

Implications of the Amendments to the Qatar Commercial Registration Law

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The Commercial Registration Law provides guidance on the process for registration of companies, branches and establishments at the Ministry of Economy and Commerce allowing them to carry out commercial activities in Qatar. No natural or legal person may trade or establish a commercial outlet until such person has been registered in the Commercial Register.

The Commercial Registration Law applies to several categories of natural and legal persons, including:

- Individuals desiring to trade;
- Commercial companies;
- Natural and corporate persons practicing a commercial agency business;
- Branches of foreign companies; and
- Commercial representation offices.

In late 2014, Law no. 20 of 2014 was issued amending certain provisions of the Commercial Registration Law. The 2014 amendment to the Commercial Registration Law modified some aspects of the application and registration process, as well as the period of validity of the commercial registration. However, the most notable, and arguably problematic, amendment to the Commercial Registration Law was the amendment made to Article 3, whereby the following additional paragraph was embedded in the text of Article 3:

'In all cases, it is prohibited to create branches of Company with Trade Names that differ from that of the Company's Trade Name. It is also prohibited to add activities that differ from the activities of the Company as set out in its Memorandum of Incorporation'.

Law no. 20 of 2014 had set out a six month period during which companies would be required to rectify their position in accordance with these amendments, particularly that of Article 3. However, almost two years after the coming into force of the 2014 amendments, the grace period for companies to comply with the amended provisions is still being extended. The latest extension of the grace period ended on the 8 January 2017.

The amendments made to Article 3 of the Commercial Registration Law have had major implications not only on branches of local companies registered in the Companies Registrar in Qatar, but also to foreign franchisors doing business in Qatar through their Qatari local agents.

The Previous Practice and the Implications of the Amendments to Article 3

Prior to the 2014 amendments to the Commercial Registration Law, foreign brand owners wishing to establish a presence in Qatar would often enter into a franchise or retail agreement with a local specialised Qatari agent or distributor, by virtue of which the Qatari agent or distributor would be able to establish a branch of its company in the name of the foreign brand and use the foreign brand's trademark as a signboard for the branch's retail shop or office. Such a branch would not have legal personality and could therefore cease to exist in the event of termination of the relevant franchise or retail agreement. The

foregoing scheme offered foreign brand owners an efficient means of operating in Qatar without jeopardising the brand or its trademark.

With the 2014 amendments, the aforementioned scheme is no longer possible and a large number of Qatari agents or distributors, who had operated under this scheme for many years and established tens of branches, found themselves at a loss as to how to rectify their position in line with the amended Article 3. The reason being that once the trade name of the branch no longer holds the name of the foreign brand, the branch will not be able to use the brand's trademark and signage on its signboards or in its publishing materials.

Proposed Solutions within the Parameters of the Law

The Ministry has now provided companies with two options in order to comply with the prohibitions inserted in the text of the amended Article 3.

• Setting up a new company in the name of the brand

One of the options proposed by the Ministry is to transfer the assets of each branch to a newly established company registered with a trade name similar to that of the foreign brand.

The advantages of this option may include:

- The Company will have a separate legal personality, as opposed to a branch;
- The Company established with the trade name of the brand will be able to register branches of the same brand holding the same trade name.

On the other hand, this option has been criticised as being detrimental to the foreign brand and trademark owners. This is because foreign brand owners are reluctant to allow a company to be registered in Qatar under their name, since there is no guarantee that the Qatari agent or distributor using the trade name of the foreign brand will be dissolved and/or will cease to use the name and trademark of the brand owner once the contractual relationship between the foreign brand owner and the Qatari agent or distributor is terminated.

• Registering the brand name of the branch in the name of the foreign brand

The Ministry has now allowed companies to register a brand name of a company or branch that is different from that of the company or branch's trade name. Under this scenario, the branch will hold the trade name of the Qatari agent or distributor's company and a different brand name similar to the foreign brand.

In order to implement this option, the Qatari agent or distributor wishing to establish a branch with a brand name similar to that of a foreign brand must present:

- An authenticated license agreement for the use of the trademark of the foreign brand. Such an agreement must be entered into between the registered trademark owner in Qatar and the licensee (being the Qatari agent or distributor). This should be in line with the requirements set out in the Law No. 9 of 2002 with respect to trademarks, trade indications, trade names, geographical indications and industrial designs and templates (the "Trademarks Law"). Further, such a license agreement must be registered in the Intellectual Property Protection department at the Ministry as stipulated in the Trademarks Law.
- A no objection certificate issued from the trademark owner allowing the branch to use the trademark on the signboards of its retail outlet or office.

Whilst, obtaining the aforementioned license agreement and no objection certificate may be a costly and time consuming process; the license agreement may be terminated and revoked by the trademark owner at any time in accordance with its terms. Hence, the foreign brand will be afforded the necessary

protection and will, therefore, more likely be willing to grant the rights to use the trademark to an experienced local Qatari company.

While both options appear to be viable alternatives to replace the previous practice, there is still a level of uncertainty regarding the mechanism of implementation of either option. Agents and distributors who are operating several brands under one company will be faced with an overwhelming task in reconciling or restructuring their branches under either of the aforementioned options.

Al Tamimi & Company's Corporate Structuring Team in Qatar team regularly advises on the efficient restructuring and remodelling of businesses . For further information please contact Ahmed Jaafir (a.jaafir@tamimi.com) or Tala Shomar (t.shomar@tamimi.com).