

New Requirements for Conducting Commercial Agency, Distribution, and Franchise Activities in Iraq

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Introduction and Highlights of the New Iraqi Commercial Agency Law

In line with other efforts to ease and facilitate trade, the Iraqi government recently issued Law No. 79 of 2017 on regulating commercial agencies. The new commercial agency law was published in the Iraqi official gazette on 13 November 2017 and became effective on the same date. It affords regulated entities one year from its effective date to comply with its requirements. One of the most important changes introduced in the new law is that, unlike the old commercial agency law, the definition of commercial agencies now extends to franchise agreements, distribution agreements, as well as actual agencies. The new commercial agency law defines commercial agency as follows:

“A contractual arrangement whereby a natural or legal person is entrusted with the sale or distribution of commodities or products or the provision of services within Iraq as an agent, distributor or franchisee for the overseas Principal for a profit or commission, in addition to the provision of after-sale services, maintenance support, and spare parts for the products and commodities marketed by such person.”

This change in the definition of commercial agency includes distribution and franchise activities, which were not previously considered commercial agency activities. The change results in greater need for clear contractual language to define what type of relationship the parties intend to have. The term “commercial agency” now has a number of meanings under Iraqi law, including an actual agency. Another notable change is that commercial agents are now allowed to deal with government procuring entities and contract directly with the government. Finally, the new commercial agency law contains rules regulating parallel importation of goods.

Requirements to Conduct Commercial Agency Activities and Consequences of Non-Compliance

Registration of commercial agents and commercial agency agreements remains mandatory under the new law. In order to obtain the required licence, the applicant must:

1. be an Iraqi national;
2. have full legal capacity;
3. not have been sentenced for a felony or misdemeanour involving moral turpitude;
4. have a commercial office in Iraq for carrying on his business;
5. be affiliated with a chamber of commerce in Iraq and have a trade name;
6. not be a civil servant or public employee; and
7. have at least one commercial agency agreement duly authenticated according to the law.

The new law further states the following requirement to verify that agents deal directly with the principal service or goods providers with no more than one link in between:

“Agency agreements submitted by a Commercial Agent must be submitted on behalf of companies that produce or manufacture commodities and provide services, or through the original company owned by the

company producing or manufacturing the commodities or providing the services and formally authorized to grant subsidiary agencies in Iraq. In addition, the registration requirements for Commercial Agency agreements shall be determined by instructions to be issued by the Minister."

Non-compliance with the requirements of the new commercial agency law can invite fines and a cessation of operations. In addition, an unregistered commercial agency agreement is not admissible or recognised before Iraqi authorities, rendering it unenforceable by both parties. Although the courts treated unregistered commercial agency agreements as unenforceable prior to the new rules coming into effect, this position is now sanctioned expressly.

Term and Termination of Commercial Agency Agreements

The new commercial agency law introduces limits on termination of commercial agency agreements. It states:

"A Principal may not terminate or not renew the agency agreement except for good cause. An agency agreement may, however, be terminated by mutual agreement between the Agent and the Principal or in accordance with an agreement concluded between the parties providing for arbitration and designating a tribunal as well as the governing law."

The above language has not been tested and it is currently difficult to predict how the Iraqi Courts will apply the new rules on termination of commercial agency agreements. In addition, it is worth noting that the new law does not expressly address the effects of deregistration of a commercial agency agreement, which is possible in the following circumstances:

- if it is proven that the commercial agency agreement had been registered on the basis of false information or documents;
- if either the commercial agent or the principal requests termination of the agreement, provided that such termination is not intended to prejudice the interests of either party;
- if it is proven that the foreign principal company has breached its obligations towards Iraq and has accordingly been blacklisted;
- if 90 days have elapsed from the date the Registrar notified the commercial agent of the expiry of the term of the agreement; or
- if, after revocation of the commercial agent's licence, he fails to obtain a new licence within 180 days from the revocation date.

However, it is generally expected that the effects of non-registration would be from the date of deregistration of a previously registered agreement.

Application of the New Commercial Agency Law in Kurdistan

Federal laws, such as the new commercial agency, are enforced in Kurdistan after they are ratified by the Kurdistan Parliament. The Kurdistan Parliament has not been ratifying important federal laws recently for political reasons. Kurdistan currently applies the old Commercial Agency Law No. 51 of 2000. This old law was restricted to actual agency relationships, which could be terminated at any time by the principal. Kurdistan adds its own regulations to the old commercial agency law, which contain rules on parallel importation and other areas addressed in the new commercial agency law. It is important to note that the situation in Kurdistan is contested as the federal Iraqi government is pushing to assert its authority over Iraq's borders. The application of federal laws, and border issues, are being negotiated between the Iraqi federal government and Kurdistan. The future deal between the federal Iraqi government and Kurdistan will affect the application of many federal laws in Kurdistan, including the commercial agency law.

Al Tamimi & Company's Iraq team regularly advises on commercial agency and trade matters For further information please contact Ali Al Dabbagh A.AIDabbagh@tamimi.com or Jawad Khalaf J.Khalaf@tamimi.com