

The Commercial Agency Register: Not as conclusive as you think...

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The Commercial Agency Register (the “Register”) is renowned in Qatar for the role it plays when it comes to governing the validity of (or lack of) the relationship between agent and principal. It is a double-edged sword, on the one end allowing registered commercial agents to believe that they can kick back, relax and enjoy their supposedly indissoluble commercial agency rights, and on the other, causing principals to be bound to supposedly inextinguishable agency agreements.

A recent judgment by the Court of First Instance has clarified the laws on commercial agency, potentially stirring up the position of principal and agent. In this case, it was held that registration on the Register is a sign of confirmation, and not creation, of an agency agreement. The determinative factor as to whether or not an agency agreement exists falls on, primarily, the legal and factual existence of the agreement itself.

The Facts

The Claimant initially entered into a limited duration exclusive agency agreement (the “Initial Agreement”) as agent for the sale of cars manufactured by the principal mother company (“Principal”) and was registered as a commercial agent of the Principal on the Register. Subsequently, the Claimant and the Principal entered into a limited duration non-exclusive distribution agreement (“the Second Agreement”), in which it was expressly agreed that the Second Agreement terminated and nullified all previous agreements existing between the Claimant and the Principal including the Initial Agreement. The Second Agreement was not renewed at the end of its term and accordingly expired.

Thereafter, the Principal entered into a similar non-exclusive distribution agreement with the Defendant. The Defendant went on to carry out promotional, marketing and sale activities of the Principal’s products, and in doing so, made public announcements about being the new agent of the Principal.

This came to the attention of the Claimant who brought a case against the Defendant. The Claimant alleged that the Defendant was unlawfully portraying itself as the new distributor of the Principal’s goods and indeed acting as the distributor, when in fact the Claimant was the only registered exclusive agent of the Principal. The Claimant relied solely on the fact that it was still registered as the exclusive agent of the Principal on the Register. The Claimant argued that as long as such registration remained, the Claimant

would be the sole party possessing the exclusive agency rights to promote market and sell the Principal's products, regardless of the existing dispute over the expiry of the Second Agreement.

Judgment of the Court of First Instance

The Court of First Instance rejected the Claimant's submissions.

The Court stated that registration on the Register is only the result of an agency agreement created and concluded between the agent and principal in question and it is not the source of such a relationship. Once an agency agreement is entered into between the relevant parties, the registration of the agent on the Register gives it effect from a more official administrative perspective.

In its judgment, the Court, redirected the focus on the contractual relationship between the parties. It emphasised that the determinative basis upon which an agency can be deemed existent or non-existent is the agency agreement entered into between the parties. Once an agency agreement is concluded, this can be registered on the Register as evidence of such an agreement. Consequently, and imperatively, the same applies to the cessation of an agency agreement. Where the agreement in question comes to an end due to termination or expiry, the agency relationship and the effect of the registration on the Register similarly ends. In other words, the fate of the agency, its operation and its cancellation does not depend on the continuing registration of such agency. On the contrary, the status of the registration depends on the terms of the agency agreement.

In noting the above, the Court consequently dismissed the Claimant's case. The Court explained that in order for the Claimant to assert its rights as the exclusive agent of the Principal's products, the Claimant would have to prove that the agency agreement itself still exists and remains in force. It is upon the validity of the agency agreement that the Claimant would have to build its case. Only then would the Claimant be able to allege that the Defendant had acted unlawfully and against the Claimant's rights by acting as the agent of the Principal. Therefore, reliance entirely on the registration of the Claimant as a commercial agent of the Principal on the Register was deemed insufficient.

Conclusion: Back to basics

The judgment, albeit one of the Court of First Instance and hence subject to appeal, may be a promising first step for tackling the current situation concerning commercial agency agreements. Previously, steadfast reliance on the Register suggested to principals that the Register is an inescapable trap, and to agents that it is a safe haven, trumping all else. The judgment discredits this belief by diverting attention back to where it originally, and legally, belongs – the contractual relationship between the relevant parties. The Court re-clarified the purpose of the Register in that it is a mechanism for recording what is agreed between a principal and its agent – it does not on its own create or maintain any commercial agency rights of the registrants. Should the judgment be upheld, the priority governing agency relationships could be re-organised: first comes the agreement, then comes the Register.

In alignment with the judgment is a recent measure adopted by the Ministry of Economy and Commerce (the "Ministry"), whereby it was announced that current agents who are registered on the Register but whose commercial agencies are expired must renew their agencies via agency renewal applications and the required documentation for the same. Otherwise, such agencies would be cancelled off the register in

accordance with Article 20 of the Commercial Agency Law No. (8) Of 2002. This approach by the Ministry reflects the same principle as that expressly reinstated in the judgment: appearance on the Register did not by default render the agencies of commercial agents as continued or renewed – the agency agreement itself had to be renewed in order for the registrations to be valid.

Of course, that is not to imply that the registration or cancellation of commercial agents from the Register can be done away with altogether, for it still holds vital importance for other reasons. While the judgment does not alter the fundamentals of the same, it clarifies the role of the Register, refocusing the spotlight on the contractual relationship of the relevant parties as the definitive factor for the creation, continuity and cancellation of agency agreements.

Al Tamimi & Company's litigation team regularly advises on the application of Qatari laws to various legal matters, on both technical application as well as practical implications.

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