

UAE Courts' interpretation of the jurisdiction of the Commercial Agencies Committee extends to include third parties

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The UAE Federal Law no. 18 of 1981 as amended by Law no. 2 of 2010 (the "Law") regulates the subject of Commercial Agencies and explicitly confer the jurisdiction over any dispute that arises in connection with a commercial agency to the Commercial Agencies Committee (the "Committee").

The Committee is a body of the government created by Cabinet Resolution no. 3 of 2011 and charged with adjudicating disputes that arise by reason of a registered commercial agency.

Pursuant to the Law, decisions of the Committee may be appealed to the competent court within 30 days from the date of notifying the parties of the Committee's quasi judicial decision.

In practice, parties to a dispute involving a commercial agency that wish to circumvent the Committee's statutory jurisdiction and procrastinate proceedings before the Committee would bypass the Committee and initiate proceedings directly before the Courts. The practice of the UAE Courts -federal and local courts alike- have always been to reject claims filed in connection with a registered commercial agency for failure of the parties to follow the path specified by the Law i.e. to report any dispute to the Committee first. The similarity between courts' precedents to date is that the disputes in question arose between a principal and its commercial agent. In the precedents subject of this commentary however, the controversies are commercial agents and third parties. In the following two judgments, we project the UAE Courts' take on whether the Commercial Agencies Committee may assume jurisdiction to entertain disputes between one or two parties of a commercial agency and a third parties.

Dubai Cassation Court decision in civil appeal no. 126/2014 dated 18/12/2014

The facts of the case:

A commercial agent (the "Agent") filed a civil claim for compensation before the Dubai Court of First Instance against a third party (the "Defendant") for importing products subject of the commercial agency into the UAE. The Court of First Instance rejected the case for being filed through a way other than that which is specified by the Commercial Agencies Law i.e. filing the case before the Committee. The Agent consequently took the case to the Committee which issued a preliminary decision assuming jurisdiction to hear the case and notifying the parties to attend before the Committee.

The Defendant -aiming to procrastinate the proceedings – challenged the Committee's decision before the Dubai Court of First Instance on grounds of Article 28 of the Law the effect of which is that parties may appeal or object to decisions of the Committee within 30 days from the date of notification of the Committee 'decision. The Defendant further asserted that the effect of Article 27 of the Law setting out the Committee's jurisdiction is that the Committee is only competent to look into any dispute that arises between a principal and its commercial agent in connection with a registered commercial agency which would consequently entail that any dispute involving a third

party falls out of such jurisdiction. The Defendant further submitted that the dispute in question is of a civil nature rather than a trait concerning a commercial agency which renders the dispute outside the scope of the Commercial Agencies Law.

The Court of First Instance rejected the case, the Defendant appealed to the Dubai Court of Appeal which rejected the case as well and the Defendant therefore filed the instance petition to the Dubai Court of Cassation challenging the lower courts decisions on the following grounds:

- The Committee's jurisdiction to hear disputes arising out of commercial agencies is an exception to the Court's jurisdiction and may not be widely interpreted to include disputes involving third parties;
- The Agent's claim against the Defendant is of civil nature which is subject to the application of the Civil Transactions Law and not the Commercial Agencies Law thus falls out of the scope of the Committee; and
- (The appealed judgment failed to identify the authority from which it derived that the Committee's decision is treated as a judicial decision when it comes to whether a the committee's decision is conclusive or merely a preliminary decision rendered during the proceedings and thus may not be appealed. The Appeal Court held that what is meant by the Committee decision which may be appealed or objected to by the parties by way of a traditional court case is a conclusive decision that adjudicates the dispute between the parties while the case at hand is related to a preliminary decision by the Committee on its jurisdiction to hear the dispute and an invitation to the parties to attend before the Committee.

The Court of Cassation

The Court rejected the grounds of challenging the appealed judgment and held that the Law determined that any dispute which may arise by reason of a commercial agency falls under the ambit of the Committee. The effect of Article 28 of the Law is that parties may appeal conclusive decisions of the Committee to the competent court within 30 days from the date of notification of the Committee's decision.

Similarly, Article 2 of the UAE Cabinet decision no. 3 of 2011 concerning the Commercial Agencies Committee states that any dispute arising by reason of a registered commercial agency falls under the ambit of the Committee.

The Court of Cassation explained that the Law conferred the jurisdiction to hear any dispute that arises by reason of a commercial agency to the Committee without consideration as to the parties of such dispute i.e. whether the dispute is between the parties of the commercial agency or third parties. It is therefore prohibited for any party to bypass the Committee's jurisdiction and take the dispute directly to the courts. Once the Committee issues its decision, the parties have the right to challenge the Committee's decision before the competent court within the statutory time limit. The criterion in determining whether the Committee's decision is conclusive or preliminary i.e. a decision to notify the parties of the dispute to attend before the Committee is whether such decision adjudicates the subject matter of the dispute.

The Court construed that the Committee's letter to the parties declaring its jurisdiction and notifying the parties to attend before the Committee does not fall under the criterion of a conclusive decision and thus may not be the subject of an appeal according to Article 151 of the Civil Procedures Law. In stating this, the Court considered the Committee's decision as a judicial decision subject to application of the same procedural rules as the court's decisions.

Union Supreme Court decision in administrative challenge no. 147/2014 dated 28/5/2014

The facts of the case

Similar to the previous case, the commercial agent in this case initiated proceedings before the Dubai Court of First Instance against two entities (the “Claimants”) and requested the appointment of a committee of experts to evaluate the damages and losses the agent incurred due to importation of vehicles subject of its agency into the UAE when the commercial agent was not the consignee.

The Dubai Court rejected the case for filing it by a way other than that specified by the Law i.e. before the Commercial Agencies Committee. The First Instance Court’s decision was upheld by both the Appeal and Cassation Courts.

The Agent re-initiated the case before the Committee which issued a preliminary decision with its jurisdiction over the dispute and notified the parties with the proceedings.

The Claimants dissatisfied with the Committee’s decision objected to the Abu Dhabi Federal Court of First Instance and joined the Ministry of Economy to the proceedings sought to cancel the Committee’s decision. The First Instance Court found that it lacked the jurisdiction to hear the dispute as it falls within the Committee’s jurisdiction. The Claimants appealed and the Abu Dhabi Federal Appeal Court upheld the lower court’s decision. The Claimants therefore challenged the appeal court’s decision before the Union Supreme Court on the same grounds submitted in the previous precedent. The Union Supreme Court upheld the appealed decision and rejected the case, however, the Supreme Court’s reasoning for rejecting the petition and interpretation of the nature of the Committee’s decisions were slightly different from those of the Dubai Cassation Court.

The Claimants submitted that the effect of Article 151 of the Civil Procedures Law is that decisions issued during the course of proceedings may not be the subject of appeal with few exceptions that include judgments determining the jurisdiction of a court in the event that the subject of the dispute does not fall under the jurisdiction of deciding court. Applying this to the instance case entails that a decision issued by the Committee regarding its jurisdiction can be the subject of an appeal.

Union Supreme Court

The court dismissed the Claimants argument on the premise that only judicial conclusive decisions can be the subject of an appeal while on the other hand quasi judicial decisions issued by administrative bodies which do not apply the rules and procedures of the law that are applicable to court judgments may not be subject to appeal through means stipulated in the Civil Procedures Law so long as such decisions are not prescribed with the meaning of a judicial decision as stipulated in the law. While the Committee’s conclusive decisions may be appealed before the competent courts, the decision of the Committee in the instance case was merely an invitation to the parties to attend before the Committee which is a preliminary decision that –per law- may not be appealed.

Practice note:

Regardless of the classification of whether the Committee’s decisions are considered judicial hence applicability of the procedural rules or quasi judicial that falls out of the scope of the procedural rules, the above decisions confirmed in practice that any dispute arising because of a commercial agency falls under the ambit of the Commercial Agencies Committee’s jurisdiction including disputes between parties of a commercial agency and a third party which is not a party of the commercial agency contract. The UAE Courts in the above two cases relied on Article 23 of the Commercial Agencies Law in extending the Committee’s jurisdiction to include any third party that violates a commercial agency agreement. Parties are advised to follow the path specified by the law in order to avoid unnecessary costs at courts so long as the dispute is concerning a commercial agency regardless of whether the dispute is between the parties of the commercial agency or

involving a third party.