



Client briefing

Commercial

Saudi Arabia

Overview on pending amendments of commercial agency law

20 June 2022

## Overview of pending amendments to the Saudi commercial agency and distributor regime

In January 2022, the Saudi Ministry of Commerce announced substantial amendments to the Saudi commercial agency and distributorship regime through a new Commercial Agencies Law. The Ministry of Commerce published a draft of the new law on its website inviting interested parties to comment. The new law is expected to come into effect in mid-2023 and will—among other things—expand the scope of application, amend the treatment of IP rights, and regulate exclusivity, termination, and compensation.

### *Application*

Possibly one of the most profound changes brought by the new law will be the opening of commercial agency and distributor activities to foreigners. Under the current law only Saudi nationals—and citizens of other GCC countries—may act as commercial agents or distributors. The current draft of the new law will allow foreigners from outside the GCC-region to act as commercial agents and distributors in Saudi Arabia, provided they obtain necessary licenses from the Ministry of Investment and Ministry of Commerce. This amendment will allow foreign businesses to establish alone or invest in their local commercial agencies or distributors to gain some level of control or supervision over their partners. For businesses with existing distribution networks in Saudi Arabia the key challenge will be to resolve or amend existing arrangements.

This opening of the commercial agency and distributor activities for foreign investment marks a dramatic change in the Kingdom's commercial agency and distributor regime, which has—like those of other GCC and Middle Eastern jurisdictions—traditionally been exclusive to local investors and protectionist in nature. It remains to be seen if other jurisdictions in the GCC such as the UAE or Qatar will also liberalize their commercial agency and distributor regimes.

### *Intellectual property rights*

Furthermore, the draft of the new law will allow commercial agents and distributors to use trademarks and other intellectual property of the principal within the scope of the agreement, providing some registration exemptions from the Saudi IP law regime. These amendments will make it easier for local agencies and distributorships to access and use IP of their principals. Hence, it is highly advisable to include language regulating the use of trademarks and other IP by commercial agents and distributors in agreements.

### *Termination and indemnity*

The draft of the new law largely mirrors the provisions governing termination of limited term commercial agency or distributor agreements. Limited term agreements may only be terminated before the end of their

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term either (1) by mutual agreement or (2) for cause. What constitutes cause for termination is determined by a catalogue included in the draft of the new law. Notably, force majeure is not one of them.

However, the draft of the new law brings noticeable changes to and clarification of termination of unlimited term contracts. Commercial agency or distributor agreements concluded for an unlimited term must be terminated by giving one month's notice for each year the agreement was in force. Where the principal terminates an agreement without or with short notice, the principal must indemnify the agent/distributor for unlawful termination. The agent/distributor must claim such indemnity within one year of termination. Where the agent/distributor asserts a claim for compensation later, the claim is time barred.

### *Exclusivity*

Moreover, the draft of the new law amends treatment of exclusive agency and distributorships. In principle exclusive agreements are permissible. Yet, the Ministry of Commerce may set aside exclusivity, where such exclusivity (potentially) impedes the supply of necessary goods or services in the Kingdom. Thus, where the exclusive agent or distributor does not have the capacity to supply the market sufficiently or the agent or distributor or the principal uses the exclusivity to create scarcity the Ministry may void the exclusivity. Aside from

protecting supply and market integrity, this approach to exclusivity may also allow principals to revoke exclusivity where Saudi agents or distributors fail to meet demands. Still, this will likely only be an option where 'necessary' goods and services are concerned. Hence, it remains to be seen what the Ministry of Commerce will consider 'necessary' goods and services within the meaning of the law.

Furthermore, the draft of the new law authorizes the Ministry of Commerce to coordinate with the General Authority for Competition and other relevant authorities to assess impacts of exclusive agencies and distributor arrangements on the Saudi market. In particular, the coordination with the General Authority for Competition should be a concern for businesses using exclusive agency and distribution arrangements. We expect the authorities to substantially increase antitrust and competition oversight over exclusive agencies and distributorships. Such an increase in oversight would also be in line with the overall tightening and increase in enforcement of actions against anticompetitive practices we have seen in Saudi Arabia over the past three years.

### *Dispute resolution committee and penalties*

The draft of the new law limits the parties' choice of dispute resolution forums. It introduces a dispute resolution committee that will have jurisdiction over disputes between principals and their agents or distributors. In addition, the dispute



resolution committee will take over some regulatory authorities. In particular, it will be charged with addressing violations of the new commercial agency law and imposing penalties.

Penalties for violations of the commercial agency regime will be substantially increased by the proposed amendments. Under the current law fines are capped at SAR 50,000 (approx. USD 14,000). Under the draft of the new law, the cap will be increased to SAR 500,000 (approx. USD 140,000).

### *Way forward*

Despite the fact that results of the survey are still under review and that the draft of the new law is not yet final, we expect the core amendments introduced by the draft—as presented above—to be maintained, at least in principle. Companies should consider these when contemplating to enter the Saudi market through agents or distributors or when revising existing distribution networks.



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