

Commercial Agency Registrations: What's covered?

Robert Roberts - Senior Associate - Corporate / Mergers and Acquisitions / Commercial
- Dubai Maze Tower

February 2016

These types of arrangements can provide a foreign business with invaluable local experience and knowledge allowing it to benefit from pre-existing relationships that an agent may have with other local businesses. However, any business wishing to enter the UAE market must consider the impact of the applicable UAE commercial agency regime. We all too often see the aftermath of a failure to appreciate local laws and customs, when seeking advice at the outset could have significantly reduced, if not eliminated, the issues parties may face.

As set out in more detail in a number of previous articles in Law Update, the registration of a UAE agent in the commercial agencies register (established by the Ministry of Economy ("Ministry")), places an agent in a very strong position. One of the key benefits of registration, pursuant to Federal Law No. (18) of 1981 Concerning the Organisation of Trade Agencies, as amended (the "Agency Law"), is the rights of the registered agent to block the products that are the subject of a registered agreement from being imported into the agent's registered territory (whether it be the UAE generally or one or more Emirates).

Registration involves the agent, in short, presenting a duly signed and notarised (before a [notary public](#)) copy of the agreement (and attested if signed outside the UAE) to the Ministry (although we are aware that there have been some instances where registrations have been effected by the Ministry in the absence of such criteria not being met). Additionally, there is the prospect that an agent, in the absence of a notarised copy of the agreement (because, for example, the principal refused or did not provide a notarised copy, or the agreement is not in Arabic), could apply to the local court to obtain an order for registration, subject to the agreement meeting the requisite criteria.

Once registered, the particulars of an agreement, such as the names of the parties, the date of registration and the products for which the agent is to be the exclusive agent in the UAE, are entered in the commercial agencies register.

What's covered?

The issue of exactly what products may be covered by a commercial registration is one that sometimes comes up and this can have a significant commercial impact on the principal. There are several issues that a principal may want to consider when dealing with a prospective registered agent.

Historically, it was not unusual for an agent to be appointed for a "brand", often on the basis of a very short form agreement, which lacked any specificity. This placed a registered agent in a very strong position to claim that they were the appointed agent for any product bearing such a brand name. In recent years, the trend has been for principals to be far more detailed in identifying, in the agreement, the specific products that an agent will be their appointed representative for in the UAE. Generally speaking, it is perfectly legitimate for an agreement to grant an agent the right to distribute only certain products, allowing the principal the freedom to appoint other agents/distributors for its other products.

Where a principal is entering into an agreement that is to be registered it would be sensible for the principal to be actively involved in the registration process, be it directly or through legal representatives.

This will allow it to monitor and try to ensure that the details which are recorded on the registration system maintained by the Ministry and which are reflected in any commercial agency registration certificate (which is subsequently issued), are correct. This is not to say that the Ministry are incapable of correctly transposing the key elements of an agreement into the commercial agency register, but differing approaches by the administration staff could mean that the way in which the products are recorded and thereafter reflected in the commercial agency registration certificate, is not an accurate reflection of the agreement between the parties.

We have seen some instances whereby there is a considerable disparity between the products listed in an agreement and those transposed into the commercial agency register, such as a generic reference to “all products and equipment” having been put into the registration system where the agreement was more specific. Unless checked, the only time this issue is ever likely to be noticed is upon a dispute arising between the principal and the registered agent, by which time a registered agent’s willingness to amend any inaccuracies in the registration will, no doubt, have waned considerably. If there is a clear mistake in how the products are recorded in the commercial agency register then the principal may be able to approach the Ministry and ask that they take administrative steps to amend the registration to accurately reflect the products listed under the agreement. However, there is no guarantee that a unilateral approach would work, as the Ministry may be reluctant to facilitate the changes without the agent’s consent. Therefore, the principal’s involvement at the outset is suggested so all parties can be sure that the scope of an agent’s appointment is clear and accurately recorded at the start of the agent’s appointment.

Another factor to be considered by principals and agents is that, on occasion, policy decisions made by the Ministry may dictate that the registration of an agency is only possible in respect of a principal’s entire product range. In these circumstances guidance should be sought from the Ministry prior to the principal signing any agreement with a proposed agent. Recent discussions with Ministry representatives have suggested that they may, by virtue of internal policy decisions, require that, in some industry/market sectors, only one agent be registered in relation to a specific manufacturer’s product range i.e. products or even “brands” manufactured by the same parent entity may be caught by a pre-existing registration in respect of a parent entity’s other brands/products. The practical effect of this would be that an agent could have a right to acquire the rights to distribute a second brand or product line, based on their pre-existing registration in respect of another brand/product line of the same principal. Obviously, the potential impact of any policy decisions of Ministry must be considered on a case by case basis, at the time of entry into the agreement. Note, this is not a broad brush approach and is only applicable to certain market sectors as and when policy dictates.

Another interesting consideration is how, if at all, a registered agreement is treated if there are operational changes which effect the principal entity that is party to a registered agreement. It is not uncommon for a company to undergo internal restructuring whereby divisions of an entity become standalone subsidiaries or for a group reorganisation to result in one member of the corporate group taking over the responsibility for the appointment of distributors/agents from another. We have seen on a number of occasions, more so with older registered agreements, that the entity responsible for supplying the products to the agent is not the entity that is recorded in the registration. In our view, it is likely that the Ministry will consider that the entity subject to the original registration remains bound by the registration and will remain so until such time as the registration is deregistered or updated at the Ministry. Of course, there may be circumstances where this approach would not make sense, such as where the original contracting party ceases to exist. In any event, the key issue for both the principal entity that is supplying goods into the UAE and for the registered agent is that, in our opinion, the registered agent will continue to be recognised as the registered agent for those products under UAE law and, in particular, will continue to benefit from the protections afforded to registered agents under the Agency Law.

Finally, “evolutions of products” can also cause potential ambiguity. Again our discussions with the Ministry have indicated that if an agent can prove that a “new” product entering the market is effectively an “evolution” or a later model of a pre-existing product already subject to registration in their name, then the registered agent could have a strong argument to claim that they are also the registered agent for that

product. Of course what constitutes an “evolution” of a product, as opposed to a standalone new product is subjective, and very much depends on the facts and, often, on the technical specifications of the products in question and/or their target market (if the “new” product is aimed at the same market and is seen as a substitute for the “old” product it is more likely to be seen as an evolution of that product as compared to a situation where it is aimed at a different market and not seen as a substitute for the “old” product).

We recommend, in the context of appointing a registered agent in the UAE that a principal be actively involved in the registration process to try to ensure that an agent’s registration with the commercial agencies register is a true reflection of the parties’ contractual agreement. However, simply ensuring that the products as listed in a registered agreement are accurately reflected in the registration certificate is not necessarily the end of the story when considering what products, in fact, may be covered by that registration!