

Qatari Court of Cassation- What constitutes a commercial agency under Qatari Law

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This Judgment highlights the definition of a commercial agent set out in the law and the court's approach in deciding what constitutes a commercial agency: "Every person exclusively licensed to distribute the goods and products or to put them on sale or circulation or to perform certain services within the scope of the agency on behalf of his principal in exchange of remuneration" Article 2 of Law no. 8 of 2002 of the Qatari Commercial Agency Law.

Background

Following the termination of a distribution agreement between a foreign company (the First Defendant) and its local distributor (the Claimant) in respect of high end prestige automobiles, the Claimant requested the Minister of Business and Trade (the Second Defendant) to place a ban on the importation of the automobiles into Qatar based on Article 17 of Law no. 8 of 2002 (the Commercial Agency Law). The Minister refused the request. The Claimant then commenced proceedings before the Administrative Court against the First and Second Defendants seeking a reversal of the Minister's decision by the Court.

The Claimant alleged that the Distribution Agreement between him and the First Defendant was a commercial agency agreement and the said agreement was terminated in contravention of the provisions of the Commercial Agency Law and seeking a reversal of the Second Defendant's decision. The Court of First Instance rejected the claim. The Claimant appealed against the finding of the Court of First Instance and the Court of Appeal overruled the judgment of the Court of First Instance, ruling in favor of the Claimant by reversing the decision of the Second Defendant. Both Defendants filed an appeal with the Court of Cassation against the judgment of the Court of Appeal.

The Court of Cassation decision

The Court of Cassation allowed the appeal of the Defendants and made in its judgment the following points:

- The relationship between the Claimant and the First Defendant was not a commercial agency as defined in Article 2 of the Commercial Agency Law. The Court ruled that in order for an agreement to be considered a commercial agency, two conditions must be satisfied: (1) exclusivity: meaning that a commercial agent must be granted an exclusive right to distribute the goods in Qatar; and (2) a commercial agent must distribute products on behalf of a principal in exchange for remuneration. Any agreement that does meet the aforementioned conditions is not a commercial agency agreement.
- The court applied the aforementioned principle to the facts of the case. The court relied mainly on Clause 2.5 of the Distribution agreement between the Claimant and the First Defendant which stated that "the Distributor shall stand in the relation of an independent contractor with the [Principal] and shall not be empowered to bind the [Principal] or to contract in the name or create any obligation to be performed by the [Principal]". Accordingly, the Court ruled that the distribution agreement did not create a commercial agency because the Claimant was not acting on behalf of the First Defendant. Consequently, the provisions of the Commercial Agency Law (including Article 17 thereof) should not apply to this case.

Comment on Judgment

The judgment created a precedent in Qatar changing the legal concept of the commercial agency and the practice of registration of commercial agency contracts with the Ministry of Business and Trade. The litigation department of Al Tamimi & Co. in association with Mohammed Al Marri won this judgment for the client, a major foreign company.