

Working with agents and distributors from jurisdictions with protectionist legislation

Protectionist legislation governing contractual relationships with commercial agents exists in many jurisdictions of the world, including those of the European Union.

The most protectionist laws of all, however, are commonly considered to be those found in Islamic law jurisdictions, such as The United Arab Emirates (“UAE”).

The Dominican Republic (“DR”), on the other hand, is a Caribbean civil law jurisdiction with one of the world’s most protectionist commercial agency laws, similar in many ways to the commercial agency laws found in Islamic law jurisdictions.

Regardless of the geography or legal system of the jurisdiction, protectionist legislation is generally characterized by the following:

1. No distinctions are generally made between agents, distributors, licensees and franchisees;
2. Public policy nature of the legislation renders any express choice of law, forum or arbitration by the parties in the contract intended to pre-empt the local law and the venue of the local courts, unenforceable;
3. Registration of contracts with some local Authority is usually required for protection;
4. Different legal consequences may follow in the case of (i) exclusive as opposed to non-exclusive arrangements or (ii) fixed term as opposed to indefinite term contracts;
5. Termination of contracts, other than for cause, is made virtually impossible without the agent’s consent;
6. Unjust unilateral terminations of contracts by foreign principals are heavily sanctioned and agents are entitled to stop the importation of the principal’s goods at customs during litigation.

Given the above, foreign principals would do well to seek professional advice before signing contracts with agents and distributors in protectionist jurisdictions such as the UAE and the DR, as well as before attempting any termination thereof.

For a summary of the commercial agency laws of the UAE and the DR please see the White Paper.

The UAE and DR laws in a nutshell

1. The United Arab Emirates (“UAE”)

In the UAE no distinctions are made between distributors and agents. Distributors are treated as commercial agents and any such agent or agency may be registered or unregistered, except that only UAE nationals or companies wholly-owned by UAE nationals may register with the Commercial Agency Registry of the Federal Ministry of Economy & Commerce.

Registered agencies are entitled to protection under the public policy provisions of the Federal Commercial Agencies Law (Federal Law No. 18 of 1981, as amended by Law No. 14 of 1988, et. al.). Purpose of the public policy law is to protect local agents and distributors from unjust unilateral terminations by foreign principals.

Unregistered agencies are not entitled to protection under the Commercial Agencies Law but, rather, are subject to applicable provisions of the Commercial (Federal Law No. 18 of 1993) and Civil Code(s) (Federal Law No. 5 of 1985). Although the Codes do not require unregistered agents to be UAE nationals or companies wholly-owned by UAE nationals, foreign agents or agencies are rare.

Under the **Federal Commercial Agencies Law**:

- Following registration of a contract, it will not be possible to cancel or delete the registration without the prior written consent of the local agent.
- It will not be possible for a foreign principal to appoint another agent unless the foreign principal settles all outstanding issues with the existing agent and obtains his consent for de-registration.
- Registered agents are entitled under the law to apply to the Ministry of Economy & Commerce to stop the importation of the foreign principal’s products into the UAE through any party other than the registered agent, and to attach any products imported in violation of the agency law.
- Compensation will have to be paid the registered agent for termination of the agency and de-registration of the contract care of the Ministry of Economy & Commerce.

N.B. Recent amendments issued by President HH Sheikh Khalifa bin Zayed Al Nahyan in June of 2006 (under Law No. 13), have toned down some of the more blatantly pro-agent provisions of the Law providing foreign principals with a number of contractual remedies that can be used to reduce the risk of a foreign principal committing an unjust unilateral termination under the law and/or to limit the liability of a foreign principal in the event of a damages claim lodged by a registered agent upon termination. For more information please contact us. (e-mail link pp)

Disclaimer: The above memorandum is no more than a brief overview of the subject matter and aims at providing only basic legal information. Although it has been prepared, as of 10 May 2007, with attention to accuracy, it is not intended to be relied upon, as comprehensive advice or as a specific opinion on the subject matter, and it is recommended that its relevance and accuracy be rechecked prior to taking any implementing action.

2. The Dominican Republic ("DR")

In the DR no distinctions are made between distributors and agents.

Registered agencies: All agreements with local agents, representatives, distributors, licensees, concessionaires or franchisees that are registered with the Foreign Exchange Department of the Central Bank within sixty (60) days of their signature are entitled to protection under public policy Law No. 173 of 6 April 1966. Purpose of the public policy law is to protect local agents and distributors from unjust unilateral terminations by foreign principals. The law, however, does not apply to contracts between Dominicans or Dominican companies.

Unregistered agencies are not subject to Law No. 173 but to applicable provisions of the local common law.

Law No. 173 was designed to protect Dominican citizens who work as agents or distributors for foreign principals and provides substantial penalties for foreign principals who unilaterally terminate contracts with local distributors or agents without cause. The public policy nature of Law No. 173 essentially means the provisions of the law will prevail over any contradictory term or condition contained in any agreement between the parties. Contract provisions granting foreign principals the right to unilaterally terminate the agreement are unenforceable. Contracts may only be terminated for cause as defined by law or by amicable agreement among the parties.

Under Law No. 173, a (foreign) principal may not terminate its relationship with a local agent, nor refuse to renew it upon expiration, unless a "just cause" exists. "Just cause" is defined as any non-compliance by the local agent with the essential obligations of the agreement, or any action or omission by the local agent such as to adversely and substantially affect the business interests of the (foreign) principal.

The law does not distinguish between exclusive and non-exclusive relations, all of which, if registered, will be governed by Law No. 173. Nevertheless, foreign principals opting for non-exclusive relationships have the advantage that, in the event of litigation with a non-exclusive agent, the foreign principal can continue doing business through the other agents without having to terminate an otherwise exclusive relationship, something that would essentially keep the principal from selling his goods in the DR until the end of the litigation.

N.B. Foreign principals wishing to do business in the DR will be interested in knowing there are a number of solutions for legally avoiding Law No. 173. For more information please contact us. (e-mail link pp)

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Done in Modena, Italy - 10 May 2007 - Dr. Paolo Paracchini