

Successful Representation of the Definition of a “Material Reason” under Regulating Commercial Agencies Law -
Federal Law No. 18 of 1981, as amended.



Commercial agencies in the UAE manifest in two forms: “registered” and “unregistered”. An unregistered agency agreement would be governed like most other commercial contracts in the UAE by the UAE Law No (5) of 1985 the Civil Transactions Law and the UAE Law No. (18) of 1993 the Commercial Transactions Law.

A registered agreement means that the agency agreement has been registered with the Commercial Agencies Register at the UAE Ministry of Economy and is thereafter governed by Federal Law No. 18 of 1981, as amended (‘Agency Law’).





The Agency Law defines a commercial agency under Article (1) as an arrangement where a: “*principal is represented by an agent to distribute, sell, offer or provide goods and services within the UAE for commission or profit.*”

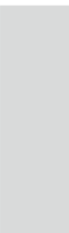
The combination of this broad definition and a lack of distinction, in this context, under the Agency Law between commercial agents and distributors/franchisees, means that many of the relationships and arrangement common in typical distribution and franchise agreements fall within the ambit of the Agency Law (if such agreement is registered); and an agency agreement would therefore fall within the ambit of the Commercial Agencies Law.

The provisions of the Agency Law grant significant statutory protections to the agent including significant security of tenure and rights of termination. These rights/protections are designed to protect an agent who may spend a considerable amount of time, effort and cost to build a profitable market for the products or services they are distributing.

The Agency Law, under Article (9), gives the agents the right to compensation from the principal if the agency is terminated without “*material reason*”. The law provides, under Article (8), that a commercial agent may be able to prevent a principal from appointing a replacement commercial agent where its agency has not been terminated in accordance with the Commercial Agencies Law. However, Article (8) also gives the principal the right to terminate an agency agreement if there is a “*material reason*” for termination or non-renewal.

The term “*material reason*” has not been further explained or defined in the Agency Law leaving the determination of what stands as a material reason to be defined by the Courts. This casts a shadow on what is meant by material reasons and it seems that the law was set up in this way to leave room for the Courts to rule based on individual cases. Case law thus far suggests that the term material reason includes but is not limited to: illegal conduct, gross negligence, exceeding authorisation or failing to meet agreed sales targets.

In a recent case, led by our dispute partner, **Abdelmajeed Zwairi**, a dispute arose between two parties, one is a manufacturer and the other an agent of said manufacturer in the UAE, with regards to termination of an agency agreement that is registered.



The manufacturer and the agent entered into an agency agreement and registered the agreement at the Commercial Agencies Register. The parties over the years entered into many equipment purchase contracts under which the agent had paid a part of the amounts due but did not complete full payment as per the invoices raised by the manufacturer within the set deadline for payment in the contracts.

The manufacturer had contacted the agent on multiple occasions requesting to settle due amounts, however, all their attempts were met with silence. No further payments were made. The manufacturer then raised a claim against the agent before the Commercial Agencies Committee¹.

In their claim, the manufacturer provided evidence of amounts due, and relied on the material reason clause in their argument in that non-payment of due amounts is a material reason to terminate a contract with an agent and enforce payment of amounts due.

The manufacturer argued that the Civil Code identifies in Article (267) that it shall not be permissible for parties to a contract that is valid and binding to resile from it, nor vary of rescind it, unless there is mutual consent or an order of the Court, or under a provision of the law. Therefore, even though the agency agreement is registered and is governed under the Agency Law, it does not preclude the agent from completing their obligations under the contract and therefore can give rise to termination under the contract by the manufacturer if the agent does not do so. The manufacturer argued that the agent's non-compliance with the terms of the contract constitutes material reason to terminate as per Article (9) of the Agency Law.



¹ The Commercial Agencies Committee was created under the Agency Law as the first point of contact for parties wishing to resolve a dispute relating to the law. Under the current legislation, the Committee has full powers of investigation and in order to be binding, the Committee must rule on disputes within 60 days of receiving a complaint from either party to an agreement. Parties are also able to appeal the decisions of the Committee before the UAE Courts within 30 days of receiving a ruling.



The manufacturer also argued that in compliance with Article (6) of the Agency Law, the agency agreement shall be considered to be made for the joint interest of the contracting parties, and therefore the non-payment of the agent is causing the manufacturer many losses and problems which could be deemed to be against their interest.

The Commercial Agencies Committee heard the case and, in their ruling, made mention to Article (6) of the Agency law and also the material reason clause. The Committee ruled that the non-payment of due amounts is a material reason to terminate an agency agreement and so, the agency agreement was to be removed from the register, and the parties reserved their right to go to the Courts to demand payment of amounts due to them². This case is a great win for our client as it brings further clarity to the scope of “material reason”.

Even though the UAE does not follow the precedent system, this decision sets a great example for future cases whereby a material reason could now include non-payment of amounts due by an agent, bringing more clarity to the term and also setting a trend for future cases.

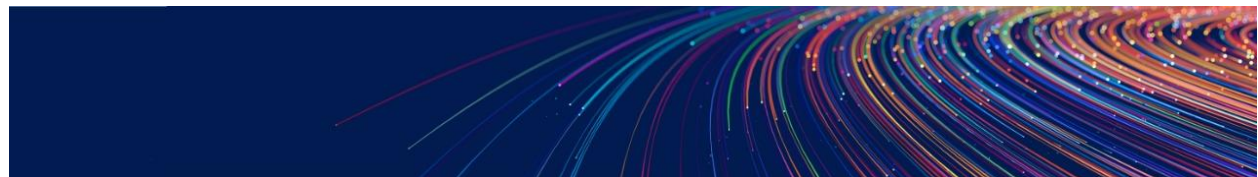
It is vital for companies to inquire about the full scope of liabilities and rights given to them under the Agency Law before registering the contract.

Please don't hesitate to contact our commercial dispute team, should you need any advice regarding a registered agency agreement.

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² The Agent has lodged its claim appealing the committee's decision before the competent court and the case is still ongoing.

