



Talal Abu-Ghazaleh Legal

AGENCY AGREEMENT IN SAUDI ARABIA





IN THIS BOOKLET

- What is the Definition of the Commercial Agency Agreement?
- How to Register a Commercial Agency Agreement?
- What Are the Conditions that a Commercial Agency Agreement Should Have?
- How to Terminate a Commercial Agency Agreement? And What are the Sequences of Such Termination?
- When to Cancel a Commercial Agency Agreement?
- What is the Difference between the Commercial Agency and the Distribution Agreement?
- Our Offices



WHAT IS THE DEFINITION OF THE COMMERCIAL AGENCY AGREEMENT?

An Agency Agreement allows one party (the Agent) to sell and promote products (goods or services) on behalf of another party (the Principal) in return for commission payments, within a given geographical arena and a fix term. Under Saudi Arabian Commercial Agencies' Act, the concept of "Agency" includes the conventional Agency (representation and business promotion for compensation), distribution and franchise.

The commercial agent or distributor shall write his name, address, the kind of his agency, the geographical arena, the agency's registration in the commercial agencies registry and in the commercial registry on his papers, contracts, all related advertisements to the agency and official invoices.

Under Saudi Arabian Commercial Agencies' Act, the agent is obliged to register the agency agreement at the Agencies' Agreements Department at the Ministry of Commerce. The agreement is checked by the controllers of the said department to ensure it does not breach any public policy of Saudi agencies' laws; the certificate of registration states for the term and territory of the agreement, the contact details of the principal, the content of the agreement (type of services – description of goods). The registration process requires some specific legalizations of the agreement from the principal's jurisdiction; undertaking of the agent that he shall hire Saudi nationals, that his entity is 100% Saudi owned.



HOW TO REGISTER A COMMERCIAL AGENCY AGREEMENT?

- ***Non –Saudi individuals and/ or companies are not allowed to be commercial agents in the Kingdom of Saudi Arabia. The Saudi companies are allowed to do the business of commercial agencies if the capital of such companies is totally Saudi, the Board of Directors is 100% Saudi and all who have the right to sign in the name of the agency are Saudis. Previously, it was possible to setup a foreign investment company (owned on the ground of 49%-51 % ownership) to specifically operate within the field of franchising; however, this legal permissibility has been recently amended and totally prohibited.***
- ***The Saudi individuals and companies are not allowed to work as commercial agents unless they are registered in the registry designed for this purpose at the Ministry of Trade & Industry, and they should apply for the registration during the first three months as from the date of implementation of the agreement. More specifically, the condition precedent is that the commercial registration of the concerned entity or establishment has to mention, prior to the registration process of the agency agreement, that this entity is deemed to act as an agent (distributor and franchisee). The registration at the department of commercial agencies' agreements cannot occur independently of a signed contract.***



WHAT ARE THE CONDITIONS THAT A COMMERCIAL AGENCY AGREEMENT SHOULD HAVE?

- ***The contract of the commercial agency or distribution should be in written and agreed upon by the principal in his country of origin or that whom represents the principal in that country. A number of legalizations, within the jurisdiction of the principal, are requested: Chamber of Commerce, Ministry of Commerce, Foreign Affairs and the Saudi Embassy.***
- ***The contract should include a detailed clarification on the rights and obligations for each party and on their commitment before customers with regard to the maintenance of the product and its spare parts. Saudi entities are recommended to claim and to point out on the applicability of the Saudi laws as being the governing ones. However, it is not always the case when the principal accepts such claim, since the principal is always the stronger party (as he is the source of the outputs to be marketed by the agent).***



HOW TO TERMINATE A COMMERCIAL AGENCY AGREEMENT? AND WHAT ARE THE SEQUENCES OF SUCH TERMINATION?

It is up to the contracting parties' discretion to agree upon an automatic/implied renewal of the agreement, or to opt to the other scenario consisting of termination of the agreement at its term unless parties have expressly decided to renew the agreement.

The consent of the parties on this particular point is without any guaranteed enforceability since, even if the agreement came into term, or has been terminated by the principal due to a non-curable breach committed by the agent, the department of commercial agencies does not authorize appointing a new agent, and blocks the radiation of the former registration until the financial claims of the agent are duly settled.

Generally speaking, it shall be up to the parties' discretion to decide the stipulations that shall survive after termination.

However, some other obligations could be maintained as enforceable despite the termination of the agreement such as the supply by the foreign supplier, of the spare parts and maintenance for one year after the contract terminates or until appointment of a new agent. The after-sales services are among the stipulations that have to be mentioned into the agreement; this being a strict public policy in field of commercial agency.

As a result of the termination, the principal has to enquire about the cancellation of the registration of the agency agreement. It is to be known that the principal cannot appoint a new agent unless the registration of the former one has been radiated from the records of the ministry of commerce.



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WHEN TO CANCEL A COMMERCIAL AGENCY AGREEMENT?

The registration of a commercial agency or distribution shall be cancelled in the following conditions:

- ***Cancellation of the commercial registration of the concerned entity or dissolution of the company; Even in this scheme, the Ministry of Commerce prefers to approach the owners of the company to check whether they are entitled to claim any financial rights over the principal's claim.***
- ***Expiring the date of the commercial agency or distribution' contract without being renewed or extended. In fact, it is a virtual reason of termination. In reality, the termination could be legally and theoretically admitted but not effectively enforceable.***
- ***Losing the commercial agent or distributor any of the basic provisions of the commercial agency regulations.***
- ***The cancellation shall be performed by writing down two red intersecting lines on all the data in the commercial agency register besides writing a clarification of the reasons behind such cancellation in the allocated place.***
- ***After a cancellation claim being filed by the principal, and if the agent objects, the Ministry of Commerce transmits the litigation to the committee for amicable settlement of disputes resulting from the commercial agencies' act. If the amicable tentative fails, the board of grievances, commercial section, is entitled to rule over the case.***



WHAT IS THE DIFFERENCE BETWEEN THE COMMERCIAL AGENCY AND THE DISTRIBUTION AGREEMENT?

The Saudi Law of Commercial Agencies does not provide for specific legal treatment for each of these business schemes. Moreover, franchise agreements are also treated by the same set of rules.

In a conventional agency scheme, the agent acts on behalf of the principal to facilitate the conclusion of deals; he is simply entitled to a commission or a bonus from the gross sales. The agent is acting for the name, benefit and account of the principal.

However, in a distribution scheme, the distributor is a purchaser of the goods then a reseller of the same. He is acting for his name, account and benefit.

Under a franchise agreement, the franchisee is a lessee of a business system. He pays a royalty due to the disclosure of trade secrets; he is also supervised by the franchisor to guarantee that the services/goods are delivered with a high level of business criteria. Yet, the franchisee acts, for his name, account and benefit.

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