

The right to appoint several distributors is not absolute!

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Introduction

In support of the continuous improvements to the domain of commercial agencies in the State of Kuwait ('Kuwait'), Kuwait Courts are still providing guidance on Law No. 13 of 2016 Regulating Commercial Agencies Law (the 'Agency Law'). On November 17 2020, the Kuwaiti Court of Cassation issued an interesting ruling (the 'Judgment') by which it exerted the application of the provided right to register several exclusive distributors/agents by the same principal under Article 9 of the Agency Law.

Background

In this case, a car manufacturer (the 'Principal') and a Kuwait based car distributor ('First Distributor') entered into three exclusive distribution agreements: the first registered under No.162/1986; the second under No.167/1986; and the third under No. 225/1988, whereby the Principal appointed the First Distributor as its sole agent to provide its services and products in Kuwait. These three agreements were extended by the parties for a period 120 days. Further, the Principal concluded another distribution agreement with a second Kuwait based car distributor (the 'Second Distributor') on March 3 2016 and registered under 558/2016. However, the application to register the Second Distributor's agreement in the commercial agencies' register of the Ministry of Commerce and Industry ('MoC') and Al Kuwait Al Youm Gazette was subsequently cancelled on March 27 2016.

It is important to note that, on the day after the signing of the agreement with the Second Distributor, the Principal expressed its desire to terminate its agency relationship with the First Distributor. Consequently, the Second Distributor initiated the dispute: (i) questioning and rejecting MoC's decision cancelling its registration as the Principal's Agent and the aforementioned contract no. 558/2016; and (ii) claiming compensation from MoC for material and moral damages incurred by the Second Distributor.

Evaluation by the Court of Cassation

The Court of Cassation issued its Judgment based on Articles 271, 272, 273, 274, 281, 284, 286 of Law No. 68 of 1980 promulgating the Commercial Law (the 'Commercial Law') and Articles 9 and 14 of the Agency Law. The Judgment interpreted the facts and documents and qualified that the termination of the First Distributor's agency relationship was a result of the collusion between the Principal and the Second Distributor. As a matter of fact, an agency may be re-registered in the Commercial Agencies Register under the name of a new agent on the occurrence of any one of the following events: (i) the agency registered previously is terminated amicably between its parties; (ii) the agency registered previously is revoked by an executable court judgment; or (iii) the agency registered previously is terminated according to its duration specified in the agency contract. However, the agreements concluded with the First Distributor were still valid and enforceable on the date of conclusion of the distribution agreement with the Second Distributor in addition to its exclusivity validity. Accordingly, the Judge rejected the claims of the

Second Distributor and confirmed MoC's decision cancelling its registered contract no. 558/2016.

Conclusion

The main principle that emerged in this case is that a principal may have more than one distribution agent only in the event of termination of any previous exclusive agency relationship. Moreover, the Judgment adds that such an exclusivity condition in a distribution and/or agency agreement may be absolute or restricted. Additionally, in case of termination of a former exclusive distributor/agent, the new agent shall be jointly liable with the principal for payment of the compensation entitled to the former agent, whenever it is confirmed that the removal of the former agent was the result of collusion between the principal and new agent.

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