

GUIDE TO THE LEGAL FRAMEWORK GOVERNING DISTRIBUTION, AGENCY, AND FRANCHISE ARRANGEMENTS ACROSS THE REGION

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<p><b>1. In practice, what are the criteria for opting for a distribution, agency or franchise arrangement in your jurisdiction</b></p>							
<p>Under United Arab Emirates (“UAE”) laws, business relationships between a principal and a local distributor or agent, which relate to the distribution of the principal’s goods and services in the UAE, are classified as “commercial agencies.” Other types of representative arrangements may also be classified as commercial agencies, depending on the circumstances, for instance, franchises, commission arrangements, dealerships or other forms of sales representatives or sales agency relationships.</p> <p>On that basis, a distributorship, agency and franchise differ on a practical level, and there are certain criteria to be considered by the principal before determining the optimal type of commercial agency, suitable to its business model:</p> <p>Distributorship: a distributor purchases the principal’s goods or services, and re-sells for its own account.</p> <ul style="list-style-type: none"> <li>- Less time and investment from the principal;</li> <li>- Large degree of autonomy for the distributor whereas the principal has less control over the business operation of the distributor;</li> </ul>	<p>Parties are generally advised to choose one of the three based on the risks they are willing to take on:</p> <ul style="list-style-type: none"> <li>- Parties who wish to maintain ownership of the products until they are sold to the final customer, whether that be for regulatory reasons or to ensure that they are paid directly by the final customer are generally advised to opt for an agency arrangement, as the agent conducts the sale on their behalf. This arrangement, however, involves the principal’s liability for the cost incurred by the agent in concluding deals on their behalf.</li> <li>- Parties who want to sell the products to the local distributor and receive the proceeds of this sale, regardless of the Distributor’s ability to resell the products thereafter, and who wish to avoid reimbursing the Distributor for his expenses are advised to opt for a distribution agreement.</li> <li>- Parties who care about their brand image, and who wish to ensure that their products are sold under their brand name, rather than the sellers own brand</li> </ul>	<p>Please see below.</p>	<p>The criteria depends entirely on the commercial needs and goals of the principal. If the principal wants to have active involvement in the management and the day-to-day affairs of the business with its own employees on the ground in Kuwait, then they usually opt for an agency arrangement. On the other hand, if the principal merely wants to sell goods or services into Kuwait without having to be directly involved in the day-to-day conduct of the business, they tend to opt for a distribution or franchise arrangement, depending on the nature of the business and the principal’s branding requirements.</p>	<p>In Qatar, the more common form adopted is the commercial agency agreement as this is governed by its own law (Law No 8 of 2002) and involves the registration of the agency agreements. This is different to distribution agreements and franchise agreements, which do not include the element of registration and are governed by general commerce-related laws.</p>	<p>This depends on the legal relationship between the parties. Agency has certain regulatory protections in favour of the agent that makes many principals shy away from agency.</p> <p>From a practical perspective, the majority of governmental entities require any foreign supplier to have a local commercial agent.</p> <p>A franchise model is different and usually adopted where different retail branches are required. This is seen in retail industries, including clothing, restaurants and the like.</p>	<p>Depends on the model proposed by the owner of intellectual property. Brand owners with a “system” and intellectual property are at liberty to choose a franchise model, for example, retail outlets. Owners of a product or service tend to adopt the distribution / agency model.</p>	<p>Generally speaking, distribution arrangements in KSA are generally classified as “commercial agencies” and are governed by the provisions of (a) the Commercial Agency Law, and (b) the Executive Regulations of the Commercial Agency Law.</p> <p>The Commercial Agency Law and its Executive Regulations are collectively referred to as the “<b>Commercial Agency Law</b>”. For the purpose of the Commercial Agency Law, a “commercial agent” means an individual or a legal entity that enters into an agreement with a foreign principal to perform commercial activities for a profit, commission or any other kind of benefit.</p> <p>There are certain conditions that are required to be met for a distribution arrangement to qualify as a “commercial agency” in KSA - and, therefore, be subject to the Commercial Agency law:</p> <p>(a) The principal must be the actual manufacturer of the products or its representative in its country of origin. A distribution agreement entered into by a foreign principal other than the actual manufacturer of the products will not be able to be registered as a commercial agency in KSA;</p>

<ul style="list-style-type: none"> <li>- Distributor operates under its own name;</li> <li>- Distributor makes strategic decisions on pricing, marketing strategies, expansion etc.;</li> <li>- Distributor takes ownership of the products and hence assume legal responsibility of such products; an</li> <li>- Risks associated with the products are passed on to the distributor except for defective products.</li> </ul> <p>Agency - An agent acts on behalf of its principal; the agent stocks and sells goods for the account of the principal. An agent either introduces the customers to the principal or creates a contract between the principal and the customer, in consideration of a commission from the principal.</p> <ul style="list-style-type: none"> <li>- Principal has a certain degree of control over the activities and the business operation of the agent;</li> <li>- Principal is not able to pass on risks associated with the products to the agent;</li> <li>- Principal could incur liability as a result of the agent's activities;</li> <li>- Principal might be required to train the agent about the product; and</li> <li>- Agent might be acting for several principals at the same time and if certain products are not selling well the agent might divert more attention and energy to other products in his portfolio</li> </ul> <p>Franchise - A franchisor grants a license to a</p>	<p>name, without the need to reimburse the seller for any of their expenses are advised to opt for a franchising agreement.</p>						<ul style="list-style-type: none"> <li>(b) The distributor must be a KSA national or a KSA entity that is 100% owned and managed by KSA nationals; and</li> <li>(c) The distribution agreement must clearly state the capacities and nationalities of the parties, the subject matter of agency (area, activities, services or commodities), effective date, term, expiry date, renewal conditions and grounds for termination.</li> </ul> <p>Franchise arrangements are governed by the provisions of (a) the Franchise Law, and (b) the Executive Regulations of the Franchise Law.</p> <p>Article 1 of the Franchise Law defines a Franchise as <i>"an arrangement under which a Franchisor grants the Franchisee the right to conduct a business - the subject matter of the Franchise - for its own account in association with a trademark or tradename, owned by or licensed to the Franchisor and includes the provision to the Franchisee of technical expertise and know-how and determining the manner in which the business is to be operated; in return for cash or non-cash consideration, other than amounts paid by the Franchisee to the Franchisor in consideration of the goods or services so provided".</i> A Franchise may not be offered unless the business to be franchised has been operated in accordance with the Franchise Operation Model for at least one (1) year and by at least two (2)</p>
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<p>franchisee to market the goods or services under the brand of the franchisor in exchange for flat payment / royalties, by following an established business model and the franchisor's know-how, which must be appropriately executed by the franchisee</p> <ul style="list-style-type: none"> <li>- Substantial amount of time, training and investment are required from the franchisor</li> <li>- Franchisor maintains tight control over the business operation of the franchisee;</li> <li>- Franchisor makes strategic decisions on pricing, marketing strategies, expansion etc.</li> </ul>							<p>persons (which may include the franchisor or any member of its Group) or in two (2) separate units.</p>
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**2. Does the law distinguish between distribution, agency and franchise arrangements and what law governs each of such arrangement in your jurisdiction?**

<p>To certain extent, there are limited distinctions between a distribution, franchise and commercial agency. All of these arrangements would fall under the general principles of "commercial agencies" under the Commercial Transactions Law, the Federal Law No. 18 of 1993 ("Commercial Code"). There are various types of commercial agencies under the Commercial Code, including commercial agency, commission based agency and distribution. We do not intend to cover all the types of commercial agencies in this article. The most common type of agency is commercial agency contracts. It is worth mentioning that in 1981, the UAE legislator introduced a special law that deals with registered commercial agencies.</p>	<p>The Bahraini Law has defined commercial agency as the representation of the principal in commercial sales whether for a commission or part of the profit, or otherwise the facilitation of trade in commercial activities. The Law did not however, distinguish between agency and distribution arrangements, leaving this to the parties and to the Court/tribunal which determines the nature of the arrangement based on the obligations and rights agreed upon.</p>	<p>The Commercial Agency Law No. 79 of 2017 (the "Agency Law"), replacing Law No. 51/2000 is the principal law for the regulation of commercial agencies and distribution in Federal Iraq. The recently issued Instructions No. 1 of 2020 also provide further guidance with respect to the Agency Law.</p>	<p>Distribution, agency and franchise arrangements are primarily governed by two laws in Kuwait: (1) Law No. 68 of 1980 on the Regulation of Business and Commerce (the "Commercial Law"); and (2) Law No. 13 of 2016 Regulating Commercial Agencies (the "Agencies Law"). The Agencies Law tends not to distinguish between distribution, agency and franchise arrangements in most cases. On the other hand, the Commercial Law does tend to distinguish between these arrangements, particularly with respect to the issue of statutory compensation upon conclusion of the arrangement, in which case, agents tend to have greater rights than distributors and franchisees.</p>	<p>Yes. Agency agreements are governed by Law No 8 of 2002 (the "Commercial Agency Law"), and are categorised as such where two criteria are met, being (i) exclusivity of the agent and (ii) the agent acts on behalf of the principal and not in its own accord. Where these are conditions are met, the agreement is deemed as an agency agreement. Distribution agreements are those that are non-exclusive agreements. Where there is a distribution agreement that satisfies the criteria above (i.e. the distributor enjoys exclusivity and acts on behalf of the principal), then this is deemed as an agency agreement and governed by the aforementioned Commercial Agency Law. Otherwise, distribution</p>	<p>Egyptian law does not expressly address franchise agreements and there is no specific set of rules or law that governs distributors in Egypt, with the exception of liability of distributors vis-à-vis their clients. The fundamental difference between agency and distribution activities is as follows: while title of goods or services are transferred to the distributor, who then resells under its own name at the profit margins it determines, commercial agents represent the principal without title being transferred and are entitled to a commission for their service arranging sales for the account of the principal. Further, commercial agents must be registered in the registry of commercial agents held with the</p>	<p>There is no specific law on franchise arrangements. Agency/distribution is governed by Royal Decree 26 of 1977 as amended. Other relevant laws are the Commercial Companies law of Oman issued under Royal Decree 18 of 2019 and the Foreign Capital Investment Law issued under Royal Decree 50 of 2019.</p>	<p>Please see previous response. The Commercial Agency Law and its Executive Regulations regulate distribution arrangements in KSA (which are generally classified as "commercial agencies"). The Franchise Law and its Executive Regulations regulate franchise arrangements implemented in KSA.</p>
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<p>Federal Law Number 18 of 1981 concerning "Organizing Commercial Agencies" (as amended by Federal Law Number 14 of 1988, Federal Law Number 13 of 2006, Federal Law Number 2 of 2010, and Federal Law No. 11 of 2020) ("<b>Agency Law</b>"), such that the Agency Law applies to registered commercial agencies only.</p> <p>Unregistered commercial agency agreements are also enforceable in the UAE as valid commercial contracts. However, the Agency Law does not govern such arrangements, the Commercial Code and the Civil Transactions Law, Federal Law No. 5 of 1985 ("<b>Civil Code</b>") contain certain provisions that regulate commercial agencies, and these provisions may be applicable to disputes concerning unregistered agreements. In such cases, the parties are bound by the terms and conditions as contained in the commercial agency agreement itself.</p>				<p>agreements are governed by Law No. 27 of 2006 (the "<b>Commercial Law</b>").</p> <p>As for franchise agreements, these are not classified as a particular type of agreement, hence are not governed by a specific law. Rather, under the civil law system of Qatar, the same are considered as a bundle of agreements in one. Thus, the nature of the contract provision in question (i.e. IP rights, lease of premises, remuneration, etc.) will determine the law applicable to the franchise agreement to that effect.</p>	<p>General Organization for Export and Import Control ("<b>GOEIC</b>").</p> <p>In relation to franchising activities, the franchisor sells their brand and know-how to the franchisee to sell the product or services in Egypt under such branch using the know-how and for a franchise fee.</p> <p>The relationship between the distributor and the principal and/or between the franchisor and franchisee is thus governed by the terms and conditions of their contractual arrangement, the general provisions in the Egyptian Civil Code number 131 of 1948 (the "<b>Civil Code</b>") and the Trade Law number 17 of 1999 (the "<b>Trade Law</b>"). Further, the Trade Law as well Commercial Agencies Law number 120 of 1982 (the "<b>Commercial Agencies Law</b>") regulates the activities of commercial agents and their registration in the pertinent registry.</p>		
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**3. Does the applicable law differentiate between exclusive and non-exclusive agent / distributor / franchisee and what benefits / protections it accords to an exclusive as opposed non-exclusive arrangement?**

<p>Yes. Exclusive commercial agreements ensure that the agent / distributor / franchisee ("<b>Commercial Agent</b>") is the only one who is given the right to sell the products/goods/services, either in respect of an Emirate or Emirates or the entire UAE. The principal is not allowed to engage with another Commercial Agent of the same products/goods/services in the territory. Registered agency agreements afford</p>	<p>The Laws of Bahrain do not require for any of these agreements to be exclusive. Accordingly, no differentiation or special protection exists for either.</p>	<p>A commercial agency pursuant to the Agency Law is defined as:          "A contractual arrangement whereby a natural or legal person is entrusted with the sale or distribution of commodities or products or the provision of services within Iraq as an agent, distributor or franchisee for the overseas principal for a profit or commission, in addition to the provision of after-sale services,</p>	<p>In general, no, neither the Commercial Law nor the Agencies Law differentiate between non-exclusive and exclusive arrangements (except with respect to statutory compensation rights of distributors in some instances; this is discussed in further detail below). Whether or not an arrangement is to be exclusive or non-exclusive is a contractual matter to be determined between the principal and</p>	<p>Yes, there is a distinction as explained in our answer to Question 2 above. Some implications of this are:</p> <ul style="list-style-type: none"> <li>- Protections afforded by registration: registration of agency agreements protects the exclusive agent from other distributors unlawfully registering as an agent of the principal - as deregistration of the</li> </ul>	<p>Exclusivity can be agreed upon between the parties. There are no provisions under the relevant law designated specifically for the exclusivity or non-exclusivity relationship of the parties. Anti-trust considerations must be observed before agreeing on exclusivity.</p> <p>Generically, exclusivity is an acceptable contractual arrangement that is upheld by courts.</p>	<p>The Agency law does not differentiate between exclusivity and non-exclusivity arrangements unless stated expressly in the agreement. The same is applicable to the distribution and franchise arrangements. Exclusivity is a contractual arrangement, breach of which, would entitle either party to claim compensation to the extent that losses have been suffered as a result of such breach. It is very common</p>	<p>Neither the Commercial Agency Law nor the Franchise Law differentiate between exclusive and non-exclusive commercial agents (i.e. distributors) or franchisees, as applicable. Such exclusivity arrangements (and their relevant terms) would need to be contractually agreed between the parties.</p>
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<p>the protection of exclusive agreements.</p> <p>However, in the case of non-exclusive agreements, the Commercial Agent is not the only agent present in that particular Emirate or in the UAE, and the principal is free to engage with other agents in the same territory.</p>		<p>maintenance support, and spare parts for the products and commodities marketed by such person”</p> <p>The following categories are considered commercial agencies in Iraq:</p> <p>1. Actual agencies:</p> <p>A party who acts as an “actual agent” enters into contracts with third parties on behalf of its principal at the principal's own risk. The contract is deemed to be between the principal and the third party. The principal shall be held solely liable for the agent’s actions, even to the extent the agent transgresses the authority granted to it by the principal (unless the third party has been informed beforehand the agent is out of his/her scope of authority).</p> <p>2. Distribution agencies:</p> <p>A party who acts as a distributor does not act on behalf of its principle, but distributes products and/or provides after-sales services. The “distributor” acts on its own account and is solely liable for its actions.</p> <p>3. Franchise agencies:</p> <p>A party who acts as a franchisee enters into a contract with a foreign principal. The foreign principal authorises the franchisee to take advantage of one or more intellectual property rights for the purpose of domestic production and marketing of the underlying commodity on an exclusive basis within a geographical territory for a specified period of time. In addition, the franchiser is required to provide the</p>	<p>agent/distributor/franchise e.</p> <p>With respect to distribution arrangements, the Commercial Law does differentiate between exclusive and non-exclusive arrangements in some ways. If a distribution arrangement is exclusive, either pursuant to its express contractual terms or in-fact (i.e., the distribution agreement states that it is non-exclusive or is silent on exclusivity, but in reality, the distributor is in fact the only distributor in Kuwait acting on behalf of the relevant principal), then the distributor in that arrangement is afforded the same rights and protections under the Commercial Law that an agent is afforded (particularly with respect to statutory compensation payable under the Commercial Law). Whereas, distributors that are not acting exclusively pursuant to contract or in-fact are not afforded all of the same rights and protections as an agent under the Commercial Law.</p>	<p>former is essential for success of the latter.</p> <ul style="list-style-type: none"> <li>- Compensation payable upon termination/non-renewal pursuant to Articles 8/9 of the Agency Law): while non-exclusive agents are afforded similar compensation under Articles 300/301 of the Commercial Code, they are only afforded compensation in absence of breach or if there was no legitimate reason for termination of the agreement. These conditions do not apply to exclusive agents - some criteria do exist but are related to the nature of the damages claimed and not the legitimacy of the termination itself.</li> <li>- Commission on goods imported via other parties: Article 5 of the Commercial Agency Law allows: (i) the agent to claim via application to the ministry a commission no more than 5% on the value of goods which are the same goods as those subject to the agency agreement, even if such goods are not imported via the principal and (ii) for goods imported by a third party through the principal, here, the agent can claim compensation from the principal pursuant to the agency agreement.</li> </ul> <p>One additional differentiation is between exclusive agency</p>		<p>in these times for agents / distributors to be appointed on a non-exclusive basis only.</p>	
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		franchisee assistance, support and technical advice against a financial consideration.		agreements of a fixed-term or open term. The difference is that neither party permitted to end open term agreements - whereas fixed term agreements will expire at the end of their agreed term. As such, termination of an open term agreement is more challenging - but the compensation awardable is based on the same criteria.			
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**4. Are there any foreign ownership restrictions applicable to companies conducting the activities of distribution, agency or franchise in your jurisdiction?**

<p>In order for a commercial agency arrangement to be registered at the UAE Ministry of Economy ("Ministry"), the Commercial Agent must be:</p> <ol style="list-style-type: none"> <li>1. A UAE national or a UAE entity that is 100 per cent owned by UAE nationals;</li> <li>2. A public joint stock company owned, at least, 51 per cent by UAE nationals;</li> <li>3. A UAE private entity owned by a public joint stock company (meeting, at least, the 51 per cent national ownership requirement)</li> </ol> <p>On the other hand, neither the Commercial Code nor the Civil Code impose a requirement as to the nationality of an unregistered Commercial Agent. Therefore, unregistered Commercial Agent may be any appropriately licensed entity established in the UAE, which otherwise does not meet the criteria noted above.</p> <p>It is also notable that pursuant to recent amendments to Federal Law No. (2) of 2015 on Commercial Companies (the "UAE Companies</p>	<p>The Law of commercial agencies in Bahrain requires any company looking to register an agency in Bahrain to be at least 51% owned by Bahraini shareholders.</p> <p>As for distribution and franchising arrangements, no restrictions are in place insofar as the Company has the required licenses to trade in Bahrain.</p>	<p>Yes. Companies engaged in commercial agency activities have to be 100% Iraqi owned, without any exceptions.</p>	<p>Yes, there are foreign ownership restrictions under the Commercial Law. With a few exceptions (e.g., a special license from the Kuwait Direct Investment Promotion Authority), foreign (read: non-GCC) ownership of a company established under the laws of Kuwait is limited to forty-nine percent (49%) of the issued capital of the Company. Thus, if a foreign principal opts to establish a Kuwaiti company of its own to conduct distribution, agency or franchise activities, it will only be permitted to own forty-nine percent (49%) of the Kuwait company. The remaining fifty-one percent (51%) must be owned by GCC nationals.</p>	<p>Yes - any entity that is an exclusive agent (or deemed to be) must be wholly locally owned pursuant to Article 11(1) of the Commercial Agency Law.</p>	<p>A commercial agency activity can be undertaken only by Egyptian companies that are fully owned and managed by Egyptians with headquarters located in Egypt.</p> <p>There are no foreign ownership restrictions in relation to distributorship and franchising, unless they import the actual finished products for the purpose of resale in the Egyptian market and hold their own importation license. In this event, a 51% Egyptian direct ownership is required.</p>	<p>The agency activity ownership is regulated by the provisions of the Oman Commercial Agency Law which specifies that the Omani shareholding of the distributor shall not be less than 51% of the total share capital of the distributor. There are no ownership restrictions in relation to distribution or franchise arrangements given that these are commonly made by way of a contractual basis.</p>	<p>In accordance with the Commercial Agency Law, the distributor must be a KSA national or a KSA entity that is 100% owned and managed by KSA nationals.</p> <p>Although the Franchise Law does not contain a similar provision (with respect to franchisee(s)), we have inquired with the Ministry of Commerce and the Ministry of Investment, and were informed that the same requirement applies (i.e. the franchisee must be a KSA national or a KSA entity that is 100% owned and managed by KSA nationals).</p>
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<p><b>Law</b>”), via Decree No. (26) of 2020 Amending Certain Provisions of the Commercial Companies Law, the previous requirement for a UAE national to be the registered owner of 51% of the shares of the LLC were removed. The default position now is that except for a limited number of ‘strategic activities’, which must have UAE national shareholders (“Excluded Activities”), all other commercial activities can be conducted by foreign nationals through wholly owned limited liability companies in the UAE mainland. The Department of Economic Development (“DED”) in each Emirate of the UAE has the right to determine the extent to which foreign ownership may be permitted in the Excluded Activities and the conditions under which foreign ownership will be allowed.</p>							
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**5. Are there any registration requirements for distribution, agency or franchise agreements in your jurisdiction? If yes, what is the competent authority to register such agreements with, and what are the registration requirements?**

<p>Commercial agency agreements must be registered with the Ministry. In order to qualify for registration at the Ministry, there are certain criteria that the Commercial Agents need to satisfy, the key ones of which are:</p> <ol style="list-style-type: none"> <li>1. It must be a UAE national or a UAE entity that is 100% owned by UAE nationals; or a PJSC owned, at least, 51% by UAE nationals; or a UAE entity owned by a PJSC (meeting, at least, the 51% national ownership requirement);</li> <li>2. The arrangement must be exclusive (either in respect of an Emirate</li> </ol>	<p>Commercial agencies have to be registered with Ministry of Commerce. The Courts of Bahrain will refuse to oversee any dispute arising out of a non-registered commercial agency.</p> <p>With regards to Franchising and distribution arrangements, there are no registration requirements</p>	<p>Yes. The competent authority is the Ministry of Trade - Registrar of Companies.</p> <p>The registration requirements include but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Being an Iraqi.</li> <li>2. Having full legal capacity.</li> <li>3. Not have been sentenced for a felony or misdemeanor involving moral turpitude.</li> <li>4. Having a commercial office in Iraq for carrying on his business.</li> <li>5. Being affiliated with a chamber of commerce in Iraq and have a trade name.</li> </ol>	<p>Yes, in accordance with the Agencies Law, all distribution, agency and franchise agreements must be registered with the Commercial Agencies Department at the Ministry of Commerce and Industry. The relevant agreement must be notarized, legalized and authenticated through the Kuwaiti embassy in the foreign principal’s home jurisdiction and then translated into Arabic (if not signed in Arabic originally) by a certified translator in Kuwait. The agreement itself must contain certain content and details, such as the goods and/or services covered by the contract, the general rights, obligations and liabilities of</p>	<p>The requirement only exists for exclusive agency agreements whereby the agent and the agency agreement must be registered and the agreement will not be recognised otherwise. This is done under the umbrella of the Ministry of Commerce, in the Commercial Registration and Licenses Department - Commercial Agents Section.</p> <p>The same is done via the application form provided by the relevant ministry department with all supporting documents including a copy of the agreement with the Arabic translation, and</p>	<p>In relation to the registry of commercial agents at the GOEIC, the person/entity seeking registration must meet specific requirements, such as:</p> <p>With regards to natural persons:</p> <ol style="list-style-type: none"> <li>1. To be reputable and to have never been sentenced to a felony or a penalty restricted to freedom in a crime against honour or in any of the crimes stipulated in the law or the laws of import or export, customs, taxes or taxes supply, companies or trade unless he has been rehabilitated.</li> <li>2. Not be bankrupt unless he has been rehabilitated.</li> </ol>	<p>Agency agreements are required to be registered with the Commercial Agency department of the Ministry of Commerce under the Commercial Agency law, Industry and Investment Promotion. An Arabic version of the agreement signed by the parties must be filed and supported by a copy of the commercial registration certificate of the agent / distributor. In relation to franchise agreements, to the extent the franchisee is using intellectual property owned by the franchisor, the licence to use should be registered with the Ministry of Commerce, Industry and Investment Promotion in the form of a usufruct agreement although registration of the</p>	<p>Generally speaking, agreements which fall under the Commercial Agency Law can be registered by the local party by submitting a relevant registration application through the Ministry of Commerce’s online portal (via the local party’s specific account). The local party will be required to submit the following documentation:</p> <ol style="list-style-type: none"> <li>(a) A certified translation of the agreement in Arabic; and</li> <li>(b) A copy of the original agreement - duly attested by the Chamber of Commerce, the Ministry of Foreign Affairs and the Saudi Embassy in the</li> </ol>
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<p>or Emirates or the entire UAE); and</p> <p>3. The application for registration must be accompanied by an attested agency contract authenticated by the official authorities. This requires that the commercial agency agreement be notarized and that foreign notarizations be authenticated up to the relevant UAE embassy, and thereafter by the UAE Federal Ministry of Foreign Affairs. This authentication procedure effectively requires that the commercial agency agreement either be executed in Arabic or translated into Arabic after execution.</p> <p>Additionally, although not prescribed by the Agency Law, the Ministry has recently been requiring a letter from the foreign principal confirming it has no objection to registration being effected (which is a policy decision currently employed by the Ministry and not mandate by the Agency Law). Furthermore, even in circumstances in which these formalities have not been carried out (e.g., no Arabic version of the relevant commercial agency agreement was prepared or no letter of consent has been provided), it may be possible for the Commercial Agent to approach the local UAE courts to seek an order for registration of its agency with the Ministry (on the basis that the Commercial Agent otherwise meets the registration criteria specified above).</p>		<p>6. Not be a civil servant or public employee.</p> <p>Unregistered commercial agency agreements are unenforceable in Iraq and will be held null and void by an Iraqi Court.</p>	<p>the parties under the arrangement, the territory that the arrangement applies to, the duration of the agreement, and methods of termination and expiration.</p>	<p>registration must be renewed every two years.</p>	<p>3. Not be employed by any local governmental units or public bodies or companies and units of the public sector. Also, not be a relative of the first degree of an employee of the rank of General Director or any level of members (Purchasing, selling or deciding committees in such unites and bodies).</p> <p>With regard to companies' registration:</p> <ol style="list-style-type: none"> <li>1. The company's Headquarter shall be in Egypt.</li> <li>2. Undertaking the work of commercial agencies or mediation must be one of the company's objectives provided in its Articles of Association.</li> <li>3. The capital shall be wholly owned by the Egyptian partners, taking into account at least ten years in the case of obtainment of Egyptian nationality by naturalization.</li> <li>4. The capital of the company shall not be less than EGP 20,000 (Twenty Thousand Egyptian pounds).</li> <li>5. Submitting an evidence that the principal has settled all dues to the previous agent.</li> </ol> <p>There are no registration requirements for the distributorship and franchise registration, unless they perform importation and in such case certain requirements would apply for them to obtain an importation license.</p>	<p>licence to use is not required by law.</p>	<p>principal's home jurisdiction, as well as the Saudi Ministry of Foreign Affairs and the Chamber of Commerce in Saudi Arabia.</p> <p>In accordance with the Franchise Law, the franchisor is required to provide the franchisee with a Disclosure Document at least fourteen (14) days before entering into the franchise agreement or paying any consideration to the franchisor relating to the Franchise, whichever occurs first. The Disclosure Document should be in Arabic, or if drafted in a different language, it must be translated in Arabic by a certified translator in KSA (and comply with the requirements of the Franchise Law and its executive regulations).</p> <p>Furthermore, the franchisor is required to register the executed franchise agreement and the relevant Disclosure Document at the Ministry of Commerce (in particular, under Monshaat (a portal sponsored by the Ministry of Commerce)), within ninety (90) days from the date of execution of the franchise agreement. The franchise agreement should be in Arabic, or if drafted in a different language, it must be translated in Arabic by a certified translator in KSA.</p>
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6. Does the law provide any protections, rights or benefits for registered distribution, agency or franchise agreements as opposed to non-registered agreements?							
<p>The main benefits of registration of the commercial agency agreements with the Ministry are as follows:</p> <ol style="list-style-type: none"> <li>1. Application of the Agency Law: the provisions of the Agency Law will apply to the commercial agency agreement to the exclusion of the express provisions of the commercial agency itself.</li> <li>2. Entitlement to Commission: the Commercial Agent would be in a position to claim 'commission' from any third party (including from the principal, in appropriate circumstances) in respect of any sales of products in the territory which it has been registered and enjoys exclusivity, regardless of whether the Commercial Agent's efforts have contributed to the sale in question.</li> <li>3. De-facto statutory exclusivity: no person other than the registered Commercial Agent can import into the registered territory the products that are the subject of the relevant commercial agency agreement;</li> <li>4. Difficulty of termination: the termination or the non-renewal of the commercial agency becomes problematic by virtue of the overriding application of the Agency Law, unless there is a gross breach. The assessment of the</li> </ol>	<p>As noted above, while the failure in registering a commercial agency does not render said arrangement void. The Courts of Bahrain will refuse to oversee any dispute that arises out of or in relation to a non-registered commercial agency.</p>	<p>Registered commercial agents enjoy protections from termination. The principal is not permitted to terminate or refuse to renew a commercial agency agreement, unless it is for '<i>good reason</i>'. The term '<i>good reason</i>' is undefined by legislation and discretion is left to the Court to determine what constitutes good reason.</p>	<p>Since all such agreements need to be registered as stated above, any agreement that is not registered is likely to be seen as invalid and unenforceable. Furthermore, if an agreement is not registered, both the principal and the agent/distributor/licensee could be in danger of being fined or penalized for non-compliance with the Commercial Law and the Agencies Law.</p>	<p>In principle, and in relation to exclusive agency agreements (as it is those that must be registered), absence of registration deprives the agent of the rights and protections of the Commercial Agency Law. Hence, one benefit of registration is that it affords the parties with the protections of the Commercial Agency Law (including, as noted above, the compensatory rights in the event of termination/non-renewal, which are special to exclusive agents).</p> <p>Another protection offered by registration is more practical - in that it protects agents from other distributors trying to wrongly obtain registration as an agent of the principal in question and act as one. This is because only one agent of a principal can be registered at a time and this can be only be done when the previous agent is deregistered.</p> <p>That said, deregistration has its own practical challenges and this may hinder the principal's ability to lawfully engage new agents even after terminating existing ones.</p>	<p>According to the Commercial Agency Law, a commercial agent that is appointed for a fixed term cannot be terminated except for a serious and acceptable cause. Otherwise, the agent would be entitled to compensation. If the contract does not have a definite term and was terminated without prior notice or at an inconvenient time, compensation is granted. This applies regardless of whether the agent is registered or not.</p> <p>The law provides the agent with the right to block the registration of a new agent to the same principal, if the agent is terminated or the agency is not renewed as per the above and no compensation was paid to the agent. This process would require resorting to court to claim compensation and notifying the competent authority of the existence of a dispute with the principal.</p>	<p>The agent/ distributor no longer has a right under law to claim compensation for termination of the agreement that has been registered with the Ministry of Commerce, Industry and Investment Promotion. An agent previously had the right to claim compensation under the Commercial Agency law following termination of the agreement but this is no longer the case. There are no longer any specific rights that are given to the agent or distributor under the law.</p>	<p>It is a regulatory requirement to complete the registration of the agreement (whether a commercial agency agreement or a franchise agreement).</p> <p>If the distributor (under the Commercial Agency Law) or the franchisor (under the Franchise Law) do not comply with their registration requirements, then this could lead, <i>inter alia</i>, to monetary penalties.</p> <p>While non-registration does not affect the validity of the contract - with reference to franchise agreements, in the event of a material breach by the franchisor of its obligations relating to the registration requirements, the franchisee may claim compensation from the franchisor for any losses suffered as a result of such breach (and may terminate the franchise agreement).</p>

<p>gross breach is subject to the discretion of the court.</p> <p>5. Statutory Compensation / Damage: the registered Commercial Agent is in a strong position with respect to claiming damages (i.e. statutory compensation) upon termination or non-renewal thereof.</p> <p>The only real benefit to registration being effected, from the foreign principal's perspective, is that once registered, the Commercial Agent is able to control parallel imports of the relevant products into its registered territory, given the Commercial Agent's right to block those products subject to the commercial agency arrangement from entering the territory in respect of which it is registered.</p>							
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**7. Does the agent, distributor or franchisee have the right to take any measures to restrict the entry of goods to the territory or other restrictive measures and in what circumstances?**

<p>One of the significant rights that a registered Commercial Agent has (and such right is not afforded to distributors, franchisees or unregistered agents) is to block the products in respect of which it is registered from entering its registered territory without its consent. The result is that a registered Commercial Agent can ensure that these products are blocked from its registered territory for the duration of any dispute with the principal. Consequently, this places the Commercial Agent in a very powerful negotiating position when discussing any termination of its registered commercial agency arrangement.</p>	<p>No, even in cases where a dispute arises between an agent and a principle, the Parties cannot restrict the entry of goods into Bahrain, unless an order is issued by the Minister of Commerce denying the entry to said good in preservation of public interest.</p> <p>As for franchising and distribution arrangements, the agent cannot restrict the entry of products. They can, however, request the seize of these products upon entry into the Country as repayment of any outstanding amounts ruled for by the Courts of Bahrain.</p>	<p>A registered exclusive commercial agent can prevent parallel importation on Iraqi borders and prevent others from obtaining import licenses.</p> <p>In practice, this will require active monitoring of the border-entry points by the commercial agent.</p>	<p>No. In fact, the Agencies Law allows for parallel imports. Thus, distributors, agents and franchisees are not permitted to take measures restricting the entry of goods, except with respect to counterfeit goods or goods that violate a party's intellectual property rights.</p>	<p>This is only available to exclusive agents. Strictly legally speaking, Article 17 of the Commercial Agency Law stipulates where a principal terminates an agency agreement or refuses to renew the same, the agent may seek an importation ban from the ministry to forbid the principals products entering into the territory. However, in practice, the chances of obtaining this are slim to none.</p>	<p>This may apply for agents as described under item 6 above, by blocking the possibility of registering a new agent in Egypt.</p> <p>No specific measures under law are available for distributorship and franchise arrangements.</p>	<p>There is no right under law for an agent / distributor to restrict the entry of goods into Oman unless the agreement provides for such power, expressly or impliedly. We are also unaware of any import restrictions from an on the ground / practical perspective unless the commercial agent has been appointed on an exclusive basis and has registered the agency contract with the Ministry of Commerce, Industry and Investment Promotion.</p>	<p>The relevant legislation (for both commercial agency agreements and franchise agreements) does not provide such rights for the commercial agent/franchisee (as applicable). Such actions would necessitate obtaining a relevant court order from the competent KSA courts.</p>
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**8. What are the commonly encountered IP related issues in relation to distribution, agency and franchise agreements throughout the term of the agreement and after termination / expiry?**

<p>Registration of a principal's intellectual property, when relevant, is of key importance for the protection and enforcement in the UAE, and it is something that a foreign-based principal should prioritize when considering distributing its products in the UAE or providing a franchise. This is mainly to be able to grant a license to use the IP. In addition, the lack of registration may open the door for the franchisee or distributor or any third party to register the IP on its own. Furthermore, the lack of registration create difficulties in enforcement of the Principal rights in case of third party infringement, ..</p> <p>In addition to securing registration of the relevant intellectual property in the UAE, it is important that the commercial agency agreement, under which the principal's intellectual property is licensed to the local commercial agent, is thoroughly addressed and includes detailed description of the limited uses allowed during the term of the commercial agency agreement and after the expiration or termination thereof.</p> <p>Notwithstanding the above, one of the most common issues in franchise and distribution, is the post termination use of the intellectual property, mainly trademarks. In most cases the franchisee or distributor, continues to use the trademarks and does not stop once the agreement is terminated.</p>	<p>The most common IP related issues throughout the term of the agreement are the issues associated with the quality of the agency as well as developing the brand of the agency's products.</p> <p>As to the issues associated with termination, we note that they relate mostly to the continued use of the trademark after the termination, as well as the issue of compensating the agent for termination.</p>	<p>It is advisable for principals to register their trademarks/IP in Iraq when appointing a commercial agent in the jurisdiction. This provides additional protection for the principal's brand in Iraq, and eliminate risks associated with franchisee or distributor taking advantage of the trademarks of the principal and register on their own</p>	<p>The owners of IP are advised to register their IP with the Trademark Control Department at the Ministry of Commerce and Industry. Principals should be careful to ensure that their registered distributor, agent or franchisee does not register any of the principal's IP in their own name, but instead are granted limited usage rights with respect to such IP.</p>	<p>One of the main issues that may cause disagreements and delays after signing the agreement is not having sufficient trademark registrations by the principal in Qatar. This is more crucial when the agreement includes opening a dedicated shop bearing the principals trademark, considering that licensing the external signboard requires both trademark and license registrations before the trademark office.</p> <p>Also not having sufficient detailed IP clauses clarifying what would be considered unauthorised use after termination or expiry of the agreement usually leads to disputes. This includes the use of the trademark in advertising, within trade name, and within the internal decoration of the shop, and not only on external signboards.</p>	<p>The franchise, agency and/or distribution agreements can take effect and be implemented without the trademark, or license thereof, being registered. The agent, distributor or franchisee may attempt to register the trademark or other IP rights of the principal in its name in Egypt.</p>	<p>IP rights are normally retained by the registered owner and are licenced to the agent / distributor. The licence is usually contained within the agency / distributor agreement and often (if required for sign boards in franchise arrangements), registered as a usufruct arrangement. Such rights are expressed to be revoked upon termination of the agency / distribution agreement and if a usufruct arrangement has been registered in Oman, such an arrangement will need to be terminated.</p> <p>The most common issues in relation to IP, is the continued use of the trademarks by the franchisee or distributor after the termination of the franchise or agency agreement, or the registration of trademarks that is confusingly similar to the Principal trademark by the agent or franchisee.</p>	<p>Generally speaking, the most commonly encountered IP related issue in relation to commercial agency and franchise agreements would be the lack of cooperation by the distributor/franchisee (as the case may be) in deregistering the trademark license agreement (if the same is registered with the Saudi Authority for IP ("SAIP")). If the (exiting) licensee does not cooperate in the deregistration process of the trademark license agreement, then the relevant process may be delayed.</p> <p>Notwithstanding what is mentioned in the previous paragraph, in accordance with Article 22 of the Franchise Law, the assignment, termination, expiry or non-renewal of the franchise agreement shall result in the expiration of the agreement for the use of any trademark or trade name associated with the Franchise - and the franchisor shall notify SAIP accordingly.</p> <p>Similar to other countries the issue always seem to be the registration of the trademarks by the franchisee or distributor, or the continued use after termination. Accordingly, securing the trademark registration in KSA is very important prior to entering any franchise or distribution arrangement, and detailed IP clauses within the agreement that details the exact uses allowed as well as the obligations post termination.</p>
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<p>This creates issues, as it is sometimes difficult to stop such use in a quick way, and Principals should go through long processes to stop the infringement. It will become even more difficult when the franchisee or distributor register the trademark as part of its trade name or domain names and social media accounts.</p> <p>Extra attention shall be given to the IP clauses in franchise and distribution agreements with respect to the exact uses to be allowed as well as the post termination obligations. In addition, a special attention should be given to the dispute resolution mechanism, as it will affect the ability to enforce the IP rights in case of termination. In addition, principals should pay careful attention to their franchisees/distributors to ensure they are not registering any IP related to the franchise/distributed products.</p>							
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**9. Are there any mandatory dispute resolution mechanisms for distribution, agency or franchise related disputes under the applicable law in your jurisdiction?**

<p>If the agreement is registered with the Ministry, then it is mandatory to apply the Agency Law, which provides that the Commercial Agencies Committee (the "Committee") shall have exclusive jurisdiction to resolve disputes involving registered commercial agency agreements. A party that does not accept a decision of the Committee may resort to the courts of the UAE. In asserting jurisdiction, the Committee and/or the UAE court, as applicable, will apply the Agency Law and UAE law to the commercial agency agreement</p>	<p>The mandatory arbitration mechanism was repealed recently, whereby the dispute resolution means has been granted again to the Courts of Bahrain. Meaning either party may resort to Court to pursue legal claims unless there was an agreement on arbitration.</p>	<p>No.</p>	<p>No, the parties are free to agree on alternative dispute resolution mechanisms and we strongly advise foreign principals that disputes under their agreement be subject to foreign arbitration in a jurisdiction that is a signatory to the New York Convention. As long as the arbitration clause is properly approved by the Kuwaiti party in accordance with its governing bylaws, the courts in Kuwait do tend to decline jurisdiction over such disputes.</p>	<p>There are none. Parties are free to choose any dispute resolution mechanism. In fact, for agency agreements, the Commercial Agency law makes mention of both court action and arbitration, implying that both are recognisable for this type of agreement.</p>	<p>Some practitioners in Egypt have taken the view that franchise agreements would be subject to the provisions of the Trade Law governing transfer of technology agreements (the "Technology Transfer Provisions"). If the Technology Transfer Provisions were to apply, then the agreements would be subject to mandatory Egyptian choice-of-law and choice-of-forum provisions.</p> <p>No mandatory choice of law or forum provisions are applicable to agency or distribution agreements. In all events, mandatory provisions governing the</p>	<p>No. The parties to an agency, distribution or franchise arrangement are free to choose the governing law and dispute resolution mechanism of their contractual arrangement. Principals commonly choose foreign law with arbitration to govern disputes.</p>	<p>N/A.</p>
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regardless of the express provisions of the commercial agency agreement itself. It is not possible to exclude the application of the UAE laws or the jurisdiction of the Committee and the courts to a commercial agency agreement that is registered with the Ministry.					agency relation would apply.		
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**10. Can the parties of a distribution, agency or franchise agreements agree on a foreign governing law or foreign court for settling dispute?**

<p>If the commercial agency agreement is registered, it is not possible to exclude the application of UAE laws to a commercial agency agreement that is registered with the Ministry. Accordingly, the parties cannot agree on another governing law other the laws of UAE, the parties cannot even agree on resorting to arbitration, as the UAE courts have exclusive jurisdiction over registered commercial agreements. Any arrangement stating otherwise will be disregarded and have no effect.</p> <p>As for the unregistered commercial agency, distribution, and franchise arrangements, whilst the UAE recognise contracting parties' rights to elect for foreign governing law to govern their contractual relationship, in practice, the UAE Courts are reluctant to apply foreign governing law or have a foreign jurisdiction hear a dispute relating to a commercial agency agreement that is entered into or partially performed in the UAE. The UAE Courts adopt this position in accordance with the UAE Civil Procedures Law</p>	<p>In principle, parties may agree to resort to another court outside of Bahrain; however, this would not normally prevent the courts in Bahrain from adjudicating the matter. In this regard, Bahrain Cassation Court has consistently emphasized that the courts in Bahrain should recognize its jurisdiction in the event where one of the parties is Bahraini and/or resides in Bahrain based on its territorial jurisdiction, irrespective of the parties agreements.</p> <p>As to the governing law, we note that the Conflict of Laws Law provides that the governing law of the franchise agreement should be the law of the country in which the licensee's head office locates at the time of concluding the contract, unless agreed otherwise.</p> <p>On the other hand, the law of the country in which the agent locates will be applicable to the dispute relating to an agency agreement, unless agreed otherwise.</p> <p>For the distribution agreements, the law is silent in terms of the</p>	<p>The choice of foreign governing law is valid in Iraq with relation to general contractual matters except areas where mandatory local rules exist. The rules of the commercial agency law requiring registration of distributorship agreements are mandatory, amongst other mandatory provisions.</p>	<p>While the Agencies Law does state that Kuwait law applies to agency, distributorship and franchise agreements, Kuwait law in general also recognizes the concept of freedom to contract. Thus, the parties can agree to apply a foreign governing law and dispute resolution mechanism in their agreement. We do not advise foreign principals to agree to foreign courts for means of settling disputes because unlike foreign arbitration provisions, Kuwait courts tend to accept jurisdiction over disputes when the agreement calls for such disputes to be settled by a foreign court, and in such instances, the court will apply Kuwait law.</p>	<p>In principal, there is nothing in the Qatari law which forbids contracting parties of such agreements to agree on foreign laws or courts. However, some practical considerations can be made:</p> <p>a) In all cases, where the agreement is being performed in Qatar, enforcement of a judgment will probably be sought in Qatar. Choosing a foreign court will mean that there are more logistics as well as legal criteria required to be fulfilled and met to recognise and enforce a foreign judgment. This can be costly and time consuming;</p> <p>b) Qatar courts are not familiar with implementing or adopting foreign laws and this may create complexity where foreign laws are chosen for disputes heard by Qatari courts; and</p> <p>c) For the agency agreements in</p>	<p>Yes. Please see our response to item 9 in relation to technology transfer agreements.</p>	<p>Yes this is very common in international franchise, distribution and agency arrangements.</p>	<p>Generally speaking, the parties may, in their discretion, provide that the governing law is a non-KSA law and disputes are to be referred to a foreign court or seat of arbitration.</p> <p>We note that any award or judgment issued by a foreign arbitral tribunal or court would still need to be brought before the Enforcement Court in KSA. The Enforcement Court is the judicial body in KSA empowered to enforce arbitral awards and court judgments. When reviewing an application for the recognition and enforcement of a foreign arbitral award or court judgment, the Enforcement Court will not examine the merits of the case. However, it will examine if any aspect of the award or judgment violates Shari'ah principles and by extension public policy in KSA. If there is any element of the award or judgment that contradicts Shari'ah principles, this will not be enforced; however, any aspect of it that is Shari'ah compliant will be enforced.</p>
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<p>(Federal Law No11 of 1992 (as amended)), which provides that the parties cannot agree on foreign courts if the UAE Courts have original jurisdiction (e.g. in cases where the contract is entered into or partially performed in UAE). If the UAE Courts do assert their jurisdiction over a dispute in this way, they are highly likely to apply UAE law to the agreement to settle the dispute. However, the UAE courts normally respect and uphold an agreement between the parties to refer their disputes to arbitration, unless the arbitration agreement is held to be ineffective or invalid.</p> <p>The UAE formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") on 21 August 2006 and the terms of the Convention entered into force on 19 November 2006. Under the terms of the Convention, generally speaking, the UAE Courts should (i) refuse to hear any dispute where the parties have agreed to arbitration as the sole means of dispute resolution and (ii) enforce arbitral awards in the UAE. In the event that a dispute is referred to arbitration, the arbitrators should, of course, recognise the choice of law set out in the relevant agreement.</p> <p>In addition, the use of the Dubai International Financial Centre ("DIFC") Courts could be another possible alternative to arbitration in light of the terms of the unregistered</p>	<p>applicable law to the dispute, meaning that normally the Bahraini laws will be applicable, unless agreed otherwise.</p>			<p>particular, the Commercial Agency Law is sometimes referred to as mandatorily applicable to agency agreements in Qatar and so it may be that Qatari law is adopted and Qatari courts accept jurisdiction, regardless of the parties' chosen law/court.</p>			
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commercial agency agreement.							
<b>11. To what extent the courts in your jurisdiction uphold the agreements between the parties in distribution, agency or franchise related disputes?</b>							
<p>For registered agreements, the UAE Courts will apply the Agency Law to the agreement, which will override certain provisions in the agreement such as term, termination, governing law and jurisdiction.</p> <p>For unregistered agreements, the UAE courts will fully uphold the terms of the agreement between the parties.</p>	<p>Generally, Bahraini courts recognise the distribution, franchise and agency agreements and endorse the claims thereof. In the event where there are formalities to recognize the agreement, such as registration for agency agreement, the registration shall not affect the validity of the agreement but rather, it will only affect how it will be perceived by court. In this regard, the absence of registration will render the agency as a mere agreement without benefiting the qualities of the agency.</p>	<p>Precedent is not readily available in Iraq, but in our experience, commercial parties can rely on the commercial agency law and its enforcement by the Courts.</p>	<p>Kuwait courts do tend to uphold and enforce distribution, agency and franchise agreements in disputes between the parties, however, there are certain aspects of Kuwait law which are mandatory and cannot be waived or avoided via contract if Kuwait law is the governing law of the agreement. For example, agents are typically entitled to statutory compensation upon the conclusion of an agency and that is a mandatory requirement that cannot be waived in advance. However, if a foreign law is agreed to as the governing law in the agreement, and disputes are exclusively reserved to foreign arbitration in a jurisdiction that is a signatory to the New York Convention, then the Kuwait courts typically decline jurisdiction over disputes thereunder. The foreign law can be applied by the tribunal and the award is enforceable in Kuwait (as long as certain procedural requirements are adhered to). In such instances, the mandatory requirements that are applicable under Kuwait law (other than the requirement to register the agreement, which always applies) can be avoided.</p>	<p>In principle, the courts do uphold the parties' agreements, and will usually only overlook or deem void the same in instances involving public interest or mandatory legal provisions.</p>	<p>To a great extent, as long as the provisions of the agreement are clear and not requiring any interpretation from courts. The courts have the discretion, in case of ambiguity of the provisions of the agreement, to step in and interpret the relation between the parties and other contractual terms from other circumstances and not the clear text of the agreement.</p> <p>In practice, courts are likely to uphold the agreements in distribution and franchise as said agreements are not regulated under Egyptian law.</p>	<p>Such agreements are treated like any other contract and are legally enforceable before the courts of Oman. If the contract expresses that a foreign law governs the contract and disputes are settled by arbitration, a foreign arbitral award will generally be enforceable before the Omani courts (if required).</p>	<p>In KSA, there is no established system of legal precedent that would be binding on the courts, so decisions of courts are based on the unique facts of any given case (including the conduct of the parties) and cases are generally not reported. The broad and general nature of Shari'ah law means that the KSA courts can be expected to apply a combination of discretionary powers and established legal principles in court proceedings and in their interpretation and ultimately the enforceability of transaction documents.</p> <p>Accordingly, in the event of a dispute regarding the interpretation or application of any provision of any agreement it is difficult to predict with any degree of certainty how such a provision would be interpreted and applied by the KSA courts if proceedings were commenced. Such would depend upon the facts of the particular case, the ambiguity (or absence thereof) of the terms of the documents in question, and the then current legislation. In addition, royal orders, ministerial resolutions and ministerial circulars and other pronouncements of official bodies of KSA having the force of law and the decisions of the various KSA Courts are not generally or consistently indexed and collected in a central place or made publicly</p>

							available. Furthermore, public policy in relation to any matter may change without notice or notification.
<b>12. What are the provisions governing termination / expiry of distribution, agency and franchise agreements pursuant to the applicable law in your jurisdiction?</b>							
<p>If a commercial agency arrangement is registered at the Ministry, the provisions of the Agency Law will govern its termination. The Agency Law will override any term and termination provisions to the contrary contained in the commercial agency agreement itself and will prevail over any other law chosen by the parties.</p> <p>Article 8 of the Agency Law provides that a principal may not terminate or fail to renew a registered agreement without "material reasons". If the principal wishes to terminate the agreement, he shall apply for de-registration at the Ministry and the application must be accompanied by supporting documents pursuant to Article 16 of the Agency Law. If the Ministry is satisfied that valid reasons for de-registration exist, then it is directed to give notice to the relevant agent who has the right to contest such decision before the Committee.</p> <p>It is important to note that a registered agreement may not be re-registered in the name of another agent, even following expiration of the contractual term, unless the previous agency agreement is de-registered.</p> <p>Establishing "material reasons" can be difficult due to the fact that this term is not defined under the Agency Law. The Committee and UAE</p>	<p>The Commercial Agency Law allows the parties to enter into definite or indefinite agency agreements. If either party wishes to terminate the agency contract prior to the expiry of its fixed term, the agency shall not be cancelled or registered in the name of another trader except with the mutual consent of the parties.</p> <p>In instances where the agency agreement is for an indefinite term, the MOICT may strike off the registration of an agency for an indefinite term upon the mutual agreement of the parties thereto or if one of the parties thereto seeks the termination thereof in spite of the opposition of the other party.</p> <p>The above provisions of the Commercial Agency Law shall be read in conjunction with the provisions of the Civil Code, which prevent a party from modifying or terminating an agreement unilaterally, and rather provide for mutual agreement and consent to be met.</p> <p>Therefore, unless the agreement is terminated by way of mutual agreement, any termination of the agency by the principal or the agent, potentially entitles either party to claim compensation for damages. Such compensation may extend to compensation where the agent's activity results</p>	<p>Pursuant to the law, a Principal may not terminate or refuse to renew the agency agreement except for "good cause". <i>Good cause</i> is left undefined by legislation and is left to the Court's discretion to decide what determines <i>good cause</i> for termination.</p>	<p>A definitive term of the arrangement must be stated in the agreement. The parties are free to agree to any termination and expiration terms of their choosing, but the Commercial Law does require parties to obtain a court order to terminate an agreement unless the agreement expressly states that such a requirement shall not be necessary. Thus, it is important for any agreement to stipulate that termination can be made without the need to obtain a court order.</p>	<p><b>Distribution agreements:</b></p> <p>Article 300 of the Commercial Law on open term distribution agreements:</p> <ol style="list-style-type: none"> <li><i>"For agency contracts that are entered into for the joint interest of both parties, it shall not be allowed for a client to terminate the contract without any fault of the agent, but he shall be obliged to compensate the agent for the damage that is caused as a result of isolation. Every agreement to the contrary shall be invalid."</i></li> <li><i>The agent shall also be committed to compensate the client for the damage that he suffered if he gives up the agency at an inappropriate time and without an acceptable reason."</i></li> </ol> <p>Article 301 of the Commercial Law on fixed term distribution agreements:</p> <ol style="list-style-type: none"> <li><i>"1.If the contract is for a fixed term and the client does not renew it at the end of its term, he shall pay to the agent a fair compensation which shall be determined by the tribunal, even if there is agreement to the contrary."</i></li> <li><i>In order to be entitled to such compensation the following conditions shall be met:</i></li> </ol> <p><i>The agent must have not made a mistake during the</i></p>	<p>According to the Trade Law, a commercial agent that is appointed for a fixed term cannot be terminated/not-renewed except for a serious and acceptable cause. Otherwise, the agent would be entitled to compensation on the basis of unjust termination. The Executive Regulations of the Commercial Agencies Law has gone even further by restricting the ability of registering another agent until the entitlements of the former one have been fully settled as evidenced by a termination arrangement.</p> <p>No specific provisions governing the termination of the distribution or franchise agreements.</p>	<p>The terms of the contract usually determine the termination provisions. Such provisions commonly express that termination can occur for material breach of the agreement, prolonged force majeure, failure to achieve sales targets and breach of intellectual property held by the brand owner.</p>	<p>With respect to commercial agency arrangements, their termination would be governed by the terms of the contractual arrangement between the parties (whether termination for cause or for convenience). In other words, if the principal or distributor wants to terminate the distribution arrangement, then it would need to do so in accordance with the agreed terms between the parties.</p> <p>With respect to franchise arrangements - and in accordance with Article 18 of the Franchise Law, a franchisor may not terminate a franchise agreement before the end of its term, without the franchisee's written consent, except for a legitimate cause. A termination for legitimate cause includes the following:</p> <ul style="list-style-type: none"> <li>- In the event that the franchisee breaches any material obligation under the franchise agreement - and such breach does not get remedied within fourteen (14) days from the day the franchisor notifies it in writing of such breach;</li> <li>- If the franchisee declares bankruptcy or insolvency, assigns the Franchise business or the benefit thereof to its creditors, or otherwise disposes the assets of the Franchise business to a third person;</li> </ul>

<p>Courts, on appeal, generally consider anything less than gross misconduct by the registered Commercial Agent to be insufficient in justifying termination.</p> <p>On the other hand, the termination and non-renewal of unregistered commercial agency agreements will be governed by the terms of the commercial agency agreement and any relevant provisions of the Commercial Code and the Civil Code, as applicable.</p>	<p>in an apparent success in promoting the principal's products or in increasing the number of his customers, and the principal's termination of the agency contract will thus prevent the agent from obtaining profit or commission.</p>			<p><i>performance of the contract.</i></p> <p><i>The activity of the agent must have led to the apparent success in the promotion of goods or increasing the number of clients.</i></p> <p>3. <i>At the time of assessment of the compensation, the amount of damage suffered by the agent and what the client helped the agent in promoting the product and increasing the customers."</i></p> <p><b>Agency agreements:</b></p> <p><i>Article 8 of the Commercial Agency Law on fixed term agency agreements:</i></p> <p>1. <i>"Unless the two parties agreed on renewal of the agency contract, the agency contract term shall end on the expiry date set for that end.</i></p> <p>2. <i>The agent may claim compensation from the principal if the latter terminates a fixed term agency contract.</i></p> <p>3. <i>The agent shall have the right, despite any contrary agreement, to claim compensation from the principal if his good performance has created a visible success in promoting the products of the principal or in increasing the number of consumers, and the principal's refusal to renew the contract deprives him of reaping the benefits of this evident success"</i></p> <p><i>Article 9 of the Commercial Agency Law on open term agency agreements:</i></p> <p>1. <i>"If the agency contract is unlimited to a specific duration, it cannot be terminated</i></p>			<ul style="list-style-type: none"> <li>- If the franchisee voluntarily abandons the Franchise business or voluntarily ceases to carry out the Franchise business for a period of more than ninety (90) consecutive days;</li> <li>- If the franchisee repeatedly fails to comply with the provisions of the franchise agreement or any other agreement with the franchisor or a member of the franchisor's Group relating to the Franchise, despite being notified to do so in writing by the franchisor;</li> <li>- If the franchisee operates the Franchise business in a manner that endangers public health and safety;</li> <li>- If the franchisee loses any licence required for conducting the Franchise business;</li> <li>- If the franchisee commits actions deemed to represent commercial fraud in connection with the operation of the Franchise business;</li> <li>- If the franchisee infringes the intellectual property of the franchisor during the term of the franchise agreement; and</li> <li>- Any other matter deemed a legitimate cause for termination pursuant to the franchise agreement.</li> </ul> <p>Furthermore, unless otherwise provided in the franchise agreement, on the assumption that the franchisee is a corporate entity, the franchise agreement shall terminate upon the issuance of a decision regarding the</p>
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				<p><i>unless both parties agree to do so. However, if one of the parties wants to terminate it while the other does not, this would take place by means of a judgement or a decision issued by the competent authority.</i></p> <p><i>2. If one of the contracting parties terminates the unlimited agency contract, the other party shall have the right to claim compensation for the damage caused by this termination.</i></p> <p><i>3. The agent shall have the right, despite any contrary agreement, to claim compensation from the principal if his good performance has created a visible success in promoting the products of the principal or in increasing the number of consumers, and the principal's refusal to renew the contract deprives him of reaping the benefits of this evident success"</i></p> <p><b>Franchise agreements:</b></p> <p><i>As for franchise agreements, this will again depend on how the agreement is categorised. If it is not deemed as an agency not distributor agreement, then ordinary termination rules and the contract terms will apply, as follows:</i></p> <p><i>Article 171(1) of the Civil Code</i></p> <p><i>"The contract is the law of the contracting parties. It shall not be revoked or amended without the agreement of the two parties, or for the reasons prescribed by the law[...]"</i></p>			<p>voluntary liquidation or upon the commencement of any liquidation proceedings under the Bankruptcy Law, or by termination of its existence (in accordance with Article 16 of the Franchise Law).</p>
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				<p><i>Article 183(1) of the Civil Code</i></p> <p><i>"In contracts binding on the two parties, if a party fails to fulfil his obligations, the other party may, after serving him a notice, ask for termination of the contract or revoking it and to claim compensation if necessary."</i></p>			
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**13. Does the law provide any compensation rights to any of the parties of the distribution, agency or franchise agreements in case of termination or non-renewal, and how is this compensation calculated?**

<p>In the context of registered agreement, the Agency Law does not specify any guidelines for calculating any statutory compensation that a registered Commercial Agent may be awarded on termination or non-renewal of a registered commercial agency agreement, the amount of compensation depends on many factors, which are described below.</p> <p>In the context of unregistered agreement, whether a Commercial Agent has a legitimate claim for compensation needs to be assessed on a case by case basis and a variety of factors and the circumstances that give rise to the termination (or non-renewal) of a commercial agency agreement need to be considered.</p>	<p>The Commercial Agency Law provides that a principal may be required to reimburse the agent for any expenses incurred by the agent in relation to the local business of the agency, regardless of the success attained by the agency. The principal may also be liable to pay the amounts, which are required to conduct the business. In addition, the principal shall also discharge the agent from any obligations in relation to conducting the agency purpose. In practical terms such obligations could extend to the overheads of the agent's agency related business.</p> <p>Please also note that separate to the compensation which may be payable with reference to the Commercial Agency Law, it may be that a principal is entitled to compensation for improper termination with regards to broader general principles of Bahrain Law (this is particularly relevant where, for example, an agreement does not come within the scope of the Commercial Agency Law - such as, where the agency or its amendments has not been duly registered with the MOICT).</p>	<p>There are no special compensation provisions in the applicable Commercial Agency Law. It is necessary to refer to the general rules under the Iraqi Civil Code to understand claims for compensation. If the agreement is governed by a foreign law, the mandatory rules on compensation are not displaced, with the exception of the exclusion of liability for fraud or gross negligence.</p>	<p>Yes, in most cases, agents are entitled to statutory compensation under the Commercial Law at the conclusion of the agency. This also applies to distributors that are deemed to be exclusive. There is no set formula for how compensation is calculated, but it is usually a product or fraction of the last two (2) or three (3) years of revenue generated under the arrangement. The agent's length of service and its impact on the success of the arrangement are also factors that a court takes into consideration.</p> <p>In any event, as stated above with respect to foreign law and foreign arbitration, if the agreement is governed by foreign law and disputes thereunder are exclusively reserved to a foreign arbitration tribunal, then the statutory compensation issue under Kuwait law can usually be avoided.</p>	<p>Please see our answer to Question 12 above.</p>	<p>For commercial agencies, if the contract has a definite term, and has been terminated prior to its term, compensation is granted, unless termination has been made for materially justified reason. Further, the Trade Law provides that if the agent's work shows successful results and the principal fails to renew the contract with a defined term, the latter is obliged to compensate the agent.</p> <p>If the contract does not have a definite term and was terminated without prior notice or at an inconvenient time, compensation is granted.</p> <p>There is no set compensation calculations and damages under Egyptian law are generally what the claimant can evidence in actual losses sustained and loss of profit.</p> <p>In regard to franchise/distribution agreements, under general principles of Egyptian law, a franchisee/distributor may claim damages for breach of contract if the agreement is terminated without a lawful reason. However, the exercise of a</p>	<p>There is no longer any express right under the law that provides an agent / distributor with a legal right to compensation upon termination of the agreement. However, the judicial precedents suggest that a registered agent may claim compensation if an agency agreement is terminated without valid cause. The court has wide discretion to decide if compensation should be awarded or not. If compensation is awarded, various criteria such as the period of the agency, the extent to which the product has been successfully promoted in the territory and the annual financial targets have been met, can be taken into consideration.</p>	<p>Generally speaking - under KSA law, compensation for damages suffered is based on 3 pillars: (i) breach; (ii) loss and damage; and (iii) the causal link between the breach and loss and damage. KSA courts applying Shari'ah principles on damages would normally require and impose compensation only for actual, direct, and tangible damages for losses incurred. Damages for loss of profits, consequential damages or other speculative damages are generally not awarded by KSA courts.</p> <p>As a general principal under the Shari'ah as interpreted and applied in KSA, an aggrieved person is entitled only to such damages and losses as can be proven to have actually and directly arisen out of the actions of the other party. Consequently, strictly speaking, so long as there is no breach by the party wishing to terminate (or not renew) and that party is only exercising its contractual rights, then the other party should not be entitled to any compensation. Furthermore, if the contractual arrangement expressly provides for the</p>
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	<p>In this regard the Bahrain Civil Code provides that an agreement may only be validly terminated or modified where the parties mutually agree (i.e. agreed upon in the agreement itself, or subsequently), or where prescribed by law. Damages (in the event that an improper termination is substantiated) in this regard may extend to losses suffered by the plaintiffs and loss of profits, in so far as these can be said to be the "normal result" of the breach by the respondent. The Bahrain Civil Code elaborates, that such damages can be considered to be the normal result, if the plaintiff is not able to avoid them by making a reasonable effort.</p> <p>As noted above, the issue of compensation for an agent upon termination of an agency relationship has mandatory application in Bahrain. It is viewed as a matter of public policy/order requiring the Bahrain Courts to apply Bahrain Law in place of the stated governing law (insofar as the stated governing law would allow for contracting out of this compensation).</p> <p>The Conflicts Law confirms that the parties may select the law governing their contractual relationship provided that this does not conflict with Bahrain public order (Articles 4 and 5 of the Conflicts Law).</p> <p>There is no clear mechanism or calculation method for Bahrain Courts to award compensation for the agent as a result of termination. From our experience in similar</p>				<p>right to terminate specified in the contract is generally considered to constitute a lawful reason, subject to the overall limitation imposed by Egypt's "abuse-of-right" doctrine, which essentially requires that a right may not be exercised in a manner inconsistent with good faith.</p> <p>Factors considered by the Egyptian courts for awarding damages include the duration of the relationship, the performance of the franchisee/distributor/agent, and the amount of money expended by them in promoting the principal's products or services, and the annual gross sales and net profit collected by the franchisee/agent during the franchise/agency relationship.</p> <p>Typically, the compensation includes (1) losses incurred such as expenses invested in marketing and promotion of the products; (2) lost profit for the remaining duration of the agreement; and (3) compensation for moral and reputational damage, which is nominal under Egyptian law if ever granted.</p>		<p>counterparty not to receive any compensation or is silent in relation to compensation upon termination, then the counterparty should not be entitled to claim any compensation, unless the termination was not in accordance with the terms of the agreement (i.e. termination prior to the end of the term of the agreement without cause or failure to follow the agreed notice period for termination).</p> <p>Notwithstanding the aforementioned, in accordance with the Franchise Law, if the franchisee requests the termination of the franchise agreement due to the failure of the franchisor to comply with its disclosure/registration requirements (in accordance with the Franchise Law); or, the franchisor terminates the franchise agreement in breach of the Franchise Law; or, the franchisor refuses to extend the term of the franchise agreement (if applicable) in accordance with its contractual covenants: then the franchisor shall, either directly or through any member of its Group:</p> <p>(a) Repurchase the physical assets purchased by the franchisee from the franchisor or from another source as directed by the franchisor, and used solely in relation to the Franchise business, within sixty (60) days from and when requested by the franchisee to do so. The price of assets shall not be less than that paid by</p>
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	<p>matters, we note that the compensation varies from one case to another. It is important to note that Bahrain Courts, in considering agency claims, have not followed consistent principles for assessing these types of claims or measuring the seriousness of a breach. As a result, and taking into consideration that the judge/tribunal also acts as finder of fact, there may be a wide variability as to the court's opinion regarding the availability of damages and quantifying of same into a compensation amount.</p> <p>Franchise and distribution agreements may be subject to compensation claims based on the general provisions of the Civil Code.</p>						<p>the franchisee, less an amount equal to the depreciation of any equipment or fittings included among such assets, which shall be calculated in accordance with acceptable accounting standards and the franchisee's past accounting practice; and</p> <p>(b) Compensate the franchisee for any losses suffered in relation to setting up, acquiring or operating the Franchise business in KSA and any other damages suffered by the franchisee.</p>
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**14. Does the applicable law in general provide more protections to any of the parties to distribution, agency or franchise agreements?**

<p>The Agency Law provides certain protections which we have described in our answer to Question (6), and such protections are mainly for registered Commercial Agents and few of these protections can also be beneficial to the principal. Accordingly, it would be safe to assume that the party that has been provided more protections under the current law is the registered Commercial Agent. Having said that, we are aware that there is a potential amendment to the Agency Law and speculation that the new law might introduce certain protections to the principal. In this respect, we refer to the article written by our Chairman, Mr Essam Al Tamimi, which provides an analytical overview of the new draft commercial</p>	<p>Generally, the applicable laws tend to provide more financial protection to the agent. In particular, compensation against work and efforts to build and develop the name of the company.</p>	<p>In general the commercial agency law provides more protection to the commercial agent.</p>	<p>Yes, Kuwait law is generally more favourable to agents, particularly with the respect to statutory compensation rights upon conclusion of the arrangement. There are some provisions in the Agencies Law that are for the benefit of the principal, such as imposing an obligation on the agent to continue to serve in its capacity as the principal's agent for six (6) months after termination of the arrangement in order to provide the principal with an opportunity to procure a replacement.</p> <p>Nevertheless, on the balance, the Agencies Law is generally more favourable to the agent, distributor or franchisee.</p>	<p>The agent is the more protected party out of the three, due to the protections offered by registration and the rights permitted by the Commercial Agency Law, as they are particular to agents and not general commercial laws as applicable to distributors or franchisees.</p>	<p>Please see above under item 13.</p>	<p>It is no longer the case that agents / distributors are given preferential treatment as between the parties. However, registered agents with the Ministry of Commerce, Industry and Investment Promotion may still rely on the general principles of law and the judicial precedents in claiming compensation whenever an agency agreement has been terminated without valid cause.</p>	<p>Yes - the Franchise Law does appear to provide more protection to the franchisee (rather than the franchisor). In particular, the Franchise Law appears to substantially regulate the rights and obligations of the parties, as well as the terms of the franchise agreement. On the other hand, the Commercial Agency Law, in our view, provides more flexibility to the parties with respect to the terms of the distribution agreement.</p>
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agencies law which can be found [Here](#).

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