

# Commercial Agency Termination

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## Summary

In a case concerning a commercial agency, the Agent filed a claim before the Abu Dhabi Federal courts requesting an order to compel the Principal to continue with the commercial agency which had been terminated by the Principal. The Agent also claimed compensation of AED 1 million per month from the date the business was suspended or to pay compensation amounting to AED 150 million for losses that the Agent would sustain as a consequence of the termination of the agency agreement.

The Agent argued that it had been the commercial agent for the Principal pursuant to an agreement dated 24/1/1969 which was confirmed by an agreement dated 10/2/1983 whereby the Agent became the exclusive commercial agent for the principal in the Emirate of Abu Dhabi. Its agency agreement had also been registered with the Ministry of Economy. The Agent argued that its agency had been renewed annually until it was terminated pursuant to a letter issued by the Principal in 2008. As a result, the Agent commenced legal proceedings against the Principal.

The Principal filed a counter claim arguing that the agreement between the two parties was a fixed term agreement which would expire on the 31 December of each year and to be renewed annually and impliedly provided neither party notifies the other of its intention not to renew, 4 months before the expiry date.

The Principal notified the Agent of its intention not to renew before the 31 December 2008 and accordingly considered the agreement expired. Thereafter, the Principal requested the Ministry of Economy to cancel the registration of the agency. However, the Ministry refused to do so without giving any reason which led to the Principal filing the counter claim against both the Agent and the Ministry. The Principal requested the court to recognize that the agreement expired on the 31st December 2008 and an order to be sent to the Ministry to cancel the registration.

## Determining the applicable law in this commercial agency dispute

One of the main issues highlighted in this significant commercial agency case was how to determine the applicable law in this commercial agency dispute in view of the fact that the agency agreement/letter of appointment was signed before the Commercial Agency Law came into existence and in light of the amendment of the Commercial Agency law by Law No 13 of 2006. The letter of appointment was signed in 1969 and the UAE Agency Law was enacted in 1981 but was drastically amended by Law No 13 of 2006 which for the first time allowed for termination of a fixed term agency without the need to establish the grounds for termination. In 1983, the parties amended the contract, the effect of the wording stated that the agency agreement would be renewable on a yearly basis, automatically renewable unless notice of termination was given 4 months before the end of the year.

In February 2008, the Principal sent a letter to the Agent giving him notice that they do not wish to continue with the relationship. The notice was sent 10 months before the end of the year. An amendment to the 1981 Law in 2006 (Law 13 of 2006) provides that: "A commercial agency of a limited term shall expire on the date of its expiry unless its parties agree to extend the same within a year before such expiry."

The Agent argued that the applicable law was Federal Law 18 of 1981 (on the basis that the agency agreement was signed in 1969) and that the contract was not fixed, (as a result, the Principal can't terminate the agency agreement without the permission of the Agent and the grounds for termination must satisfy the Commercial Agency Committee) whereas the Principal argued that they had a fixed term agreement and Federal law 13 of 2006 applied. If the court decided that the applicable law was 13 of 2006, exercising the right not to renew was a valid right and cannot be construed as termination (which meant that the Agent did not need to go through the Commercial Agency Committee).

### **Court of Appeal**

Law 13 of 2006 was repealed in 2010, whereby the provisions in Law 18 of 1981 were reinstated. However, the case which commenced in 2008 was still ongoing in 2010. In the Principal's counterclaim, it was argued that if the courts looked at the applicable law at the time the agreement was signed then the Agency law would not even apply. Instead, the courts would have to consider Sharia principles which were applicable in 1969. Applying Sharia law, there is no prohibition to refuse to renew a contract.

The Principal's second argument highlighted that the courts should look at the applicable law at the time the cause of action arose. Accordingly, the decision not to renew was taken in 2008 when the 2006 Law was still in force.

The Court of Appeal rejected the Agent's main claim and accepted the Principal's counter claim and confirmed that the contract was a fixed term agreement and the applicable law was Law No 13 of 2006.

### **Federal Supreme Court**

The Agent appealed before the Federal Supreme Court, however, the Federal Supreme Court confirmed that it is well established that laws can not be applied retroactively unless such laws relate to procedural or public policy issues.

The Federal Supreme Court also held that although the law under Article 8 of the Commercial Agency Law of 1981 as amended by Law 13 of 2006 contains provisions to ensure the parties are protected and safeguards against termination without grounds, there is nothing under Article 8 that restricts the parties freedom of contract and prevents them from terminating the contract expressly or impliedly. Under the general principles of UAE contract law, the parties may agree to terminate their contract expressly or impliedly and this shall be the role of the trial court to determine.

The court also rejected the Agent's argument that Law 13 of 2006 does not apply on the basis that this law regulates procedural issues. It is clear that Article 8 provides that a commercial agency of a fixed term shall be considered expired upon expiry of the term unless the parties agree to renew the term before its expiry. The court then held that Law 13 of 2006 applied with immediate effect and confirmed that the contract expired as there had been no new agreement to renew the term. As a result, the court properly applied the law.

The Court also held that the Principal had not abused its right to terminate the agreement as it was not established that the Principal exercised its right with the intent to cause harm to the Agent or to achieve an illegal purpose. Furthermore, it had notified the agent 10 months before the expiry date that it did not want to renew the agreement upon its expiry.

### **Conclusion**

In this case, the Supreme Court addressed two important issues, one is the principle of freedom of contract and the second is whether the application of Law 13 of 2006 would contravene the general principle against retroactivity of laws. The Court held that Law 13 of 2006 applied to the cause of action with regards to the subject matter of the law suit (the termination letter was sent in 2008). It should be noted that the principle held by the court in this matter applies only to cases in which the cause of action started

during the validity of Law 13 of 2006 which was repealed in 2010. Any new matters brought after the 2006 Law was repealed can not benefit from the principles highlighted by this Supreme Court decision as under the current law, a principal can not terminate or refuse to renew an agreement even if the agreement is a fixed term agreement. However, new disputes that occurred after the 2006 Law was repealed must be filed before the Commercial Agencies Committee and thereafter to the court. The Principal must provide the Committee/court sufficient reasons to justify termination and cannot rely on the expiry of the fixed term agreement.