

Amendments to the UAE Commercial Agencies Law: broadening the scope

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In January this year, it was announced that the United Arab Emirates ('UAE') Cabinet had approved certain proposed amendments to Federal Law No. 18 of 1981, more commonly known as the 'UAE Commercial Agency Law', which regulates registered commercial agencies within the UAE. On 31 May 2020, Federal Law No. 11 of 2020 was published in the UAE Official Federal Gazette No. 679, and entered into force on 1 June 2020. Federal Law No. 11 of 2020 implements the anticipated changes announced earlier in the year and makes a fundamental modification to which types of UAE legal entities can register a commercial agency arrangement at the UAE Ministry of Economy ('Ministry').

Previously, only UAE nationals or companies wholly owned by UAE nationals could qualify for registration as a commercial agent by the Ministry and hence only UAE nationals, or companies wholly owned by UAE nationals, could avail of the protections afforded to registered commercial agents under the UAE Commercial Agency Law.

As addressed in previous Law Update articles, the primary reason for the enactment of Federal Law No. 11 of 2020 relates to the fact that the prior national ownership requirements naturally discouraged local UAE family businesses, which had existing registered commercial agencies as part of their business portfolio, seeking external investment via a private placement or initial public offering ('IPO') (due to the fact that any private or public offering would have to be restricted to UAE nationals in order to maintain and comply with the 100 per cent UAE national ownership requirement).

The position has now changed as a consequence of the amendments introduced by Federal Law No. 11 of 2020, which has essentially introduced two additional UAE legal entities that may qualify for registration at the Ministry as a commercial agent – thus widening the net. Now, post the enactment of Federal Law No. 11 of 2020, in order for a commercial agency arrangement to be registered at the Ministry, the agent must now be:

1. a UAE national; or
2. a UAE public joint stock company ('PJSC') owned, at least, 51 per cent by UAE nationals;
3. a UAE private entity owned by a PJSC meeting the requirements of (2) above; or
4. a UAE private entity that is 100 per cent owned by UAE nationals.

The additional registration criteria previously required for effecting registration at the Ministry have not changed under Federal Law No. 11 of 2020 (i.e. the relevant commercial agency arrangement must be exclusive, either in respect of an Emirate or Emirates or the entire UAE and the commercial agency agreement must be notarised and accompanied by certain supporting documents).

A word of caution is that the Minister of the Economy will, in due course, issue a resolution on the procedures and controls necessary for the engagement of a PJSC or private companies owned by a PJSC (meeting the national ownership criteria) in commercial agency activities in the UAE but, in principle, local family businesses are now able to convert their private companies into a PJSC in order to seek foreign equity investment without the risk of losing their registered commercial agent status (assuming, of course, that at least 51 per cent of the shares in the PJSC are and continue to be held by UAE nationals).

In addition to the amendments to Article 2 of the UAE Commercial Agency Law, noted above, Federal Law No. 11 of 2020 also introduced some additional modifications to Articles 1, 8, 28, 30 and 32. The below table highlights these changes and provides a short summary of the impact, if any, the amendments have made to the previous position.

Article	Previous Wording	Amended Wording	Commentary
(1)	<p>In the course of applying this Law, the following terms and phrases shall have the meanings as defined below, unless the context otherwise requires:</p> <ul style="list-style-type: none"> • The UAE: The United Arab Emirates; • The Ministry: The Ministry of Economy; • The Minister: The Minister of Economy; • Competent Authority: The local authority in the relevant Emirate; • The Committee: The Committee of Commercial Agencies, which is formed under Article (27) of this Law; • Commercial Agency: The representation of a principal by an agent for the distribution, sale, offer or provision of a commodity or service inside the UAE against a commission or profit; • Principal: The producer or manufacturer inside or outside the UAE or the producer's approved exclusive distributor or exporter; provided that the producer does not practice marketing on its own; • Agent: A natural person having UAE nationality or a corporate person that is wholly owned by UAE nationals who are authorised under the commercial agency contract to represent the Principal to distribute, sell, offer or provide a commodity or service inside the UAE for a commission or profit. 	<p>For the purpose of applying the provisions of this Law, the following words and expressions shall have the meanings assigned thereto respectively, unless the context requires otherwise:</p> <ul style="list-style-type: none"> • State: The United Arab Emirates. • Ministry: The Ministry of Economy. • Minister: The Minister of Economy. • Competent Authority: The local authority in the relevant Emirate. • Committee: The Committee of Commercial Agencies. • Commercial Agency: The representation of a principal by an agent under an agreement of agency, distribution, sale, display, franchise or providing a commodity or service in the State in return for a commission or profit. • Principal: A producer or manufacturer in the State or abroad, or an exclusive exporter or distributor authorised by the producer; provided that the producer does not carry out the marketing functions by itself. • Agent: A natural or legal person representing a Principal under a commercial agency agreement. 	<p>Although certain definitions have been updated under the amendments to Article 1, principally, the new definitions still reflect the position pre Federal Law No. 11 of 2020 having been enacted. That said, the definition of Agent has been updated due to the amendments made to Article 2 concerning the legal form and ownership requirements for an entity to qualify for registration as a commercial agent in the Ministry. Additionally, the definition of "Commercial Agency" has also been expanded to add the wording "under an agreement" whereas the former provision provided for representation without an express requirement for any agreement. In practice, the majority of commercial agencies were via a written contract but, on occasion, if an agent did not have a written contract then it may have been possible for the agent to apply to the UAE court to consider correspondence and any other communications between an agent and relevant principal, in order to ascertain if there was sufficient evidence of an agreement (even though not reduced in a written contract). The judgment issued was then subsequently used to replace the written contract. This change in the definition could now impact an agent's ability to register itself at the Ministry without a written contract in place. Furthermore, there is now express reference to "franchise", which was not included in the old definition of Commercial Agency and this too represents an important development.</p>

(2)	Practice of Trade Agencies' activities within the State shall be restricted to individual nationals or national Companies fully owned by national natural persons.	<p>1. The practice of commercial agency activities in the State shall be limited to citizens, including individuals or companies that are fully owned by a:</p> <ol style="list-style-type: none"> 1. national natural person; 2. public legal person; 3. private legal person owned by public legal persons; or 4. private legal person fully owned by national natural persons. <p>2. PJSC incorporated in the State to which the contribution of the State's citizens is not less than (51 per cent) of the company's capital shall be excluded from the provisions of Clause (1) above.</p> <p>3. the Minister shall issue a resolution on the procedures and controls necessary for the engagement of the companies mentioned in Clause (2) above in commercial agency activities in the State.</p>	<p>As dealt with above, this amendment to Article 2 represents the most fundamental change to the UAE Commercial Agency Law.</p> <p>Now, in order for a commercial agency arrangement to be registered at the Ministry, the Agent must be:</p> <ol style="list-style-type: none"> 1. a UAE national; or 2. a UAE public joint stock company owned, at least, 51 per cent by UAE nationals; 3. a UAE private entity owned by a public joint stock company meeting the requirements of (2) above; or 4. a UAE private entity that is 100 per cent owned by UAE nationals. <p>Although the relevant individual or entity would still need to satisfy the other prerequisite criteria for effecting registration at the Ministry (as further dealt with above).</p>
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<p>(8)</p>	<p>Subject to Article (27) and Article (28) of the Law, the Principal may not terminate or refuse to renew the agency contract unless there is a material reason for termination or non renewal. In addition, a Commercial Agency may not be re-registered in the Register of Commercial Agencies in the name of another Agent, even if the previous Commercial Agency was established under a fixed-term contract, unless the Commercial Agency has been consensually terminated between the Agent and Principal or there are material reasons which, are satisfactory to the Committee, give rise to termination or non-renewal of the Commercial Agency or upon a final judgment confirming its abolishment.</p>	<p>1. a commercial agency shall devolve to the heirs in the event of death of the agent. 2. subject to the provisions of Article (27) and (28) of the Law, the Principal may not terminate or refuse to renew the agency agreement without a material reason justifying the termination or non renewal. In addition, the agency may not be re-registered in the commercial agents' register in the name of another agent, even if the preceding agency is based on a fixed term agreement, unless the agency has been terminated by mutual agreement between the Principal and the Agent or in case of material reasons accepted by the committee justifying the termination or non renewal of the agency or after rendering a final court judgment writing off the agency. 3. the expiry of the agreement term shall not constitute a material reason for terminating the agency agreement between the two parties.</p>	<p>The amendment to Article 8 now brings clarity to two specific points. Firstly, it is now expressly mentioned that a commercial agency shall devolve to the heirs in the event of the death of the agent. Previously, in the event of death, Article 14 of the UAE Commercial Agency Law required that an agent's legal representative or heirs must submit an application along with supporting documents to remove the commercial agency from the register within 60 days of the death or submit objections to avoid the removal of the agency. Article 14 has not been amended under Federal Law No. 11 of 2020, so the Ministry will need to clarify whether, in light of Article 14, the notification requirements are now necessary given the amendment to Article 8. Secondly, it is now expressly mentioned that the expiry of a registered commercial agency does not amount to a "material reason", justifying the termination of the registered commercial agency arrangement. This confirms the interpretation previously given to the original wording of Article 8 i.e. a new commercial agency could not be registered for the same products even if the previous commercial agency was established under a fixed-term contract.</p>
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(28)	<p>The Committee shall be competent to hear any dispute arising from the commercial agency registered with the Ministry. Parties may not bring the claim before the court until after the issue is referred to the Committee of Commercial Agencies. The Committee shall hear the dispute within 60 days from the date of the request for hearing the dispute (in the event that the request meets required formalities) or from the date on which the required documents are duly completed. The Committee may seek the help of any person it deems fit in order to fulfill the duties assigned thereto.</p> <p>The Committee's decision may be challenged before the competent court within 30 days from the date on which the Committee's decision is notified; otherwise the Committee's decision shall be final and not subject to further challenge.</p>	<p>The Committee shall have jurisdiction to hear the disputes arising between the parties to a commercial agency registered with the Ministry. No action may be admissible before courts in this regard before referring the dispute to the Commercial Agency Committee, which shall hear the dispute within 60 days from the date of submitting an application for hearing the dispute, in case of a complete application, or from the date of completing the required documents. In order to perform its functions, the Committee may engage whomever it deems fit.</p> <p>The Committee's decision may be contested before the competent court within 30 days from the date on which the Committee's decision is notified, otherwise, the Committee's decision shall be deemed final and uncontestable.</p>	<p>The wording of Article 28 has changed in part but the substance of the Article remains the same. Essentially, the Commercial Agency Committee must first hear any disputes arising out of a registered commercial agency. Thereafter, a party has 30 days following notification of the Commercial Agency Committee's decision to contest the decision before the local UAE courts. If no appeal is commenced within this timeframe, the Committee's decision is deemed final and binding.</p>
(30)	<p>A decree to nominate an official as referred to in a preceding article herein shall be issued by the Minister of Economy & Commerce. The decree shall determine procedures to be adopted to establish any breach of this act that may occur. Officials so nominated are prohibited from disclosing matters deemed confidential by their nature made acquainted with by virtue of their posts. Anyone who violates such restriction shall be disciplinarily penalised without prejudice to civil or criminal liability.</p>	<p>The employees identified by a resolution of the Minister of Justice, in agreement with the Minister, shall have the capacity of judicial officers to detect what falls within the scope of their competence of the violations of the provisions of this Law, the Executive Regulations thereof and the resolutions issued in implemented. Such employees shall not disclose the matters to which they may have access ex officio if such matters are of a confidential nature. Whoever violates such prohibition shall be penalised without prejudice to any civil or criminal liability.</p>	<p>The amendment to Article 30 has not changed the substance of the original wording save for the identity of the judicial officers charged with determining what falls within the scope of the UAE Commercial Agency Law and any violations thereof shall be by agreement between the Minister of Justice and the Minister of Economy, rather than solely the Minister of Economy.</p>
(32)	<p>Minister of economy and foreign trade shall implement this act and issue the regulations and decisions necessary for execution thereof.</p>	<p>The Minister shall issue the regulations and resolutions necessary for implementing the provisions of this Law.</p>	<p>The amendments to Article 32 are cosmetic in nature and rectify errors in the use of defined terms in the original English translation of the UAE Commercial Agency Law.</p>

The enactment of Federal Law No. 11 of 2020 represents the most significant change to the UAE Commercial Agency Law since 2010. This latest amendment constitutes a milestone in encouraging local companies to access the financial markets for additional funding and investment, which in turn, should act as a stimulus to the local financial markets.

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