

inBrief



Termination of a Commercial Agency Contract under the (New) Commercial Agency Law

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The importance of the UAE as a trading and consumer goods hub resulted in a protective approach of the authorities towards distributors and franchisees. The UAE Federal Law No. 18 of 1981 on Commercial Agencies (**Old Law**) was drafted with the intent of protecting the interests of UAE nationals (and companies wholly owned by UAE nationals), and was protective towards the interests of registered commercial agencies. In the last few years, there has been a gradual shift away from such protectionist measures and this shift has now led to the issuance of a new Federal Law No. 3 of 2022 Regulating Commercial Agencies in December 2022 (**New Law**).

The New Law repeals the Old Law and will come into effect in June 2023. Kindly refer to our [inBrief](#) of 26 January for a snapshot of the key changes to the regime. In this inBrief, we focus on the termination of commercial agency contracts and disputes that may arise.

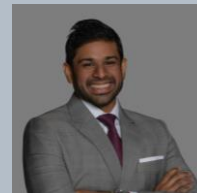
- Term and termination:** Expiry or termination of a registered commercial agency has been the most contentious issue under the Old Law. The Old Law provided that the principal is not permitted to terminate or refuse to renew a commercial agency contract unless there is mutual consent of both parties or there is a fundamental reason justifying the termination. The term 'fundamental reason' was not defined and was determined by the court or the Commercial Agencies Committee (**Committee**) at their discretion. The New Law has proposed major amendments in this regard and provides that:
 - Unless otherwise agreed between the parties, if the contract requires the agent to establish display buildings, commodity stores, or maintenance or repair facilities, there shall be a default contract term of five years.
 - The commercial agency contract shall expire in any of the following cases:

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- (i) upon expiry of the contract term unless renewed;
- (ii) pursuant to the terms of the contract;
- (iii) by mutual agreement of the principal and the agent; or
- (iv) by court order.

The ability of the principal to terminate the contract in accordance with its terms or at expiry of the term is a deviation from the Old Law which had very restrictive termination provisions.

2. **How to terminate?** The party intending to terminate the agency pursuant to the terms of the agency contract is required to:
 - (a) send a termination notice to the other party of their wish to early terminate the agency contract. Unless otherwise agreed in the agency contract, the notice period for the termination notice should be not less than one year notice prior to the effective date if termination or prior to the lapse of one half of the contract term, whichever is less. This requirement can be dispensed with if agreed by the parties; and
 - (b) either party may submit a detailed report prepared by a specialized professional body on the settlement of dues, guarantees of non-interruption of after-sales services, estimation of assets and expected damages, consequent to the termination.

In case of non-renewal of the contract, the party wishing to not renew the contract is required to notify the other of non-renewal one year before expiry of the term or before the lapse of one half of the term, which is less, unless the two parties agree otherwise.

3. **How to challenge termination:** A party may challenge the termination notice before the Committee. The Committee is required to give its decision within 120 days from the date of the request. If it does not give its decision within this timeline, the challenge is deemed rejected. The ability to terminate / not renew and the strict timelines for resolution of the challenges to termination are very principal friendly. This is a major departure from the earlier regime which practically saw a timeline of four to six months for the Committee to issue its decision on such matters.
4. **Compensation on termination:** The New Law lays down certain provisions relating to the compensation that may be claimed upon termination/expiry of the agency contract. The New Law permits the parties to agree to 'no compensation' provisions in the contract in the event the contract is terminated due to expiry of the contract term. This however appears only to relate to circumstances where the contract terminates due to the expiry



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of the contract terms. In circumstances where the agency contract is terminated pursuant to the terms of the contract, the agent shall be entitled to compensation, if it proves that their legitimate activity has contributed to the achievement of visible and significant success of the products of the principal, has led to the promotion of such products or the increase in the number of customers and that the termination of the contract would deprive the agent of their lost profit.

- Commercial Agencies Committee:** In line with the Old Law, the New Law also provides that disputes in relation to commercial agencies shall be referred to the Committee prior to being referred to Court. This however does not appear to be the case if the parties have agreed to arbitration. The New Law introduces a timeline of 120 days for the Committee to issue its decision. Failure to comply with the timeline grants the parties the right to approach courts within 60 days of lapse of the deadline.
- Arbitration:** In a major departure from the Old Law, the New Law recognises the parties' right to agree to arbitration. While the default seat of arbitration has been identified as 'within the UAE', the parties are free to agree on a different seat. Note however that this provision does not apply to agency contracts in respect of which a dispute is being heard before the Committee or the competent courts before the New Law is issued. Also, if a party initiates arbitration after the issuance of the Committee's decision, the Committee's decision shall be disregarded and have no effect or consequences. The effect of this is likely to be that the Committee could be circumvented by a party, if the agency contract contains an arbitration clause.
- Application of termination provisions to existing agencies:** In order to protect the existing agencies, the provisions relating to termination due to expiry of term or termination in accordance with the contract terms shall apply to existing agency contracts only after two years from the effective date of the New Law. Further, in case of agencies that have been registered for the same agent for more than ten years or agencies in which the volume of the agent's investment exceeds AED 100 million, such provisions shall only apply ten years after the New Law comes into effect in June 2023.

Further clarity is awaited on penalty provisions, release of certain activities from the requirement of being undertaken only through commercial agency and provisions relating to import of goods and services into the UAE during the period of dispute between the parties.

Overall, the New Law introduces much expected changes. The provisions on commissions and exclusivity have been retained and existing agents have been protected from termination for a specified time. This would soften the blow on the existing agents who enjoyed full protection and advantages under the Old Law. ■

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