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Al Yamamah University

College/Department:
Course Title: Commercial Law / Commercial Contracts

Research Title: A Critical Legal Analysis of Commercial Agency Contracts under Saudi Law: Formation, Rights, Obligations, Termination, and Practical Challenges

Selected Contract: Commercial Agency Contract
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Submission Date: 27 July 2026

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1. Introduction

Commercial agency contract is one of the major business contracts in Saudi Arabia because with the help of this contract the foreign and domestic principal will be able to get its products to the customers through the local professional agency without establishing branches. It may include promotional activities, negotiations, after sales services, development of markets, distribution of products and building trust of the clients. There is also the issue of legal risks due to problems with the powers of the agent, exclusivity, payment of commissions, online sale, legality of termination or non-renewal.

The aim of this research is to find out to what extent the law of Saudi Arabia regulates the formation, implementation, and termination of the commercial agency contract in a clear manner. The hypothesis of this research paper is that the law of Saudi Arabia provides an appropriate framework for regulation of commercial agency contract through Law of Commercial Agency, general principles of contracts and the jurisdiction of the Commercial Court. However, there are numerous practical problems associated with drafting the contract, in particular those related to powers of the agent, territory, exclusivity, commissions, performance targets, termination notice, post-termination, confidentiality and dispute resolution.

2. Legal Definition and Nature of the Commercial Agency Contract

It can thus be described as a commercial relationship whereby the agent undertakes promotional, marketing, distribution, negotiation, and conclusion of commercial business deals for the benefit of the principal within certain powers, and usually at a commission rate. The course textbook describes it as an arrangement whereby the agent acts on behalf of the principal within a given territory for which he receives remuneration, which is an accurate description of its commercial role but needs to be verified with regard to Saudi regulations and the terms used by the parties.[1]

Commercial agency is contractural in the sense that it is consensual, bilateral, onerous and continuing. It is consensual in the sense that it is usually done through offer and acceptance, bilateral in the sense that each party has something to do, onerous in the sense that there is remuneration, and continuing in the sense that it involves a period of performance rather than one act. It is also a commercial contract in the sense that its aim is to gain access to products and to sell them. An agent is not employed by his principal but he operates independently and takes risk. This point is very important.

Difference with Other Types of Contracts

[1] Dr Nora Abo Shareb, *Commercial Contracts in Practice: Ten Key Commercial Contracts* (Al Yamamah University, Chapter Two) 11-14.

Broker is somebody who normally joins parties without making a contract for anyone of them. Commission agent acts on behalf of his principal in his own name. Distributor buys and sells goods for profit. Franchisee employs the whole business operation using the brand name of the franchiser.[2]

Arrangement	Main role	Who bears resale/transaction risk?	Main financial return
Commercial agency	Represents or promotes for principal	Usually principal, subject to contract	Commission/remuneration
Brokerage	Introduces parties	Main parties	Brokerage fee
Commission agency	Contracts in own name for principal's account	Agent faces third party; principal bears economics	Commission
Distribution	Buys and resells	Distributor	Resale margin
Franchise	Operates business system	Franchisee, subject to franchise law	Business profits less fees

3. Saudi Legal Framework Governing Commercial Agency Contracts

The key specialized sources are the Law of Commercial Agencies in Saudi Arabia enacted via Royal Decree No M/11 dated 20/2/1382H, as amended, as well as the Implementing Regulations thereof promulgated via Ministerial Decision No 1897 dated 24/5/1401H.[3] The Ministry of Commerce and Industry is also responsible for the registration of commercial agencies.[4] Thus, there is a certain regulatory element to the contract: the agency is not merely a private deal since the registration, agent qualifications and documentation can impact compliance and enforcement of the contract.

As for the general contract law, the new Civil Transactions Law enacted via Royal Decree No M/191 dated 29/11/1444H applies today. It regulates the capacity to perform deals, offers and acceptances, contracting through agents, good faith principle, interpretation and legal consequences of performing contracts.[5] For instance, the Law stipulates that contracts shall be performed according to their terms and consistently with the good faith principle whereas the agent must not exceed his powers. This provision is important because the Commercial Agencies Law is not complete.[6]

The Law of Evidence may serve as the primary tool of proving agency issues including written evidence, electronic evidence, customs and business practices.[7] The Law of Commercial Courts and Implementing Regulations thereof are the specialized procedural provisions related to commercial

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[2] ibid 15-24, 39-44.

[3] Law of Commercial Agencies, Royal Decree No M/11 dated 20/2/1382H, as amended; Implementing Regulations of the Law of Commercial Agencies, Ministerial Decision No 1897 dated 24/5/1401H.

[4] Ministry of Commerce, 'Application for registering a Commercial Agency' (official e-service page, accessed July 2026).

[5] Civil Transactions Law, Royal Decree No M/191 dated 29/11/1444H.

[6] Civil Transactions Law, arts 88, 90 and 95.

[7] Law of Evidence, Royal Decree No M/43 dated 26/5/1443H, arts 1, 5, 10 and 88-90.

disputes.[8] Arbitration can be resorted to where agreed, however it cannot always be preferable to litigation in courts.[9] Thus, the Saudi law provides a framework, yet leaving major issues to the contract drafting process, namely exclusivity, e-commerce, commission triggers, sales targets, cure periods and post-termination provisions.

4. Essential Elements and Formation Requirements

There are some key elements for the existence of valid agency relationship such as competent parties, consent, legality and specificity of the subject matter, scope of the power, identification of the goods and/or services, territory, term, remuneration and registration. The Law of Civil Transactions states that a person has the capacity to act unless there are some prohibitions. Moreover, the law says that a capacity to make an agency agreement could be made by agreement unless there is prohibition of law. Thus, there must be the indication of the principal, agent, the products and actions of the agent.[10]

The ambiguity of the terms in the agreement also could be the source of the conflict. For example, when the agreement states that the agent represents the principal in the Kingdom of Saudi Arabia, it could be unclear whether or not the agent could conclude any agreements, collect payments, make warranties, appoint sub-agents or obligate principal for any responsibilities after the sale. If the territory is not indicated, online and cross border sales could raise questions. When the commission is stated to be customary in the agreement, the conflict could arise regarding whether the commission is to be received for orders placed on the internet website of the principal.

It could be difficult to have electronic transaction since there could be the electronic transaction in accordance with Saudi laws and also the law of evidence admits electronic evidential procedure. However, in case of regulation agency agreement, email will not be enough. It would be better to have an appropriate agreement that would include Arabic version of the agreement or the language clause, the provisions of notices, signing authorities and the list of products, territory, clients, commission and objectives.[11]

[8] Law of Commercial Courts, Royal Decree No M/93 dated 15/8/1441H; Implementing Regulations of the Commercial Courts Law, Ministerial Resolution No 8344 dated 26/10/1441H.

[9] Law of Arbitration, Royal Decree No M/34 dated 24/5/1433H.

[10] Civil Transactions Law, arts 47 and 87.

[11] Electronic Transactions Law, Royal Decree No M/18 dated 8/3/1428H; Law of Evidence, art 10.

5. Types of Commercial Agency

Classifications of agencies typically come from the practice of contracts and not necessarily from statutory definitions. In an exclusive agency agreement, there will be some particular rights granted by the principal to the agent in a particular territory or market. This type of agency agreement can encourage the investment from the agent's side, but at the same time, it may limit the activities of the principal due to poor performance. Non-exclusive agency gives flexibility to the principal in appointing other agents, but at the same time, the investment of the agent is discouraged.

The marketing agency will promote the goods and give possibilities for sales, and the sales agency can make negotiations and enter into agreements under its authority. It is significant to consider the distinction of the two types of agencies also because of the legal aspects since the third party can believe the representations made by an agent. The agency that has authority to make agreements is effective from the commercial perspective but risky since it involves the exceeding of the authority and misrepresentation. The limited promotional agency decreases the risks related to the liability of the third party but makes it difficult to prove the claim for the commission.

It is more appropriate to include the information about the scope of authority in the contract rather than use labels.

6. Rights and Obligations of the Commercial Agent

The basic responsibilities of the agent include loyalty, good faith, obeying legal instructions, reasonable care, safeguarding the commercial interests of the principal, confidentiality, maintaining records, reporting periodically, and complying with the law of Saudi Arabia. These are based on general contract law and the agency relationship, even where the contract lacks sufficient detail.[12] The course material is also right in mentioning the principle of honesty, good faith, protecting the interests of the principal, following instructions, and professional diligence.[13]

The agent needs to act within authorized limits. If the agent makes unauthorized discounts, makes unrealistic warranties, or indicates to customers that it can bind the principal, then there could be a dispute between the principal, the agent, and the customer. This risk is avoided by written authority schedules and notices to customers.

The agent has certain rights. It needs to get the promised commission, reimbursements, information, cooperation, product data, respect for exclusivity, and remedies if the principal prevents performance. Nevertheless, it does not mean that any claim will become a valid payment obligation. The entitlement

[12] Civil Transactions Law, arts 88, 93 and 95.

[13] Abo Shareb, *Commercial Contracts in Practice* (n 1) 13.

of commission should depend on certain criteria like acceptance of an order, payment of the invoice, and delivery. From the point of view of the agent, a comprehensive provision of the commission gives security in relation to building the market. From the point of view of the principal, commission should not cover any speculative introduction which does not result in transactions.

7. Rights and Obligations of the Principal

The principal should undertake the obligation to pay commission, provide proper information regarding the products, provide necessary documents, cooperate with the agent, maintain the exclusivity arrangements, reimburse authorized expenses and refrain from any behavior making fulfillment difficult. These duties apart from being basic principles of business etiquette, represent the conditions of good faith and establishment of the legally binding agreement. The principal may argue that it did not violate the particular clause regarding commissions since it sold all products using Internet resources in secret manner.[14]

However, there are also some rights of the principal. They consist in monitoring of performance, compliance with the instructions, protecting the reputation, keeping confidentiality, preventing of any unauthorized obligations, complying with trademark law, terminating the agreement because of material breach and claiming damages for the proven losses. The only problem here is negotiation power. In case of foreign manufacturers it would be possible to impose standard agency terms while local agents would do their best in promoting the product and maintaining relations with customers.

8. Authority, Representation, and Liability toward Third Parties

Authority is the legal heart of the agency relation. It can be either expressed - for instance, authority to execute sales contract in written form - or it is implied in the agreement and business practice. According to civil law of Saudi Arabia, an agent can enter into a business deal on behalf of the principal, without exceeding agency limits, which means that in case an agent performs the deal on behalf of the principal within the limits of authority, then rights and duties arise in favor of the principal.[15] However, in cases where an agent does not indicate his/her agency status, legal consequences will vary depending on whether third party is aware of it or not.[16]

It is necessary that agency agreement should set out who has the right to give quotations, discounts, acknowledge purchases, solve disputes and make after sale obligations. Clients should have the same information at any time. In case the principal intends the limitations to be binding upon third parties, such limitations should be specified in the documents of transaction.

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[14] Civil Transactions Law, arts 94-95.

[15] Civil Transactions Law, arts 87-90.

[16] Civil Transactions Law, art 91.

This is the main distinction between commercial agency, commission agency and brokerage. In the first case, agent usually enters into a business deal on behalf of the principal. In the second case, agent performs the business deal on behalf of the principal, but in his/her own name. In the latter case, broker just introduces parties.

9. Commission and Financial Entitlements

Disputes arise due to the fact that the agreement specifies the conditions under which "how much" shall be paid, but fails to specify "when". Commission can be based on net sales, gross invoice, collection or profit margin. Commission can become payable on signature of the agreement, customer's payment, delivery or acceptance of goods or services. Each option transfers the risk of non-payment in a different way. When the commission is payable on contract signature, the risk of non-payment goes to the principal. When the commission is payable on collection, the risk of delay of payments is left on the agent.

Disputes may also arise regarding repeat orders and existing customers. Let us assume that the German machinery manufacturing company appoints an exclusive agent in Saudi Arabia for Riyadh at 6% commission and the agent finds Hospital A and negotiates the sale. Six months later, Hospital A orders the machine from the website of the manufacturer after the agent has provided him with technical assistance. There is no special provision for direct orders and repeat orders, hence there is room for disputes between the parties. The agent will claim that the sale resulted from market development activities and the manufacturer will claim that there were no agency services rendered regarding the direct order. The provision needs to address introduced customers, direct sales, repeat orders, key accounts and sales post termination of the agreement.

Other provisions to be included in the agreement are currency and VAT/tax documents, payment terms, statement and audit right, reimbursement, and delays in payment. Instead of general damages, parties shall rely on transparent statements and short time periods for objections.

10. Exclusivity, Territory, and Performance Obligations

Exclusivity is precious, but at the same time, it may bring risks. Exclusivity means that an agent will spend money on advertisement, client visits, specialists, and after-sales service since it assumes secure income. However, exclusivity may be harmful to the principal if an agent fails to perform its obligations. It is important to emphasize that the Saudi law does not exempt from precise draft. The agreement needs to contain such elements as territories, clients, products, channels of sales, Internet sales, government sales, affiliated companies, and direct sales by the principal to strategic accounts.

Sales targets can help us find the solution for both sides. They should be realistic, quantifiable, and have an objective effect on the failure to meet them. However, failing in meeting minimum sales target does not have to imply the breach of the agreement; rather, the punishment should include loss of exclusivity, cure period, review of the marketing strategy, and transition to non-exclusivity.

The biggest challenge is related to e-commerce. If the principal sells goods online into the territory of exclusivity, the agent will think that the market is bypassed. The best approach will be to restrict the kinds of e-commerce, as well as to offer a lower commission on internet sales to introduced customers or those requiring local servicing.

11. Termination, Non-Renewal, and Post-Termination Consequences

Termination warrants special consideration since it is at this stage that the agency becomes highly disputed. Termination may arise due to the expiry of the fixed term of the contract, the mutual agreement of the parties, material breach, underperformance, insolvency, loss of legal capacity, lack of compliance with the applicable regulations or for convenience if allowed for in the contract. Saudi Arabia's general contract law accepts that a valid contract may not be terminated or amended other than by agreement or by law.[17]

Hence, the terms of the contract must provide for the termination provisions, the notice period, cure and situations where immediate termination is called for. Arbitrary termination may be unfair to an agent that helped create the market, but overprotection may lock up the principal in an uneconomical agency relationship. An approach balancing between serious misconduct, which would allow for immediate termination, and ordinary underperformance that would call for notice and an opportunity to cure.

The issues regarding the post-termination phase should be specified in the contract. This would include among others the need for the agent to surrender all documents, samples, confidential information, and marketing material; stop using trademarks; respect the confidentiality clause and transfer the pending files of customers if need be. The principal would be required to pay the agent's earned and agreed post-termination commission for the completed or pending transactions.

12. Practical Legal Issues and Critical Analysis under Saudi Law

Here are the five practical issues that commonly create troubles in commercial agency in Saudi Arabia. Firstly, ambiguity in authority leads to problems with third parties. Legal issue is whether the agent binds the principal. Practical solution is preparing the authority matrix and quotation terms for customers. Secondly, ambiguity in exclusivity leads to disputes about direct sales and other agents. Practical solution is determining territory, sales channels, customers and exceptions.

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[17] Civil Transactions Law, art 94.

Thirdly, commission provisions rarely cover introduced customers, repeat business, and post-termination sales. Legal rule is entitlement in good faith performance. Practical solution is the provision of a commission schedule and audit rights. Fourthly, non-renewal of the contract after the agent developed the market looks like commercial injustice. Need for flexibility of the principal should be balanced with the reliance investments. Practical solution could be advance notice and final commission statement and payments for the protected customers.

Fifthly, there is a potential of ambiguity of the control of conflicts of the two text versions in Arabic and English of the contract. The ministry registration and court procedures make Arabic text crucial. The parties have to identify the controlling version and make sure both versions are correct. Sixthly, there is the issue of dispute resolution clauses in case of foreign principals. Enforcement, language and cost issues have to be addressed. Litigation will be cheaper and more authoritative while arbitration – neutral and confidential but most probably more costly.

Educational hypothetical example. A French company appoints a Saudi agent exclusively for the sale of the medical devices in the Central Region. Commission is 7%, minimum annual sales are SAR 8 million, and online sales are not mentioned. The principal begins selling its products directly through the Internet to hospitals that were introduced by the agent and terminates the contract, saying the agent did not meet the results.

Question: Is commission and post-termination claim possible? Legal rule: It depends on the terms of the contract, authority, good-faith performance, evidence and mandatory agency rules. Application: If the agent manages to prove that direct online sales were made to introduced customers and impacted its ability to meet the targets, the Commercial Court or tribunal would find the actions of the principal relevant for the breach and compensation of damages. If the contract mentions the exclusion of online sales, the position of the principal will be more strong. Conclusion: This dispute was avoidable due to clauses.

13. Dispute Resolution and Commercial Court Jurisdiction

Dispute resolutions in cases of agency are to start with negotiations and escalation of the case by senior management due to their commercial nature. Mediation can take place where both parties would like to preserve the business relation. If no settlement is reached, then Saudi Commercial Courts which are competent to hear disputes of a commercial nature with a procedure for evidence, electronic records, and experts.[18]

Arbitration can be considered in case of a dispute between foreign principal and Saudi agent, if a confidential, impartial and binding resolution of a dispute is needed on the condition of the validity of an agreement for arbitration and compatibility with Saudi law.[19] However, arbitration is not always the best way since it is expensive and time consuming in cases such as emergency relief, registration and documentation. It is recommended to insert a clause which obligates the parties to negotiate and mediate prior to deciding to litigate the dispute in Saudi Commercial Courts or to arbitrate at SCCA in Riyadh, where the language will be Arabic and bilingual correspondingly.

Evidence will be an important element in dispute. Both parties have to document all their agreements and communications in written form such as purchase orders, emails, invoices, commission statements and customer lists. The Law of Evidence allows the use of evidence and custom in the case when there is no provision or agreement.[20]

14. Drafting Recommendations for Commercial Agency Agreements

Legal Risk	Recommended Contract Clause	Purpose	Benefit to Principal	Benefit to Agent
Unclear appointment	Define agent, principal, products and territory in schedules	Fix scope	Avoid unwanted commitments	Protect market rights
Excess authority	Authority matrix for quotations, discounts and contracts	Control third-party risk	Limits liability	Clarifies powers
Vague exclusivity	State exclusive/non-exclusive and channel exceptions	Avoid direct-sales disputes	Keeps reserved channels	Protects territory
Commission disputes	Define rate, base, trigger and excluded sales	Payment certainty	No overpayment	Predictable income
Online sales	Allocate e-commerce and introduced-customer commission	Modern channel clarity	Keeps digital strategy	Rewards market building
Underperformance	Measurable targets with cure and review period	Fair accountability	Performance leverage	Avoid sudden termination
Confidentiality/IP	Use, return and post-termination restrictions	Brand protection	Protects IP	Defines permitted use
Compliance failure	Registration, anti-bribery and regulatory duties	Legal compliance	Reduces penalties	Shows lawful status
Termination	Material breach, notice, cure and immediate grounds	Orderly exit	Enables lawful termination	Prevents arbitrary action
Dispute forum	Escalation, mediation,	Efficient resolution	Predictable process	Fair forum

[18] Law of Commercial Courts (n 8); Implementing Regulations of the Commercial Courts Law (n 8).

[19] Law of Arbitration (n 9).

[20] Law of Evidence, arts 5, 10 and 88-90.

Legal Risk	Recommended Contract Clause	Purpose	Benefit to Principal	Benefit to Agent
	court/arbitration, language			

15. Conclusion

In accordance with Saudi law, the legislative framework of the commercial agency agreement is quite well structured; it includes the agency law, Civil Transactions Law, evidence law and procedure of Commercial Courts. This legislative framework provides commercial certainty and takes into consideration the importance of the local agencies from the commercial point of view. However, this framework does not provide assurance of solving all practical issues. Issues connected to authority, exclusivity, direct sales through the Internet, repeat business commission, non-renewal and consequences after termination depend mostly on the wording of the agreement and the evidence which will be provided.

The current legislative framework will ensure fairness and balanced approach in case the parties have developed their agreements properly. The legislative framework ensures protection of principals by limiting the authority, performance of the agreement and termination in case of serious breach of the agreement terms. On the other hand, it ensures protection of the agent by the good faith performance, payment of commission, keeping records and regulation compliance. The main disadvantage of the legislative framework is the uncertainty in case of using generic templates which cannot be adjusted to the current situation of the sales process.

The most important recommendation could be considered the development of the general appointment into the legal tool including such elements as schedule for the products, territory, authority, commission, Internet sales, objectives, reporting and termination of the agreement.

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