

Shipping Agents in Kuwait: Applicable Law & Potential Liabilities

Omar N. Omar - Partner, Head of Transport & Insurance - Insurance / Shipping, Aviation & Logistics
o.omar@tamimi.com - Dubai International Financial Centre

Ahmed Rezeik - Senior Counsel, Head of Shipping - Kuwait (Consultant) - Arbitration / Litigation / Insurance / Shipping, Aviation & Logistics
a.rezeik@tamimi.com - Kuwait City

Introduction

The new Kuwait Agency Law (No. 13 of 2016)(the “New Agency Law”) defines commercial agency:

‘as the agreement according to which the person who has the legal right shall assign to a trader or a company in the state to sell, to promote or to distribute commodities, products or to render services in his capacity as the agent, distributor, a having the franchise or the license for the product or the original importer against a profit or a commission.’ (translation of prevailing Arabic text)

Kuwaiti law recognises commercial agency in different forms, each carrying its own definition, required elements, operation, and consequences. Some popular examples include; contractual agency, distribution agency, commission agency, and shipping agency. Here the author addresses issues specific to shipping agency.

Shipping Agents

Shipping agency generally arises in situations where a designated person, or entity, is considered to be responsible for the handling of shipments and cargo. It does so whilst seeking to protect the general interests of its appointor’s customers, at ports and harbors worldwide. The agent’s actions may be in concert with other parties to the shipment, for example; ship owners, managers, or charterers, any of which may be the de facto principal. There are several sub-categories of shipping agents, for instance: port agents, cargo brokers, liner agents, and own agencies, each rendering specific services depending on the shipping company they represent.

A ship agent may accordingly be considered to be any person or company that carries out the functions of an agent, irrespective of whether they are in business as a ship agent, or they perform such functions as an adjunct to, or conjunction with, other activities, such as ship owning or operating, providing cargo handling, or similar.

The appeal of shipping agents is their ability to handle certain key tasks of a shipping company more quickly and efficiently. For instance, agents ensure that essential supplies, crew transfers, customs documentation, and waste declarations are expediently arranged with port authorities. Further, they generally provide their principal shipping company with updates and reports regarding activities at the destination port so that real-time information is available to them whilst goods are in transit.

Shipping Agents Right’s Protected under the Maritime Law

Notwithstanding the above, the Kuwait Maritime Trade Law (No. 28 of 1980)(the “Maritime Law”) deems shipping agents to be commercial agents. The Maritime Law provides its own definition in Article 136, stating that a shipping agent is “the agent of the furnisher in places where the furnisher has no branches”.

The Maritime Law continues, noting that a shipping agent may receive cargo before the commencement of

an ocean voyage for the purpose of shipping and delivery. Further, a shipping agent is entitled to charge a transportation fare (ie; freight). The agent may also be entrusted with the usual duties relating to the requirements of the ship or the voyage, within its scope, some of which may otherwise be the responsibility of the ship's master. Any debts arising from its performance of such duties are preferentially secured against the vessel, as provided in item 5 of Article 47 of Maritime Law.

Shipping Agents in Legal Proceedings

In Kuwait a shipping agent, as is common in most maritime jurisdictions, is deemed liable to the same extent as an ordinary agent before its principal. Further, recourse against a shipping agent by a shipper or consignee is generally not permitted, except where harm arises as a direct result of the agent's personal fault.

Should legal proceedings be initiated, the shipping agent is deemed, and cited, as a representative of the principal (ie; the marine carrier). Accordingly, any legal provisions affecting the responsibility of the principal, any relief therefrom, as well as provisions concerning prescription (time bar), shall be extended to the shipping agent in respect of lawsuits resulting from their activities.

Potential Liability of Shipping Agents

The Maritime Law has however extended the potential liability of a shipping agent beyond what is ordinarily expected in a traditional agency relationship. This extension appears unique to only Kuwait and Colombia. It essentially seeks to extend some liability, upon delivery of a judgment against a principal, to its shipping agent. Article 139 states:

1. The agent must deposit with any Kuwaiti bank a cash deposit or a bank guarantee to ensure the execution of the legal judgments issued against his Principals.
2. The Minister of Communications, after consultation with the Ports Public Authority, shall issue a resolution concerning the organization of ship agents record and the determination of deposit amount or the bank guarantee to be deposited.'

In the light of above article, the Ministry of Communication issued Ministerial Decree No 282 of 1980 confirming the amount required for bank guarantee, as should be deposited with a Kuwaiti bank. The Decree also reiterates the shipping agent's responsibility in cases where court judgments are awarded against its principals.

Conclusion

We suggest that Article 139(2) may need to be reconsidered to bring the liability of shipping agents within international standard practice. The allocation of risk in this regard should be matched with the various international marine conventions and approaches of most jurisdictions worldwide.

We otherwise remain available to consider any assist shipping agents with any inquiries or concerns they may face in Kuwait and to offer appropriate legal solutions.