An agency agreement is a fiduciary relationship between two parties, involving a Principal (first party) and an Agent (second party) and is often used by foreign companies wishing to trade onshore in the UAE as it requires comparatively lesser investment and risk coupled with the advantage of local experience and market knowledge. Such arrangements are termed commercial agency or distribution arrangements and are regulated by the UAE Agency Law (Federal Law 18 of 1981, as amended).

The law defines a commercial agency as “the representation of a Principal by an Agent on the distribution, sale offer or presentation of commodity or service within the State.” Further, the law explicitly states that trade agencies are not permitted to practise such activities without registered commercial agents. Any trade agency agencies/agreements not registered in the specific register will not be considered and nor will they eligible for legal actions or receive the protection of the Agency Law.

The Agency Law requires some conditions to be fulfilled for it to apply to the specific party:

1. Agent must be UAE national or a company wholly owned by UAE nationals (per Article 2)
2. Relationship must be exclusive (either as to a specific products (s) and/or territory, per Article 5)
3. Commercial agency agreement must be registered in the Commercial Agents Registrar with the Ministry of Economy in the applicable Emirate (per Article 3).

Registration is imperative as it ensures prevention of parallel trading of similar goods and provides grounds for any trade mark infringement issues.

A registered agency is entitled to significant protections under the law, including but not limited to:

1. Protection against termination or non-renewal of agreement (per Article 8)
2. Right to exclusivity, preventing principal from appointing new agent (per Article 8)
3. Subsequently, right to prevent import of principal products into the UAE (per Article 23)
4. Right to compensation/damages on withdrawal of agency rights (per Article 9)
5. Right to commission on all sales made within the UAE regardless of whether or not the agent makes or contributes to those sales (per Article 7)

As per Article 4 of the Agency Law, registration of an agency is effective only if the principal and the agent are bound by a written and notarized agreement. The UAE Customs authorities are not permitted to clear the importation of products through parties other than the registered agent without prior approval of ministry and the agent.

Registration involves the agent presenting a duly signed and notarized copy of the agreement (attested if signed outside the UAE) to the Ministry of Economy. Conversely, if an agent has failed to procure a notarized copy of the agreement, they could quite possibly apply to the local court to obtain an order for registration, only if the agreement meets the requisite criteria. Once this procedure has been completed, the details of the contracting parties, the date of registration and the goods/services concerned that the agents have exclusive rights to in the UAE are entered into the commercial agents register.

One of the material safeguards offered by the law is the agents right to protection against termination. As per Article 8, termination is allowed in the presence of a ‘material reason’ or express agreement between contracting parties; this makes it harder for principals to withdraw out of agreements. There are very little guidelines in place to construe the context for ‘material’ reasons, particularly due to the individualistic scenarios presented in every relevant case.

The Commercial Agencies Committee was created under the Agency Law as the first point of contact for parties wishing to resolve a dispute relating to the law. Under the current legislation, the Committee has full powers of investigation and in order to be binding, the Committee must rule on disputes within 60 days of receiving a complaint from either party to an agreement. Parties are also able to appeal the decisions of the Committee before the UAE Courts.
It is advised that any foreign company seeking to expand into the market in UAE or even browsing through their options receive legal counsel before making any agreements so as to avoid undertaking any legal risks.

For further information or assistance, please contact our colleagues at Germela-Lootah at +971-4-288-8345 or at info@germela-lootah.com