Qatar Court of Cassation shifts its view regarding Commercial Agency

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In 2009, the Court of Cassation issued a judgment interpreting Article 2 of Law No. 8 of 2002 ("Commercial Agency Law") and defined the conditions that must be met to establish the existence of a commercial agency agreement between a foreign company and its local distributor in Qatar.

Article 2 defines a commercial agent as "every person exclusively licensed to distribute the goods and products or to put them on sale or circulation or to perform certain services within the scope of the agency on behalf of his principal in exchange of remuneration." The Court held that Article 2 requires three specific conditions to be met for a commercial agency agreement to exist: exclusivity, scope of the agency on behalf of the principal and remuneration. Pursuant to the facts of the case before it in 2009, the Court found that while exclusivity and remuneration were clearly established, the local distributor failed to successfully establish the scope of the agency on behalf of the foreign company. Therefore, the Court held that a commercial agency did not exist.

A new case was presented to the Court of Cassation on 17 December 2013 regarding the existence of commercial agency. The Court of First Instance and the Court of Appeal, applying the earlier 2009 judgment of the Court of Cassation, held that commercial agency could not be proven as the appealing party failed to successfully establish scope of the agency on behalf of the principal company. Remarkably, the Court of Cassation overruled the judgments of the Court of First Instance and Court of Appeal. In its recent judgment, the Court of Cassation first set out the facts of the case and repeated the same three conditions as in its earlier 2009 judgment. However, when analysing the merits of the case before it, the Court determined that the Commercial Agency Law was applicable and a commercial agency did indeed exist thereunder, because the conditions of exclusivity and remuneration were established. Notably, the Court remained silent with respect to the third condition in its analysis and sent the case back to the Court of Appeal to be re-heard by a different panel of judges.

On a practical note, the 2009 judgment of the Court of Cassation, while favourable to the foreign company, constituted a bright line rule and provided clarity by requiring three specific conditions to be met to establish commercial agency in cases of disputes. However, the recent judgment, which appears to be more favourable to local agents, may cause serious concerns to foreign companies as regards contractual relationships with local agents, particularly when viewed in light of the compensation provisions found in the Commercial Agency Law. Under Article 8 of the Commercial Agency Law, upon the expiry of fixed term agency and irrespective of agreement to the contrary by the parties, the agent shall have the right to demand the principal to pay indemnity if it is apparent that the principal obtained a successful outcome from the efforts of the agent. In addition, Under Article 9, if the agency contract term is indefinite, the parties must mutually agree to terminate the contract. Further, in the event of termination of an indefinite term agency contract, and irrespective of agreements to the contrary, the agent shall have the right to demand the principal to pay indemnity if the principal obtained a successful outcome from the efforts of the agent. Therefore, under both Articles 8 and 9, a foreign company would be liable to pay indemnity to the local agent upon the termination or expiry of contracts if the contracts are determined to be commercial agency contracts under Article 2 of the Commercial Agency Law.