

inBrief

**UAE Commercial Agencies Regime (2023)**

By Bashir Ahmed and Abdus Samad | 26 January 2023

The UAE commercial agency regime has been a central pillar of commerce since the issuance of UAE Federal Law 18 of 1981 (the **1981 Law**). While piecemeal amendments to the 1981 Law have been introduced from time to time, the UAE government has now issued UAE Federal Law 3 of 2022 concerning commercial agencies (the **New Agencies Law**) which repeals and replaces the 1981 Law in its entirety.

The New Agencies Law represents a substantial modernisation of the 1981 Law and will no doubt contribute further to the development and expansion of the UAE economy and its integration into global commerce. This inBrief considers some of the salient issues concerning registration and termination of commercial agencies under the New Agencies Law.

Requirement for registration as a commercial agent

The New Agencies Law provides that the following shall be permitted to act as “commercial agents”:

- natural persons who are UAE nationals; or
- a body corporate that is wholly owned by:
 - one or more natural persons who are UAE nationals; or
 - a public company (subject to what is stated below).

A separate regime is contemplated for UAE incorporated public joint stock companies that are (or propose to be) registered as commercial agents under the New Agencies Law. Such companies may be registered as commercial agents notwithstanding that they do not have 100 per cent UAE national participation (but provided that UAE national participation is not less than 51 per cent) however, additional specific implementing regulations are contemplated.

In addition, the New Agencies Law provides that the UAE Federal Cabinet may, upon the recommendation of the Minister of Economy, permit an “international” business not owned by UAE nationals to promote and sell its own products in the UAE (and presumably to be

The Authors**Bashir Ahmed**

Managing Partner
bahmed@afриди-angell.com

Bashir is the managing partner of Afridi & Angell. He advises clients on cross-border transactions, general corporate and commercial, private equity, banking, licensing and maritime matters.

**Abdus Samad**

Partner
asamad@afриди-angell.com
Tel: +971 4 330 3900

Abdus Samad (Samad) advises foreign and UAE clients on general corporate, commercial and other matters relating to the conduct of business in the region. Samad has extensive knowledge and experience in cross-border matters including complex acquisitions and divestures, joint ventures, restructurings and reorganisations. Samad has been ranked as “Rising Star” for commercial, corporate and M&A, in Legal 500 EMEA.

registered as its own “commercial agent” in accordance with the New Agencies Law) provided that:

- there is no commercial agent registered for the relevant product(s) in the UAE; and
- there has not previously been a commercial agent registered for the relevant product(s) in the UAE.

The scope of this carveout for a foreign principal is anticipated to be supplemented by a decision of the UAE Federal Cabinet and we look forward to further clarity on what is no doubt going to be an issue of interest.

As with the 1981 Law, a written contract is required to be entered into and default jurisdiction for commercial agency disputes is reserved for the commercial agencies committee within the Ministry of Economy and subsequently the onshore courts of the UAE. However, the New Agencies Law allows for the parties to a commercial agency contract to provide for the resolution of disputes by arbitration. This is an important change to the 1981 Law which did not provide for such an alternative.

Expiry or termination of registered commercial agencies

It is common knowledge that the 1981 Law provided substantial safeguards against termination to a registered commercial agent. The New Agencies Law provides that a commercial agency shall “expire” upon the expiry of the contractual term stated in the contract of commercial agency. The New Agencies Law also provides that a commercial agency contract may be terminated unilaterally by either principal or agent in accordance with the provisions of the commercial agency contract. Both of the foregoing concepts concerning expiry and termination are new and fundamentally change the previous position with respect to termination, as stated in the 1981 Law.

In addition, the New Agencies Law provides that a party wishing to terminate a commercial agency contract at the end of its term (i.e., a “*non-renewal*”) shall serve notice on the other party not less than either:

- (a) one year prior to the expiry of the term of the underlying commercial agency contract; or
- (b) prior to the lapse of half of the stated contractual term,

whichever of (a) and (b) is shorter.

Application of the New Agencies Law to existing commercial agencies

The New Agencies Law is stated to come into effect six months after the date of its publication in the Official Gazette. The New Agencies Law was published in the Official Gazette on 15 December 2022 and accordingly will come into effect in June 2023.

Notably however, the New Agencies Law provides that the stipulation concerning the expiry of a commercial agency (as summarised above in this inBrief) shall *not* immediately apply to commercial agency contracts in force at the time of the issuance of the New Agencies Law and shall only apply to such contracts after the lapse of two years of the date of application of the New Agencies Law (i.e., two years from June 2023). Equally importantly (and by way of exception to the two-year period above), where a commercial agency has been registered for a period of ten years or a commercial agent’s investment into the development of the relevant agency exceeds AED 100 million, the provisions of the New Agencies Law concerning expiry of a registered commercial agency shall only apply after the lapse of ten years from date of its application (i.e., ten years from June 2023) in relation to such agencies. Further implementing regulations concerning this carveout are contemplated in the New Agencies Law.

Key takeaways

As noted, the New Agencies Law represents a substantial modernisation of the 1981 Law. New provisions concerning the expiry and termination of registered commercial agency contracts have been introduced and will be very important in any negotiations concerning commercial agency contracts proposed to be entered

into. A number of key provisions remain subject to further supplementary rules and legislation. As with all legislative updates, the application and enforcement of the New Agencies Law will determine the further development of the UAE commercial agencies regime. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is a full-service UAE law firm in its fifth decade at the forefront of the legal community. From the beginning, our hallmarks have been a commitment to quality, unsurpassed knowledge of the law and the legal environment, and crafting of innovative business solutions. Licensed in the three largest Emirates of Abu Dhabi, Dubai and Sharjah as well as the Dubai International Financial Centre, our practice areas include banking and finance; corporate and commercial law; arbitration and litigation; construction; real estate; infrastructure projects; energy; project finance; maritime (wet and dry); and employment. We advise local, regional and global clients ranging in size and sophistication from start-ups, sole proprietorships, family-owned businesses, entrepreneurs and investors to some of the world's largest public and private companies, governments and quasi-government institutions. We attract and retain clients with our dedication to practical guidance focused on their business needs supported by decades of experience here in our home jurisdiction, the UAE.

Afridi & Angell is the exclusive member firm in the UAE of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms, and World Services Group.

www.afridi-angell.com