan through a duly licensed Jordanian bank or money changer. As stated above, contracts and correspondence must disclose the agent's name. Failure to comply with this requirement results in the commission being paid to the Public Treasury. The Minister of National Economy decides on the size of the commission for this purpose, but in any event, it is not less than one percent of the value of the goods.

G. Termination and Penalties

An agent may sue the principal for wrongful termination of the agency agreement and may recover his lost profits or any damages relating to the termination. These actions are under the court's jurisdiction in the location of the agent's place of business. Violations of the 1974 Law are punishable by a fine of not less than one hundred Jordanian Dinars.

H. Liabilities to Third Parties

The agent and his foreign principal can be jointly and severally liable to the Jordanian customer for breach of a sales contract. In a dispute between the principal and purchaser, the agent must intervene.

111 Id. art. 13.
112 Id. art. 13(d).
113 Id. art. 12.
114 Id. art. 13.
115 Id.
116 Id.
117 Id. art. 18.
118 Id. art. 20.
119 Id. art. 21.
120 Id. art. 19.
to resolve the dispute.\textsuperscript{121}

VI. KUWAIT

Kuwait has one of the most comprehensive laws governing the use of agents in the Middle East. Like the United Arab Emirates,\textsuperscript{122} Kuwait affords agents a high degree of protection against termination and non-renewal of agency agreements.\textsuperscript{123}

A. Agency Qualifications

Only Kuwaiti nationals or companies may conduct commercial agency activities in Kuwait.\textsuperscript{124} The Kuwaiti agent may also act as an agent for the foreign company's official local representative in Kuwait as long as this representative is not already marketing there.\textsuperscript{125} As in Jordan, the use of sub-agents is precluded in Kuwait because of the requirement that agents have a direct relationship with the foreign principal.\textsuperscript{126}

B. Registration

Agents must register in the Commercial Agent's Register of the Ministry of Commerce within two months after the agency appointment.\textsuperscript{127} The Ministry of Commerce is required to rule on the application within fifteen days of its receipt and issues the agent a registration certificate in the event of a favorable decision.\textsuperscript{128} In other cases the Ministry must notify the prospective agent of any refusal of the application and the reasons therefor.\textsuperscript{129} Applicants can appeal this decision to the President of the Court of First Instance within one month of notification of rejection.\textsuperscript{130}

\textsuperscript{121} Id.
\textsuperscript{122} See infra notes 249-293 and accompanying text.
\textsuperscript{123} See infra notes 156-165 and accompanying text.
\textsuperscript{124} Law No. 36 of 1964, art. 1 (Kuwait). See also Implementing Regulation of the Law Regulating Commercial Agencies. Foreign consultants such as doctors, lawyers, and engineers are exempt from the requirement of using a Kuwaiti agent or partner in order to do business in Kuwait. These professional activities are apparently exempt from this requirement found in Articles 26 and 27 of the Commercial Law because professional activities apparently do not constitute commercial acts. See Jones, Foreign Consultants Agent or Partner Required, MIDDLE EAST EXECUTIVE REPORTS, May 1979, at 7, 8.
\textsuperscript{125} Law No. 36 of 1964, supra note 124, art. 2.
\textsuperscript{126} Id.
\textsuperscript{127} Id. art. 3.
\textsuperscript{128} Id. art. 4.
\textsuperscript{129} Id. art. 5.
\textsuperscript{130} Id.
Anyone may obtain extracts from the Commercial Agent's Register.\textsuperscript{131} If no such registration exists, the Ministry can issue a certificate to this effect.\textsuperscript{132} Applications to delete a registration must be made by the agent or his heirs or successors within one month from the date of termination or expiration of the agency agreement.\textsuperscript{133}

C. Agency Definitions

Commercial Law No. 68 of 1980 governs the relationship between foreign principals and their Kuwaiti agents. Kuwaiti agents are classified into three categories: contract agency, commission agency, and distribution agency.\textsuperscript{134} A contract agency is defined as:

\ldots a contract whereby a person undertakes in a certain area of activity to continuously encourage and negotiate the conclusion of transactions for the benefit of his principal in consideration of a remuneration. His undertaking may include conclusion and execution of such transactions in the name of the principal and for his account. \ldots \textsuperscript{135}

A tender agent, who would assist a foreign manufacturer in obtaining an order in Kuwait in the foreigner's name in return for a commission based on the value of the order, fits in this category. A commission agency "is a contract under which the commission agent undertakes, in consideration of a remuneration, to carry out in his own name any legal act for the account of the principal."\textsuperscript{136}

Under a distribution agency, "a merchant undertakes to promote and distribute the products of an industrial or commercial firm in a certain territory provided that he shall be the sole distributor thereof. \ldots "\textsuperscript{137} The distribution agent typically purchases goods from the foreign principal in his own name for resale and earns a fee by way of a markup on the goods.

D. Management/Exclusivity of Contract and Distribution Agents

Contract and distribution agents must conduct their business independently of the foreign principal and bear the expenses connected

\textsuperscript{131} \textit{Id.} art. 6.
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} \textit{Id.} art. 8.
\textsuperscript{134} Commercial representatives who cannot be classified within the true sense of an agent, as that term is known in the Middle East, are also dealt with under Commercial Law No. 68. A commercial representative is defined as "[a]ny person who is entrusted by a merchant to carry out some of his business, whether at his place of business or elsewhere by means of an employment contract . . . ". Commercial Law No. 68 of 1980 (October 15, 1980), art. 297 (Kuwait).
\textsuperscript{135} \textit{Id.} art. 271.
\textsuperscript{136} \textit{Id.} art. 287.
\textsuperscript{137} \textit{Id.} art. 286.
with the agency. Principals are free to retain more than one contract agent in the same territory and for the same types of products. Agents, however, can not represent more than one firm in any given territory or commercial activity without the consent of the Ministry of Commerce and Industry. This provision is designed to avoid conflicts of interest, such as the representation by the agent of two or more bidders on the same project. In practice, however, distributors in Kuwait are allowed to represent manufacturers for overlapping product lines.

E. Agency Term

In general, no specific agency term is required. The agency agreement must specify the limitations on the agent's authority, his compensation, the scope of his activities, the term (if it is limited), and the products and trademarks covered by the agency. If the agent must establish a showroom, warehouse, or a maintenance or repair facility, the agreement must have at least a five-year term. This protects the agent who invests in facilities and equipment, from being terminated before having an opportunity to recoup his investment.

F. Fees

The agent's compensation is based on a percentage of the value of the contract obtained through the agent unless otherwise agreed. The agent is entitled to his fee for concluded transactions, and for transactions where failure to conclude is the principal's fault. The agent will also receive his fee if the principal negotiates a contract for the products covered by the agency without recourse to the agent or if the principal secures the business through other entities in Kuwait, even if the agent took no part in the sales effort. Regardless, the

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138 Articles 271 through 286 of Law No. 68 apply to contract agents. Distribution agents possessing an exclusive distributorship will be constructively deemed to be contract agents and are consequently subject to articles 275, 281-85. See Law No. 68, supra note 134, art. 286.
139 Id. art. 273.
140 Id.
141 Id.
143 Law No. 68, supra note 134, art. 274.
144 Id. art. 275.
145 Id. art. 277.
146 Id. art. 278.
147 Id.
parties may modify these rights by mutual agreement.\textsuperscript{148}

G. Miscellaneous

An agent cannot collect receivables from the principal’s accounts unless agreed to by contract.\textsuperscript{149} Without the principal’s prior permission the agent cannot offer his customers any grace period for delayed payments or discounts in the amount of outstanding debt.\textsuperscript{150} The agent may, however, receive complaints about contracts he helped secure and he has an affirmative duty to represent his Kuwaiti principal for all claims relating to such contracts.\textsuperscript{151}

The principal must furnish his agent with sufficient information and materials to enable him to promote the agency.\textsuperscript{152} Such materials usually include product specifications, technical data, brochures and samples.\textsuperscript{153} The agent, in turn, must protect the rights of his principal (including the obtaining of any pertinent trademark registrations), and must furnish him with market information.\textsuperscript{154} He may not disclose any proprietary information disclosed to him by the principal even after the agency agreement has been terminated.\textsuperscript{155}

H. Termination

Principals are not permitted to terminate an agency agreement unless the agent has breached the agreement.\textsuperscript{156} If the principal unjustifiably terminates the agency agreement, he will be liable to the agent for damages flowing from the termination, even if the agency agreement precludes such liability.\textsuperscript{157} The agent can also be liable to the principal for damages if he terminates the agency agreement without justifiable cause.\textsuperscript{158}

Principals may be liable to the agent for nonrenewal of the agency agreement despite an agreement to the contrary.\textsuperscript{159} In the event of wrongful nonrenewal, the Kuwaiti court decides the amount of compensation owing to the agent, taking into account the harm suffered by

\textsuperscript{148} Id.
\textsuperscript{149} Id. art. 276.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id. art. 279.
\textsuperscript{153} Id.
\textsuperscript{154} Id. art. 280.
\textsuperscript{155} Id.
\textsuperscript{156} Id. art. 281.
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id. art. 282.
the agent and the benefits realized by the principal through the agent’s efforts.\textsuperscript{160} To recover this compensation, the agent must demonstrate that he has not breached the agency agreement, and that he has successfully promoted the principal’s products.\textsuperscript{161}

Nonetheless, the principal is afforded some protection against claims by the agent for nonrenewal. For example, the agent must bring his claim within ninety days of the expiration of the agency agreement.\textsuperscript{162} Claims of any nature relating to the agency agreement are foreclosed after three years from termination of an agency agreement.\textsuperscript{163}

Principals and any replacement agents are held jointly responsible for termination of an original agency agreement if the principal and the new agent colluded to terminate the original agency agreement.\textsuperscript{164} Although jurisdiction in all these claims is exercised by the court in the agent’s territory,\textsuperscript{165} the practical effect of this provision is questionable in a country as small as Kuwait where the agent’s territory is likely to include the whole country.

I. Commission Agents

Commission agents are treated as a separate category under Law No. 68 and many of the rules applying to them under the Law do not apply to contract or distribution agents.

In the event of a dispute between the agent and principal, judges cannot estimate the amount of a commission agent’s remuneration.\textsuperscript{166} Therefore, if the commission agent sells at prices that differ from those determined by the principal, the principal must reject the transaction immediately after finding out about it or else be deemed to have accepted the agent’s prices.\textsuperscript{167} Furthermore, the principal cannot reject the transaction if the agent bears the price differential.\textsuperscript{168} If the agent concludes an agreement on terms more favorable than those specified by the principal, the agent must furnish an accounting to his principal.\textsuperscript{169} In any case, agents forfeit their commission if they engage in

\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} Id. art. 283.
\textsuperscript{163} Id.
\textsuperscript{164} Id. art. 284.
\textsuperscript{165} Id. art. 285.
\textsuperscript{166} Id. art. 287.
\textsuperscript{167} Id. art. 288.
\textsuperscript{168} Id.
\textsuperscript{169} Id. art. 289.
sales with their own operations or subsidiaries.170

If the agent extends the customer's payment period or agrees to installment payments without the principal's permission, the principal can demand immediate payment from the agent of the full price.171 Nevertheless, the agent may agree to installment payments or to an extended payment period without his principal's authorization if required by the custom or usage prevailing at the location where the sale took place, unless the principal specified immediate payment terms.172 If the agent sells on the basis of immediate payment where the principal specified installment payments, the principal cannot require compensation from the agent prior to the installment schedule.173 Further, if the agent had agreed on a price exceeding that fixed by his principal, the agent may keep the difference.174

Commission agents cannot disclose the principal's name without his consent.175 The agent is not required to disclose the name of his customer to the principal unless the payment terms are on an installment basis.176 If the agent refused to disclose the customer's name in an installment sale, the principal may request the agent to pay the sales price immediately.177

The principal, unless otherwise provided by law, has no liability to the agent's customers, whose only legal redress is against the agent for any claims relating to the products.178 If the agent is declared bankrupt before payments from his customer are collected, the principal may require the customer to pay him directly.179 If the bankruptcy occurs before delivery, and the commission agent was purchasing goods on his principal's behalf, the principal may require the seller to deliver the goods directly to him.180 The commission agent is not liable for his customer's nonpayment to the principal unless the agent expressly assumed such liability.181 In cases where commission agents guarantee the performance of others, they are entitled to special compensation.182
J. General Provisions Applicable to All Agents

Although in many cases commission, contract, and distribution agents are subject to separate rules under Law No. 68, certain general provisions of the Law apply to all three types of agents.\textsuperscript{183} Agents must receive compensation from their principals for their agency activities unless otherwise agreed.\textsuperscript{184} If compensation is not specified in the agency agreement, the amount is determined based on usage and trade.\textsuperscript{185} An agent can only be remunerated for the actual efforts exercised by him.\textsuperscript{186} Thus, an agent is not entitled to compensation if he fails to conclude the transaction covered by the agency agreement, unless his failure is caused by his principal.\textsuperscript{187}

Agents can be held liable for any damages accruing from their failure to obey their principal's directives.\textsuperscript{188} If an agent feels that carrying out these directives would harm the principal he may delay the performance of his agency activities until he has had a chance to clarify matters with the principal.\textsuperscript{189} In the absence of the principal's express instructions, the agent may delay his performance under the agency agreement until he receives further instructions from his principal.\textsuperscript{190} In urgent circumstances, the agent may perform his agency functions without his principal's instructions provided he exercises due care and judgement.\textsuperscript{191}

Agents are responsible for risk of loss of products kept by them on behalf of their principal, unless the loss results from force majeure or the products' inherent defects.\textsuperscript{192} Absent a request from his principal, an agent is not required to insure the products in his custody.\textsuperscript{193}

Nonetheless, the agent must investigate the effects of any damage incurred to the principal's products while in transit.\textsuperscript{194} Further, the agent may apply for permission from the Chief Judge of the Kuwaiti Court of First Instance for permission to sell the goods if they are subject to quick spoilage or decline in value where the principal has not yet

\textsuperscript{183} Id. art. 261. \\
\textsuperscript{184} Id. \\
\textsuperscript{185} Id. \\
\textsuperscript{186} Id. \\
\textsuperscript{187} Id. \\
\textsuperscript{188} Id. art. 262. \\
\textsuperscript{189} Id. \\
\textsuperscript{190} Id. \\
\textsuperscript{191} Id. \\
\textsuperscript{192} Id. art. 263. \\
\textsuperscript{193} Id. \\
\textsuperscript{194} Id. art. 264.
authorized the agent’s sale of the goods.\textsuperscript{195}

The agent has a security interest in goods consigned to him by his principal to cover his principal’s debts to him, whether relating to goods currently or formerly in the agent’s custody.\textsuperscript{196} The agents’ security interest is in the proceeds from the sale of his goods,\textsuperscript{197} but it only exists in the goods in the agent’s possession.\textsuperscript{198} An agent is deemed to possess the goods if (1) they are placed at his disposal in the government’s or his own warehouse, or transported on his own vehicles; (2) the goods have not yet arrived in Kuwait, but the agent has the bill of lading for the goods; or (3) he has exported the goods, but retains the bill of lading.\textsuperscript{199}

The agent’s security interest has priority over all other liens except those arising from legal expenses and government debts, such as taxes and customs duties.\textsuperscript{200} If the principal has no legal domicile in Kuwait, the agent’s domicile serves as the principal’s legal domicile in Kuwait for service of process and jurisdiction.\textsuperscript{201}

K. Penalties

Foreigners who engage in commercial agency activities in contravention of Law No. 36 are subject to up to three months imprisonment and/or a fine of not less than 100 dinars.\textsuperscript{202} Parties who falsely represent themselves as agents of a particular company or who submit false information to the Ministry of Commerce pertaining to the commercial agent’s register are subject to up to one month imprisonment and/or a fine of between fifty and 500 dinars.\textsuperscript{203}

VII. SAUDI ARABIA

Two sets of agency regulations exist in Saudi Arabia. The Service Agents Regulations\textsuperscript{204} apply to the conduct of tender or service agents who lobby on behalf of the principal to assist him in obtaining a particular contract in return for a commission or fee. The second, the Com-

\textsuperscript{195} Id.
\textsuperscript{196} Id. art. 265.
\textsuperscript{197} Id. art. 266.
\textsuperscript{198} See also art. 224 on rules governing pledges.
\textsuperscript{199} Id. art. 267.
\textsuperscript{200} Id.
\textsuperscript{201} Id. art. 269.
\textsuperscript{202} Law No. 36 of 1964, supra note 124, art. 10.
\textsuperscript{203} Id. arts. 11, 12.
\textsuperscript{204} Royal Decree No. M/2 of 21/1/1398 A.H. (Saudi Arabia).
mercial Agents Regulations,\textsuperscript{205} govern the activities of merchants engaged in the purchase resale business.

A. Service Agents

The Service Agents Regulations mandate the use of a Saudi agent on all contracts between the Saudi government and foreign contractors,\textsuperscript{206} unless the foreign contractor has a Saudi partner.\textsuperscript{207} Agents must be either Saudi nationals or companies of 100% Saudi capital and must register in the Commercial Register.\textsuperscript{208} Use of agents is prohibited on armament contracts and related service contracts, and on government to government contracts.\textsuperscript{209} “Armaments” in this context generally refers to destructive instruments of war and not to items such as military hospitals, radar or trucks. A foreign contractor may have more than one Saudi agent but may not represent more than ten foreign companies.\textsuperscript{210} An agent can not act both for the consultant and the contractor on the same project.\textsuperscript{211}

The agency relationship must be reduced to an agency agreement.\textsuperscript{212} The contractor is required to pay its agent a fee, although not in excess of five percent of the contract price.\textsuperscript{213} Agents are prohibited from exercising undue influence to obtain a contract.\textsuperscript{214} The Committee for the Settlement of Commercial Disputes has jurisdiction over any disputes between a foreign contractor and his agent.\textsuperscript{215} Foreign violators of the Service Agents Regulations are banned from Saudi Arabia.\textsuperscript{216} The Saudi agent who violates these regulations is prohibited from future agency activities and his commercial registration is cancelled.\textsuperscript{217} Unlike Kuwaiti law,\textsuperscript{218} the Saudi regulations do not prescribe any compensation for a contractor’s wrongful termination of the agency agreement.

\textsuperscript{205} Royal Decree M/11 of 1962, \textit{as amended by} Royal Decree M/8 of 1973 (Saudi Arabia).
\textsuperscript{206} Royal Decree No. M/2, \textit{supra} note 204, art. 2.
\textsuperscript{207} \textit{Id.} art. 3.
\textsuperscript{208} \textit{Id.} art. 5.
\textsuperscript{209} \textit{Id.} art. 4.
\textsuperscript{210} \textit{Id.} art. 6.
\textsuperscript{211} \textit{Id.} art. 9.
\textsuperscript{212} \textit{Id.} art. 7.
\textsuperscript{213} \textit{Id.} art. 8.
\textsuperscript{214} \textit{Id.} art. 10.
\textsuperscript{215} \textit{Id.} art. 11.
\textsuperscript{216} \textit{Id.} art. 12.
\textsuperscript{217} \textit{Id.}
\textsuperscript{218} \textit{See supra} notes 156-165 and accompanying text.
B. Commercial Agents

The term commercial agent includes:

... anyone who enters into an agreement with the producer or his representative in his own country to undertake commercial activities whether as an agent or distributor or in any form of dealership or distribution in exchange for profit, commission or facilities of whatever nature. This shall cover land, maritime or air transport agencies or any agencies established by a resolution of the Commerce Minister.\(^{219}\)

The Commercial Agents Regulations limit trading, including the import and resale of goods in Saudi Arabia, to Saudi nationals and companies wholly owned by Saudi nationals.\(^{220}\) Moreover, the directors of such enterprises and those individuals with signatory authority on their behalf must be Saudi.\(^{221}\)

Foreign companies or joint ventures with foreign participation are generally permitted to conduct import resale activities in Saudi Arabia as long as the products are sold as part of an installation, erection, or repair contract.\(^{222}\) Saudi joint ventures with foreign participation can sell products in Saudi Arabia that they have assembled or manufactured there.\(^{223}\)

Agents must provide spare parts and maintenance services at reasonable rates under the Implementation Rules of the Commercial Agencies Regulations.\(^{224}\) The regulations contain a model agency agreement to serve as a guide in the preparation of other agency agreements.\(^{225}\) Use of this approved model agreement may help prevent or resolve future disputes. In addition, an agency agreement’s enforceability may depend on the use of the model form.\(^{226}\)

Under this model agreement the agent must be exclusive for the specified territory and he must conduct the agency independently on his own premises with his own personnel.\(^{227}\) In doing so, he has the right to use his principal’s trademark.\(^{228}\) The principal in turn, must

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\(^{220}\) Royal Decree M/11, supra note 205.

\(^{221}\) Id. art. 1.


\(^{223}\) Id.

\(^{224}\) Ministry of Commerce Resolution No. 1897 of 24.5.1401 A.H., March 30, 1981 (Saudi Arabia).

\(^{225}\) Royal Decree M/32, supra note 219.


\(^{227}\) Ministry of Commerce Resolution No. 1897, supra note 224, Standard Form Agency Contract, art. 3.

\(^{228}\) Id. art. 8.
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give a warranty of quality, merchantability, and fitness according to the commonly adopted product specifications in Saudi Arabia.\textsuperscript{229} The principal may also be required to compensate the agent for nonrenewal of the agency agreement if the agent has successfully promoted the principal's products and the subsequent agent has benefitted from these promotional successes.\textsuperscript{230} Conversely, the principal is entitled to compensation for the agent's breach or wrongful termination of the agency agreement.\textsuperscript{231}

C. The Agent/Customer Relationship

An agent must provide a continuous supply of reasonably priced spare parts for the products distributed by him throughout the term of his agency agreement plus one year or until a new agent is appointed.\textsuperscript{232} Although spare parts are rarely requested, the agent must supply them within thirty days of any request.\textsuperscript{233} He must also maintain these products at a reasonable price and warrant them in terms similar to the manufacturer's warranty.\textsuperscript{234} In addition, an agent in Saudi Arabia who appoints sub-distributors, remains responsible to the local consumers.\textsuperscript{235}

D. Registration

Commercial agents must register at the Commercial Agents Register at the Ministry of Commerce within three months after the effective date of the agency agreement.\textsuperscript{236} The application must include a copy of the agency agreement.\textsuperscript{237} To be valid, the agency agreement must be with the principal's home country office or with his representative in that country, and must specify the obligations of both parties vis-a-vis maintenance and spare parts services for consumers.\textsuperscript{238} An agent can file a petition with the Ministry of Commerce to contest a denial of registration.\textsuperscript{239}

\textsuperscript{229} Id. art. 9.
\textsuperscript{230} Id. art. 15.
\textsuperscript{231} Id. art. 16.
\textsuperscript{232} Royal Decree M/32, supra note 219, art. 3(1).
\textsuperscript{233} Id.
\textsuperscript{234} Id. art. 3(2).
\textsuperscript{235} Id. art. 1.
\textsuperscript{236} Id. art. 6.
\textsuperscript{237} Id. art. 9.
\textsuperscript{238} Id. art. 10B.
\textsuperscript{239} Id. art. 7.
E. Penalties

The Minister of Commerce is charged with establishing a group for investigating and prosecuting violators of the Commercial Agency Regulations.\textsuperscript{240} Fines of up to $18,000 can be imposed.\textsuperscript{241} Foreigners or Saudi companies with non-Saudi partners can be liquidated or temporarily or permanently prohibited from doing business in Saudi Arabia.\textsuperscript{242} In addition, foreigners can be deported by order of the Minister of Interior.\textsuperscript{243}

The Minister of Commerce is required to form a commission to rule on violations and to enforce these penalties.\textsuperscript{244} Appeals can be made from the commission's decisions within fifteen days after receipt of notice of the decision.\textsuperscript{245}

F. Termination

Unlike the agency laws of Jordan and the United Arab Emirates, the Saudi agency regulations do not specify any penalties or compensation for wrongful termination of service agency or distributorship agreements by the foreign principal. In practice, the foreign principal in such a case may have to reimburse the agent for any of his out-of-pocket expenses incurred in connection with the agency, such as showroom costs or employees' termination pay.\textsuperscript{246} The principal may also have to buy back unsold inventory held by the agent.\textsuperscript{247} Further, because the Saudi Arabian business community is relatively small and is based on personal relationships, the foreign principal may find it difficult to find a substitute agent.\textsuperscript{248}

VIII. UNITED ARAB EMIRATES

The two categories of agents in the United Arab Emirates (UAE)\textsuperscript{249} are commercial agents and tender agents.\textsuperscript{250} Until the issu-
ance of Federal Act No. 18 on August 11, 1981, which for the first time contains a set of agency regulations applicable to commercial agents throughout the UAE, Abu Dhabi was the only Emirate with any systematic agency law.\textsuperscript{251}

A. Commercial Agency Defined

The Federal Act defines Commercial Agency as, "... the representation of the principal by an agent for distribution, sale, display or provision of any commodity or service within the state [the UAE] in consideration of any commission or profit."\textsuperscript{252} The "principal" includes the manufacturer, whether based in the UAE or overseas, or the authorized distributor or exporter.\textsuperscript{253}

B. Qualifying as a Commercial Agent

Only UAE nationals or companies wholly owned by them can act as commercial agents.\textsuperscript{254} Commercial agents must be duly registered in the Commercial Agents Register kept at the Ministry of Economy and Commerce (Ministry).\textsuperscript{255} As a general requirement for doing business in the UAE, a commercial agent must possess a trade license in each municipality within his agency territory.\textsuperscript{256} The commercial agent should also be duly registered at the Chamber of Commerce and Commercial Registry in each Emirate covered by his agency.\textsuperscript{257}

\textsuperscript{251} The Organization of Trade Agencies (Law No. 11/1973, as amended by Law No. 4/1978) governed the activities of commercial agents in Abu Dhabi. This law provided that commercial agents must be Abu Dhabi nationals or companies wholly owned by Abu Dhabi nationals (Art. No. 2). The commercial agent had to register in the Commercial Registry in Al Ain or Abu Dhabi, the two principal cities in the Emirate of Abu Dhabi. The agency application had to specify the type of goods covered by the agency, the name of the principal, and the term of the agency (Article No. 4). Agents could not be registered where there was already an agent registered for the same products on behalf of the same principal.

In Dubai, as in the rest of the Emirates, agencies were primarily governed by custom and practice. See Williamson, S., Distributorships under the Federal Law, Middle East Executive Reports, Nov. 1981, at 23. Agents were not required on government contracts. In Dubai, however, a foreign company had to have a Dubai national as a sponsor in order to open a branch office or post a bond of $25,000. See Resolutions 155, 161, 178 of 1966, 306 of 1967 and 337 of 1968.

\textsuperscript{252} Federal Act No. 18, supra note 250, art. 1.

\textsuperscript{253} Id.

\textsuperscript{254} Id. art. 2.

\textsuperscript{255} Id. art. 3.

\textsuperscript{256} Id.

\textsuperscript{257} Federal Act No. 18, supra note 250, art. 10. See also Implementing Regulations of the Minister of Economy and Trade, which sets forth in greater detail the agency registration process. Under article 4 of the Implementing Regulations, the agent must submit an authenticated copy of the agency agreement in addition to the application form.
C. Registration

An agent must file a separate application at the Commercial Agent's Register for each agency, including the principal's name, the products covered, the agent's territory, and the commencement and termination dates of the agency. The Ministry rules on the application within fifteen days, and upon approval of the application, issues an official registration certificate to the agent. The Official Gazette publishes the Ministry's decision and the details of the agency in the event of a favorable decision. Notification is also given to the Customs authorities and the Chamber of Commerce. The Ministry must notify these authorities of any deletions from the Commercial Agent's Register. Copies of the registration entries are available to interested parties from the Commercial Registry.

The Ministry must specify its reasons for rejecting an application. The applicant can appeal this decision within sixty days of notification of rejection. Agents must file with the Ministry any amendments or changes in registration within sixty days of their occurrence.

The agent, or his legal representatives or heirs, must, within sixty days of termination of the agency, apply to the Commercial Agents Register for deletion of the agency registration. The Ministry can delete the agency registration if the agent has not objected to such action within sixty days of its notification.

Existing agents have six months from the effective date of the Federal Act for registering at the Commercial Agent's Register and one year for modifying any existing business arrangements to comply with this act. Failure to comply with these provisions within the grace period results in nullification of the agency.

UAE agents must have a direct relationship with the principal, which precludes them from acting as sub-agents for a regional distribu-
tor or master agent.\textsuperscript{271} As in the case of Egypt and Saudi Arabia, agents must maintain an adequate supply of spare parts and other materials in their territories that are needed to service the goods covered by the agency.\textsuperscript{272} This requirement helps prevent shortages of local service and repair.

D. Exclusivity

A principal may appoint different agents in each Emirate.\textsuperscript{273} Each agent, however, must be exclusive for his territory at least insofar as the particular product covered by the agency agreement.\textsuperscript{274} This exclusivity rule is effective because of the requirement that the customs authorities be notified of all agency registrations.\textsuperscript{275} The customs authorities will prevent the entry into the UAE of goods originating with a foreign principal who has a duly registered agent for these goods in the UAE, but who is shipping the goods to the UAE in another agent's name.\textsuperscript{276} If the principal sells its product directly or through an alternate agent in the same territory, the original agent is entitled to the commission or profit attributable to such sale.\textsuperscript{277}

E. Termination

The foreign principal cannot unilaterally terminate the agency agreement regardless of the terms of the agency agreement, except with due cause.\textsuperscript{278} An agent successfully claiming unjustified termination can recover anticipated commissions or profits.\textsuperscript{279} To protect himself against an agent's nonperformance, principals should specify sales objectives in the agency agreement which, if not attained by the agent, provide grounds for termination. The principal should attempt to upgrade the agent's performance to show good faith on his part before cancellation.

Foreign exporters should be aware that they are required to compensate the agent for failure to renew the agreement if the agent demonstrates that he has successfully promoted the principal's products and

\begin{footnotesize}
\begin{enumerate}
\item Id. art. 4.
\item Id. art. 21.
\item Id. art. 5.
\item Id.
\item Id. art. 17.
\item Id. art. 23.
\item Id. art. 7.
\item Id. art. 8.
\item Id. art. 9.
\end{enumerate}
\end{footnotesize}
will lose future profits if the agreement is not renewed.\textsuperscript{280} Substantial breach by the agent is apparently the principal's only defense against such a claim.\textsuperscript{281}

The Commercial Agencies Committee will prevent the renewal of an agency registration in another agent's name unless there were valid reasons for termination or nonrenewal of this agency.\textsuperscript{282} Although not addressed in the Federal Act, termination by mutual agreement may require the negotiation of a settlement sum to be paid by the foreign principal to his agent.

F. Penalties

Anyone who undertakes commercial agency activities in contravention of the law is subject to a 5,000 dirham fine.\textsuperscript{283} Goods that are not shipped through the registered agent to the UAE are subject to confiscation.\textsuperscript{284} Wilful submission of incorrect statements in connection with agency registration is also subject to a 5,000 dirham fine and the denial of any subsequent registration.\textsuperscript{285}

The UAE courts of law determine the punishment for violations of the agent's obligation to maintain an adequate supply of spare parts.\textsuperscript{286} A Commercial Agency Committee settles agency disputes relating to the commercial agency activity.\textsuperscript{287} This committee is composed of representatives from the Chambers of Commerce, the Ministry, and the municipalities.\textsuperscript{288}

G. Tender Agents

Tender agents apparently are unaffected by the Federal Act and remain subject to the laws and customs of each individual Emirate. Tender agents in Abu Dhabi, that is, agents retained on a commission basis for a specific project, are subject to limits on agency commissions on government contracts.\textsuperscript{289} Contracts in excess of $13 million are restricted by a 1% commission ceiling; contracts between $2.5 million and $13 million are subject to a 1.5% ceiling; and for contracts under $2.5

\textsuperscript{280} Id.
\textsuperscript{281} Id.
\textsuperscript{282} Id. art. 8.
\textsuperscript{283} Id. art. 22.
\textsuperscript{284} Id. art. 23.
\textsuperscript{285} Id. art. 24(a).
\textsuperscript{286} Id. art. 25.
\textsuperscript{287} Id. art. 28.
\textsuperscript{288} Id. art. 27.
\textsuperscript{289} Circular No. 3/78 of February 8, 1976 (UAE).
million, the ceiling is 2%.290 The tender agency agreement, like the commercial agency agreement, must be registered with the commercial registrar.291 It is generally believed that because the Federal Act deals with commercial agents, these tender agency rules are still valid.

The commission limitations on tender agents can be misleading because an agent can act simultaneously as a sponsor and charge a flat fee or commission for sponsorship services.292 In return for this fee, the sponsor may assist the foreign company in establishing a local branch in the UAE, obtain visas for the foreign company’s employees, and provide translation and communication facilities.293 The sponsorship agreement is usually separate from the agency agreement.

IX. CONCLUSION

The agency laws in the countries discussed above share similar characteristics. In Egypt, Jordan, Kuwait, Saudi Arabia and the UAE, where private enterprise is encouraged, foreign suppliers must use agents in practically all instances. In general, these countries reserve agency activities to their own nationals. Agents are regulated by mandatory registration procedures, and they are protected against arbitrary termination by their foreign principals. A distinct trend towards requiring distributors to acquire warranty and repair capabilities is apparent. In Algeria and Iraq, foreign commerce is conducted almost exclusively by state-owned enterprises or trading companies.

A successful relationship between the foreign principal and his local agent in the Arab world must be based not only on familiarity with the laws of the particular country, but also on a knowledge of the business customs of that region. The principal must continuously cultivate good personal relations with his local agent. In each of the countries discussed, where the use of an agent is permitted, beneficial relationships will result from a combination of frequent and timely communications between the principal and his agent and also from the principal’s ongoing interest in the agent’s business.

290 Id.
291 Id.
293 In Abu Dhabi, a foreign company with a UAE government contract requiring significant local works must register a branch there. The branch registration can only be obtained through a local sponsor who usually would also be the agent on the contract.