

The New Saudi Commercial Agencies Regulation

On June 23, 1980, Royal Decree M/32¹ was promulgated, amending the Saudi Commercial Agencies Regulation which first came into effect in 1962.² Implementing Regulations and a form of model agency contract were issued under Royal Decree M/32 by the Ministry of Commerce on March 30, 1981.³

The issuance of Royal Decree M/32, the Implementing Regulations and related model contract apparently represents the long-awaited revision of the original Commercial Agencies Regulation, although M/32 itself affects only one substantive area of the relationship between foreign manufacturers or other foreign principals, and Saudi commercial agents: the area of product service, and warranties and spare parts. Practitioners in Saudi Arabia anticipated that the revision would impose a number of other conditions on commercial agency relationships, including, most importantly, that compensation be paid to a Saudi commercial agent who is terminated (or not renewed) by its foreign principal "without cause." Instead, only the non-binding model contract issued by the Ministry of Commerce contains a gen-

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¹Royal Decree M/32 of 10/8/1400H (June 23, 1980), not yet published in the *Official Gazette*. Apparently through an oversight, the royal decree, which corresponds to a statute in the United States, has not been published, but the implementing regulations thereunder, which correspond to administrative agency regulations, have. The legal effect is that the royal decree, which confers authority on the Ministry of Commerce to issue implementing regulations, is not in force. The staff of the Ministry of Commerce, however, regards the implementing regulations as being in force, and personnel of the Ministry are now applying them.

²Royal Decree M/11 of 1328H (1962), amended by Royal Decree M/5 of 1389H (1969) and Royal Decree M/8 of 1393H (1973).

³Ministerial Decision No. 1897, published in the *Official Gazette*, No. 2865, on 13/6/1401H (April 17, 1981), and effective one (*hijri*) month thereafter, May 17, 1981. The original Commercial Agencies Regulation, as amended by royal decree M/32 and the implementing regulations, are referred to together as the "Regulation." An English translation of Royal Decree M/32, the implementing regulations and model contract are annexed hereto.

eral clause calling for reasonable compensation where appropriate.⁴ The new amendment and Implementing Regulations do, however, remove a number of ambiguities in the application of the Commercial Agencies Regulation to various types of agencies and distributorships. In general, of course, the amended Regulation must be read against the "common law" of Saudi Arabia, the Islamic *Shari'a*.

Background

The original Commercial Agencies Regulation as issued in 1962 and subsequently amended, required only the proper commercial registration of a Saudi agent and the registration of agreements between the agent and its foreign principal in the Commercial Agencies Registry maintained by the Ministry of Commerce in the area where the head office of the agent was located. It also confined those who may act as commercial agents in Saudi Arabia to Saudi nationals and Saudi companies wholly owned and managed by Saudi nationals. The meaning of "commercial agent," as that term was used in the original regulation, was quite ambiguous, with the result that the scope of application of the regulation was equally vague. In practice, it was generally believed, for example, that dealer or distributorship arrangements under which the Saudi party purchased and resold goods (as opposed to representation or agency commission arrangements) were not covered, and, therefore, were not required to be registered. Furthermore, in practice, the original Commercial Agencies Regulation fell into disuse and was routinely ignored. It was reported, for example, that for at least two years the Commercial Agencies Registry office in Jeddah, the principal commercial city in Saudi Arabia, had stopped accepting all agreements for registration pending the promulgation of a new regulation or amendments to the existing one.

Scope of the New Regulation

Royal Decree M/32, at article I, clarifies the scope of the Commercial Agencies Regulation. It provides that it applies

to all who enter into a contract with a producer or one who represents a producer in its country, to perform commercial activities *whether as an agent or a distributor in any form of agency or distributorship*. (Emphasis added.)

For the first time, therefore, all types of commercial representation arrangements involving products, including agricultural products,⁵ are clearly covered by the Regulation.

⁴The model contract may, of course, come into common usage if the Saudi business community insists on employing it, or if the Saudi authorities (unexpectedly) begin to refuse registration of agreements not wholly or in some particular part in "model form."

⁵See article 8(8) of the Implementing Regulations. In addition, the provisions on service, warranties and spare parts discussed below also apply to mere importers, Saudi companies that have no commercial agency agreement as such with the foreign producers of the goods imported. See article 3(2) of the Implementing Regulations.

The use of the word “producer” (the Arabic word is *muntij*), as opposed for example to “manufacturer” (in Arabic *musanni*), is interesting. Although M/32 itself does not specifically so state, the Implementing Regulations clearly cover contracts establishing agencies for agricultural commodities and for certain types of services. Article 1 of the Implementing Regulations states:

“Commercial Agencies” . . . include all situations in which a person enters into an agreement . . . to perform commercial activities, whether as an agent or distributor . . . for a certain profit, commission or other benefit of any kind; includ[ing] . . . *agencies for marine, aerial, and land transportation* and any relationship which is determined to be an agency relationship by the Ministry of Commerce. (Emphasis added.)⁶

To date, no ministerial decision adding other types of agencies to those listed has been issued.

The Implementing Regulations also state at article I that “service agencies” the subject of Royal Decree M/2 of 1978⁷ are governed by that decree, not by the Regulation. Prior to this statement, most practitioners took the view that a service agent (one who represents a foreign contractor in connection with a contract with the Saudi government) was only one variety of commercial agent with respect to goods and equipment and services being sold to the government, and that, therefore, the agency agreement was at least theoretically subject to registration under the old Commercial Agencies Regulation. The amended regulation now establishes a clear distinction between the two types of agencies. If a single commercial agency agreement, however, contemplates both representation of the principal, acting as a contractor, before the Saudi government, and as a “producer” vis-à-vis the private sector, it would be subject to registration in one of the Commercial Agencies Registries.

Finally, Royal Decree M/32 and the Implementing Regulations, like the commercial agencies laws of several other countries in the Middle East, including Egypt, Jordan and Qatar, seem to require that Saudi commercial agency arrangements be concluded by the Saudi agent directly with the foreign producer *or* a representative of the producer located in the producer’s own country.⁸ This provision undoubtedly represents an effort to prohibit (by making non-registrable) agreements between Saudi agents and regional agents or distributors or other “middlemen,” whose role, in the view of the Saudi government, makes the goods or services the subject of the agency unduly expensive locally, by the factor of the middleman’s markup or commission. The exception for a representative located in the producer’s own country is presumably designed to permit the arrangement where the pro-

⁶See also article 11(2) of the Implementing Regulations.

⁷Royal Decree M/2 of 1398H, published in the Official Gazette January 20, 1978. See Cartwright and Hamza, *The Saudi Arabian Service Agents Regulation*, 34 Bus. L. 475 (1979).

⁸Under article 10(1) of the Implementing Regulations, the Ministry could presumably refuse to register an agreement between a third country middleman and a Saudi commercial agent.

ducer or manufacturer (usually a small or medium size company) routinely exports only through an independent export trading company in its country.

Service, Warranties and Spare Parts

Article 2 of M/32 imposes substantive requirements on Saudi agents and distributors, which undoubtedly result from the unhappy experiences of many Saudi "consumers" of foreign manufactured equipment as a result of the lack of adequate local maintenance, service and spare parts.⁹ Article 2 requires a Saudi commercial agent to provide

- (a) spare parts which are frequently requested by consumers on a permanent and continual basis; other spare parts within a reasonable period of time; the spare parts referred to are those pertaining to products covered by the agency, all as provided under the Implementing Regulations;
- (b) all required maintenance, warranties, and guarantees for good workmanship that are usually provided by a manufacturer on a continuous basis throughout the duration of the agency and for one year after the termination of the agency or until a new agent has been appointed, whichever occurs first, all as provided under the Implementing Regulations.

Although M/32 and the Implementing Regulations impose these obligations only on the Saudi commercial agent, the agent must presumably in many cases satisfy them with the cooperation of his foreign principal by means of their contract.

Adequate spare parts must be kept on hand if they are needed frequently. Other spares must be available within thirty days.¹⁰ The agent is required to provide customers with warranties equal to those normally provided by the producer (presumably in his home market). Both requirements, if observed, are likely in the long term to increase the acceptance of a producer's products in the Saudi market. In the shorter run, they may result in larger orders for certain commonly needed spare parts. Significantly, the parallel provision of the Implementing Regulations also require that maintenance services be made available by commercial agents "at reasonable cost," and that records showing the prices of goods from their source, as well as the costs of insurance, freight, transportation and duties be kept.¹¹

⁹The term "consumers" should probably be construed broadly to include any purchasers (including industrial and commercial customers) of goods bought locally from an agent or distributor of a foreign producer.

¹⁰Implementing Regulations, article 3(1).

¹¹See article 3(4) of the Implementing Regulations. Most goods are subject to indirect price controls in Saudi Arabia. The Consumer Affairs Department of the Ministry of Commerce generally regards aggregate Saudi wholesale and retail mark-ups in excess of 30 percent as price gouging, and merchants that engage in that practice receive adverse publicity, warnings, and may be shut down. Some imported goods, such as drugs, foodstuffs, and automobiles are subject to lower mark-up ceilings. The importation and resale of some foodstuffs are subsidized by the Saudi government, the subsidy being computed based on the landed cost to the importer.

Article 9 of the Ministry's model contract also obliges foreign producers to provide the agent ". . . with spare parts and maintenance requirements which are necessary . . . periodically and on appropriate dates or immediately after the agent has ordered them. . . ." Such a broad provision obviously ought to be resisted by foreign manufacturers as it would tend to facilitate the wholesale "shifting of blame," and perhaps liability, for a violation of article 2 of M/32 to the foreign manufacturer. The broad language on maintenance requirements, without substantial qualification, could suggest in some situations that the foreign principal has some duty to provide technical support and training to the staff of the commercial agent.¹²

In the context of the obligation to provide normal warranties, the Implementing Regulations as well as the model contract also refer to "standard specifications recognized in the Kingdom."¹³ If, then, the Saudi Arabian Standards Organization (SASO)¹⁴ has issued a product specification, an imported product of the same kind must at least meet that specification. The commercial agent also would undertake in the model contract to provide consumers with spare parts at reasonable prices. The agent also agrees to provide maintenance to guarantee product quality. One wonders in view of the provisions of M/32 which require the contract to set out each parties' obligations vis-à-vis consumers, whether it would be possible in a proper case for a customer of the agent to assess liability against the principal for failure to discharge this responsibility. See *Penalties* below.

Termination

As noted in the introduction, it was widely expected that, unlike the pre-existing Commercial Agencies Regulation, the new amendment would contain provisions for compensation of a terminated or non-renewed agent based, for example, on loss of future profits. Rumor had it that the chambers of commerce in the Kingdom had proposed a draft which contained a compensation formula based on the agent's historical profits. Surprisingly, then, neither M/32 nor the Implementing Regulations contain any such requirement. Article 4 of M/32, however, says that the Ministry of Commerce will prepare a model contract ". . . as a guideline for agents and distributors which shall contain all the 'essential elements' of the contract such as . . . the terms for renewal and termination. . . ." Further, the Implementing Regulations, at article 11, provide that to be registrable, the agreement must contain a term on "the manner of termination or expiry of

¹²There is, of course, a substantial question whether a foreign principal can ever violate M/32 directly, although certainly a non-Saudi individual or company (including a Saudi company with foreign ownership) which acts as an agent, directly violates the Regulation. See the discussion under *Penalties*, below.

¹³See article 3(2) of the Implementing Regulations and article 9 of the model contract.

¹⁴SASO has issued such standards for a large number of consumer products.

the agency." These two provisions should be read against the following article from the Ministry's model contract:

Article 51. The commercial agent or distributor may claim reasonable compensation for his efforts which actually led to the apparent success in the agency or distribution work, promotion thereof, discovering and developing customers, in case the principal refuses to renew or continue the contract and as a consequence the new agent or distributor has obtained benefit from the previous activity.

Of course, it is too early to tell what the Ministry's precise position will be on the question of registrability. Neither M/32 nor the Implementing Regulations state that any of the Ministry's model provisions are themselves essential terms. It is always possible, however, that in practice, the Commercial Agencies Registries will refuse to register agreements which contain certain objectional provisions or which do not contain certain model ones.¹⁵ Indeed there is precedent for such a practice. Within the last two years, for example, the Ministry has refused to process any agreement, particularly Articles of Association of Saudi companies, which contain foreign governing law clauses or clauses providing for dispute resolution outside Saudi Arabia.¹⁶

Assuming either a substantially uniform stance is adopted by Saudi Agents on the question of compensation or, as suggested, the Ministry at some point in the future conditions registration of particular commercial agency contracts on there being a compensation article substantially similar to that in the model contract, the question will arise of how the term "reasonable compensation" will be interpreted. Historically, the Jeddah Chamber of Commerce took the position (and the Saudi courts found the position persuasive as to principles of justice and equity under Islamic *Shari'a* applicable to all contracts) that, upon termination or non-renewal, a Saudi agent had the right to have his inventory repurchased at cost and to be compensated for the "unamortized expenses" he had incurred in prosecuting the agency.¹⁷ No specific recognition was to be given to other kinds of damages, such as the loss of future profits although, in practice, in reaching amicable settlements which terminated agents, undoubtedly these were

¹⁵It has been reported that while the Ministry has given no indication that the model provision are required, their use ". . . will facilitate relations between agents and foreign firms and will permit the fair resolution of disputes. . . ." See Middle East Executive Reports, May, 1981, p. 16. This report goes on to say that the reporter was told that failure to use the model could cause Saudi authorities "to ignore any other document when proof of agency is required or when a dispute arises."

¹⁶The Ministry's model contract, at articles 19 and 20, specifies the Saudi Committee for the Settlement of Commercial Disputes for dispute resolution and Saudi regulations as the governing law. The Ministry of Commerce will register agreements which are silent on dispute resolution and governing law, however.

¹⁷*E.g.*, the costs incurred for renting or building a showroom or warehouse, for hiring employees to market the product, for establishing a service center, etc. (For this reason, some agency agreements limit the amount of such expenses that an agent will incur, without the consent of the principal.)

indirectly taken into account, even where the terminated agent had achieved only modest success in the market.¹⁸

It could be argued, therefore, that the model contract term would add very little, if anything, to what was the prior Saudi "law" on this subject. But, the express reference to compensation for activities benefiting a new agent or distributor sounds much like a future profits standard. Moreover, in the absence of any contract provision on compensation in these circumstances, the Saudi courts could in the future find the Ministry's formulation of the circumstances in which compensation should be payable and how the amount should be computed just as persuasive of the general principles of justice and equity under Islamic *Shari'a* as the prior position of the Jeddah Chamber of Commerce.

The model contract provision also casts some doubt on whether the parties can bind themselves in advance as to what level of performance will constitute "apparent success," by including in the agency agreement a term setting out a minimum market penetration criterion to be achieved by the agent. Normally, a contract provision with such a standard goes on to say that if the agent fails to meet the agreed upon benchmark, the principal may terminate "for cause" (a term not used in the model contract) and without any liability for compensation (beyond, e.g., buying back stock). Under the bare new Saudi model contract clause, however, it may ultimately be up to the court (Committee for the Settlement of Commercial Disputes) to decide whether the agent had achieved "apparent success" or, perhaps, whether it had promoted such success or had discovered and developed customers. Nevertheless, Saudi commercial agency agreements should continue to contain specific standards for measuring "apparent success" and more important still (from the standpoint of foreign principals) those benchmarks should be as high as reasonably possible. This is especially true in view of the single most common complaint of foreign manufacturers concerning their Saudi agents, particularly the several large and well-known Saudi training companies: the lack of an adequate number of skilled marketing personnel to devote to their many product lines.

Exclusivity and Subagents

There has never been any requirement that a Saudi commercial agent be given an exclusive right to represent a foreign principal in a given territory (usually either the whole kingdom, or one of the three principal regions, the Eastern Province (Dammam, Al-Khobar, Dhahran, Ras Tanura and Jubail), the Central Region (Riyadh and surrounding area) and the Western Province (Jeddah, Mecca, Medina, Taif, Yanbu and surrounding areas)). It is, however, true in Saudi Arabia that unless the contract specifically provides that the agent's right is non-exclusive, the arrangement will be presumed to be exclusive.

¹⁸As a practical matter, amicable termination of the first can be crucial to recruiting a new agent.

The Regulation apparently changes none of this. "Territory" is an essential term of the agreement and must be covered.¹⁹ The model contract, at article 3, however, contains the following provision:

The territory of this contract shall be _____. The first Party [the principal] shall not appoint another [agent/distributor] in this territory during the term of this contract.

The second sentence of this provision will probably not be regarded as essential by the Ministry of Commerce for the same reason that it should not regard the model provision for compensation upon termination or non-renewal as essential.

Article 1 of the Implementing Regulations provides that the agent or distributor may contract with subdistributors within the territory ". . . provided the original agent or distributor remains responsible for the obligations imposed by the regulations vis-à-vis consumers." (The Ministry's model contract is silent on the subject of subdistributors.) Although not free from doubt, this provision of the Regulation is probably subject to any contrary provision which may be contained in the agreement, one which, for example, prohibits the appointment of subdistributors without the foreign producer's approval. In any case, article 17 of the model contract provides that the agent or distributor shall be liable for the mistakes of his employees or subagents ". . . whom [it] appoints without express authorization from the principal."

Registration

As noted, prior to the promulgation of new Implementing Regulations, the registration requirements of the Regulation were often ignored during the last several years. Some commercial registries would not even accept filings. With issuance of the Implementing Regulations, however, there is every reason to assume that the new registration requirements will be enforced.²⁰ Registrations under the new amendment have already begun.

Article 22 of the Implementing Regulations provides that, as to existing agencies and distributorships (whether registered or not), applications for registration must be made within one year from the effective date of the Implementing Regulations.²¹ Article 6 requires that applications for the

¹⁹See article 4 of M/32 and article 8(9) of the Implementing Regulations.

²⁰If precedent is a reliable guide, the Ministry of Commerce's coordinated effort to register foreign companies operating in the Kingdom indicates that the present effort will also be a serious one. (See Ministry of Commerce Regulation 680 of December 1978.) However, the Ministries' present task is unquestionably more difficult because, in addition to its own investigation and enforcement personnel, it must rely on the cooperation of the Saudi private sector (instead of other government departments) for enforcement assistance.

²¹The application calls for the following information: the name of the agent, its C.R. number(s), address, manager or authorized signatory, the kinds of goods or services covered, the name and nationality of the principal and its head office address, the address of the principal's facility where the goods covered by the agreement are produced and the territory and duration of the commercial agency. (See article 8 of the Implementing Regulations). The

registration of new agreements be submitted within three months from the date such agreements come into effect. All registrations will be effected through the main office of the Ministry of Commerce in Riyadh. Saudi commercial agencies are not permitted to continue to operate unless they apply for registration. Each agreement is to be the subject of a separate application and entry in the appropriate registry. Separate registries will be maintained for agencies and distributorships. As to those agreements which are already registered under the Regulation, the agent need only attach to its new registration application "proof" that the agreement is still effective, and evidence of the agent's current membership in a chamber of commerce. Presumably, prior *registered* agency agreements will not, therefore, be subjected to substantive review under the new Regulation.

As stated in the introduction, the fundamental legal significance of registration or the lack thereof, is set out in article 6 of the Implementing Regulations, as follows:

No one can act as a commercial agent or a distributor unless he is registered in the appropriate registry maintained by the Ministry of Commerce. . . .

Lest there be any doubt, article 7 then says:

Non-Saudis or those whose registration documents are not in accordance with the regulations and its implementing rules cannot be registered.

Registration of a commercial agent in the proper registry is, therefore, after the expiration of the applicable grace period, a legal condition to the conduct of the agent's activity under an agreement calling upon him to perform commercial agency activities.

Further, furnishing the commercial agency agreement constitutes an integral part of the registration process. Article 10 of the Implementing Regulations provides as follows:

The validity of the commercial agency or distributorship agreement for registration purposes is conditioned upon the following: (1) the conclusion of the agreement in writing with the principal or his representative in its original country,²² [and] (2) a sufficient description within the agreement of the mutual rights and obligations of the two parties, and of their obligations towards consumers regarding the provision of maintenance and spare parts.

Under article 11 of the Implementing Regulations, the agreement must also recite the capacity and nationality of the parties, the agency's territory and the type of goods or services covered, the term (duration) of the agency and the manner in which it is to be renewed or how it is to be terminated.

application must be accompanied by the following documents: two copies of the Commercial Agencies Agreement (one must be legalized), an Arabic translation of the agreement stamped by a translator licensed in Saudi Arabia, a copy of the agent's commercial registration showing that he may so act, a written certificate from the agent that his capital is wholly Saudi and that its manager or other authorized signatory is a Saudi national, and a certificate as to the agent's membership in a chamber of commerce.

²²See the discussion above as to the registrability of agreements between Saudi agents or distributors and regional agents or distributors of foreign producers.

The Implementing Regulations make clear that in the registration procedure, the Ministry is to review more than the form of the contract. Article 12 provides that “[a]fter verifying that all registration requirements have been met both in form and *substance*, the registration approval must be issued by the Deputy Minister or his deputy . . .” (emphasis added). Thus, in whatever manner the Ministry interprets the substantive requirements of M/32 and the Implementing Regulations on, for example, the issue of termination compensation, it is empowered to deny registration of an agreement that does not conform to its interpretation.

Penalties

In addition to denial of registration (with the result that prosecution of a commercial agency is illegal), the Implementing Regulations establish a special board in the Ministry of Commerce to assess fines for each violation of the Regulation in the amount of SR5,000 to SR50,000. If the violation is committed by a non-Saudi or by a Saudi company (by having one or more non-Saudi shareholders or partners, for example), in addition to a fine the business can be liquidated, and any Saudi involved may be prohibited from trading. A foreigner may be deported from the Kingdom.²³

The obligations imposed by the Regulation fall upon the person or company acting as agent or distributor, not on the principal, and except for the prohibition on non-Saudis acting as commercial agents, are properly to be regarded as falling only on the Saudi party to the arrangement. The only other exception to this appears to be the requirement of article 10 of the Implementing Regulations that the commercial agency agreement must contain obligations (referring to obligations of each party) towards consumers in the terms described in article 2 of M/32 and article 3 of the Implementing Regulations. Those two articles themselves, however, apply by their express terms only to the agent. The regulatory scheme, therefore, appears to encourage, if not require, as a condition to registration that the foreign principal bind itself contractually, on a third party beneficiary theory, to consumers, to insure they are provided spare parts, maintenance and warranty services.²⁴ The Islamic *Shari'a* recognizes the right of a third-party beneficiary against the obligor of a contract.²⁵ Under Islamic *Shari'a*, liability also may be imposed on an aiding and abetting theory. It is therefore possible, if not likely, that liability for an agent's primary violation of the maintenance and service, or even of the registration requirements of the Regulation, could be assessed against its foreign principal in certain circumstances, assuming the non-Saudi could be brought before the special board to be established in the Ministry of Commerce to hear cases under

²³See article 20 of the Implementing Regulations.

²⁴See article 9 of the model contract.

²⁵The same third party beneficiary exposure exists for the agent as well. See article 13 of the model contract. Of course, the Saudi consumer also may have a direct right of action against the agent under M/32.

the Regulation or the Committee for the Settlement of Commercial Disputes.²⁶

For all the above reasons, a foreign principal, otherwise subject to suit in Saudi Arabia, should not conclude that it legally can afford to ignore evidence that its Saudi agent intends to violate the Regulation. It is, of course, at this early stage, impossible to predict how the Ministry of Commerce will apply the Regulation in the context of a number of issues discussed in this article.

²⁶ See article 21 of the Implementing Regulations. The Committee for the Settlement of Commercial Disputes, of course, retains jurisdiction over disputes between agents and principals. See article 19 of the model contract. A Saudi consumer has already apparently brought an action against a Saudi commercial agent for alleged violations of the warranty provisions of the Implementing Regulations. The Ministry is considering referring the complaint to the Committee for the Settlement of Commercial Disputes.

Appendix A**I. The Commercial Agencies Regulations**

(Ministerial Decision No. 1897 Dated 24/5/1401H)

Article 1

Commercial agencies which are subject to the Commercial Agencies Regulations include all situations in which a person enters into an agreement with a foreign producer or his representative in the foreign producer's own country to perform commercial activities, whether as an agent or a distributor in any manner, for a certain profit, commission or other benefit of any other kind; included within this provision are agencies for marine, aerial and land transportation and any relationship which is determined to be an agency relationship by the Ministry of Commerce.

The agent or distributor may contract with subdistributors within the territory of the agency provided that the original agent or distributor remains responsible for the obligations imposed by the regulations vis-à-vis consumers.

The relationship between a foreign contractor and a Saudi service agent is subject to the provisions of the Regulations pertaining to service agents issued by Royal Decree No. M/2 dated 20/1/1398H.

Article 2

It is not permitted for non-Saudis to act as commercial agents in the Kingdom of Saudi Arabia, whether as natural persons or as legal entities. Saudi companies acting as agents should be wholly owned by Saudis, and the members of their boards of directors and managers and all persons authorized to sign on their behalf should be Saudi persons.

Article 3

Without prejudice to the Regulations and Resolutions regarding the supply of maintenance and spare parts, the agent and the distributor shall be obligated during the whole period of the agency and for one year after the date of its termination or after the date of appointing a new agent, whichever occurs first:

1. To provide on a continuous basis and for reasonable prices the spare parts usually and continuously required by consumers of the products subject to the agency and to provide other spare parts which are rarely demanded within thirty days from the date consumers request them.
2. To ensure the availability of necessary maintenance for the products at reasonable costs and to guarantee the good quality and the warranty conditions normally given by the producers, taking into account the standard specifications recognized in the kingdom. This provision shall apply to importers even if they are not agents or distributors, and to all those who sell directly or indirectly for a profit as a profession. Anyone who violates this article shall be subject to the penalties which apply to agents and distributors.
3. To comply with the conditions included in the warranty provided by the principal with respect to the products subject to the agency.

4. To maintain in the commercial store the documents showing the prices of goods from their source, and documents evidencing the insurance, freight, transportation and customs duties paid.

Article 4

Both the commercial agent and the distributor are bound to have on their letter-heads, contracts, announcements, and official invoices their names, addresses, kind of agencies, territory, and their registration number in both the commercial agencies' registry and commercial registry.

Article 5

Both the commercial agent and the distributor are bound to assist competent officials in carrying out their mission of inspection, and to cooperate with them and meet all the requirements set forth in the various provisions of this Regulation.

II. Rules of Registration

Article 6

No one can act as a commercial agent or a distributor unless he is registered in the appropriate registry maintained by the Ministry of Commerce. Application forms for registration must be submitted within three months from the commencement of the agency agreement. The applications must be submitted along with all required documents to the Deputy Minister of Commerce or the Ministry of Commerce branches. In order that the competent department may complete the registration, a Ministry of Commerce branch receiving an application must send it directly to the Deputy Minister so that he can review the application and determine if the agency agreement and supporting documents are satisfactory.

Article 7

Non-Saudis or those whose registration documents are not in accordance with the regulations and its implementing rules cannot be registered.

One whose registration application is refused can appeal to the Minister of Commerce within one month from the date on which the notice of refusal was received. In this case, the application must be reviewed in the light of the reasons set forth in the complaint. The decision of the Minister of Commerce shall be decisive and final.

Article 8

The application form for a commercial agency or distributorship registration must set forth the following:

1. The name of the commercial agent or distributor, either an individual or a company.
2. The number of the main and subsidiary commercial registration which gives him the right to be an agent.
3. The address of the commercial agent or distributor.
4. The name of the person who has the right to manage the agency or sign on its behalf.
5. The kinds and names of goods and services encompassed by the agency agreement.
6. The name and nationality of the principal.
7. The head office address of the principal.

8. The address of the industrial or agricultural center of the producer of the goods encompassed by the agreement.
9. The territory of the agency or distributorship and the duration thereof.

Article 9

Registration applications for the commercial agency or distributorship registry shall not be accepted unless they are supported by the following documents:

1. The commercial agency or distributorship agreement in two copies, one of which must be the original and duly ratified by the competent authorities.
2. An authorized Arabic translation of the agreement and any other documents written in foreign languages.
3. A copy of the commercial registration form of the agent, either main or subsidiary, giving him the right to be an agent or distributor.
4. A written confirmation from the registration applicant, whether an individual or a company, that its capital is completely Saudi, and that the one who has the right to sign or to manage on its behalf is a Saudi national.
5. A Chamber of Commerce Certificate that the subscription fee due is paid.

Article 10

The validity of the commercial agency or distributorship agreement for registration purposes is conditioned upon the following:

1. The conclusion of the agreement in writing with the principal or his representative in its original country.
2. A sufficient description within the agreement of the mutual rights and obligations of the two parties, and of their obligations towards consumers regarding the provision of maintenance and spare parts.

Article 11

The agreement must include the following information:

1. The capacity and nationality of the two parties.
2. The subject and territory of the agency and its scope of works, services and goods.
3. The duration of the agency and its method of renewal.
4. The manner of termination or expiry of the agency.

The agreement may include any other conditions not in contradiction with prevailing regulations in the Kingdom of Saudi Arabia.

Article 12

After verifying that all registration requirements have been met both in form and substance, the registration approval must be issued by the Deputy Minister or his deputy. The papers are to be submitted for registration in the commercial agents' and distributors' registry after paying the registration fee due. The pages of the said registry must be numbered, each page to have a number which is in the meantime the number of the registration set forth on such page. Every agency or distributorship agreement must have an independent registration, even if one single agent or distributor has several registrations or numbers. The data of the said registry should include all the detailed clarifications of the commercial or distributorship registry. The commercial agent or distributor should be given a separate certificate for each registration.

Article 13

The commercial agent or distributor must apply, within one month starting from the date on which the registration certificate was issued, to effect the addition of the certificate contents to his commercial registration by the competent commercial registration office within the agency's territory. If the agency covers the whole territory of the Kingdom, such addition must be done to the main registration of the commercial agent or distributor.

Article 14

In the event of any amendment to the date previously recorded in the pages of the commercial agency or distributorship registry, the concerned party should apply, within one month from the date of such amendment, to have the same recorded after approval for such amendment is obtained from the competent authority. The amendment must be done in the registry page by deleting the amended item and recording the new one; or otherwise, if it was only a matter of addition, by recording the addition. Such amendment or addition must also be recorded in the commercial registry after modifying the statements of the registration certificate.

Article 15

The registration fee for every agreement in the agency registry, according to the Royal Decree No. M/8 dated 20/3/1393H, is 500 Saudi riyals, whether the applicant is an individual or a company.

III. Cancellation of Registration

Article 16

Without prejudice to the terms set forth in the Commercial Registry Regulation regarding cancellation of agency or distributorship registrations, the commercial agency or distributorship registration should be cancelled in the following cases:

1. Abandonment of commercial work by the merchant, whether an individual or a company.
2. Expiration of the commercial agency or distributorship agreement without renewal or extension.
3. Violation of one of the main conditions set forth in the commercial agencies regulation and amendments thereto.

The cancellation shall be implemented by placing two crossed red lines over the concerned registration record page and by recording the reason for cancellation in the space specified therefor.

Article 17

Registration cancellation shall be done by administrative action if the concerned parties do not apply for such cancellation within one month from the occurrence of an event which is grounds for cancellation after hearing the defense of the concerned party. The concerned party must be notified of the decision by registered mail.

Article 18

The concerned party can appeal the administrative cancellation decision to the Minister of Commerce within one month from the date on which he received notice of the decision. He must present the grounds for his appeal. The decision of the Minister of Commerce shall be decisive and final.

IV. Violations and Penalties

Article 19

The Minister of Commerce shall appoint officials specialized in prosecuting violators of the Commercial Agents Regulation and provisions of this Decision. The said officials shall have, in this connection, the power to seize violators, the right to enter places and shops to inspect, to investigate, to record minutes of violation seizure, to hear the defense of the concerned parties, to review documents and, in general, to perform any investigative procedures.

Article 20

Without prejudice to the Commercial Registration Regulations provisions or any other prevailing Regulation in the Kingdom of Saudi Arabia, a fine of not less than 5,000 Saudi riyals and not exceeding 50,000 Saudi riyals shall be imposed upon anyone who violates the provisions of the Commercial Agents Regulation and its implementing rules. The fine shall be published at the expense of the violator in one of the local newspapers without any prejudice to the right of anyone sustaining damage as a result of the violation to claim compensation.

If the violation was committed by a foreigner or a Saudi company including one or more foreign partners, the penalty shall be, in addition to the fine, the administrative liquidation of activities with the possible deprivation, either permanently or for a specific period of time, of practicing commerce. The Minister of Interior may deport a foreigner from the Kingdom in light of the decided penalty. The Minister of Commerce should inform the Minister of Interior of any foreigner who has committed a violation, whether he is an individual or a partner in a company.

Article 21

The Minister of Commerce shall form a commission of at least three legal advisors which shall be empowered to impose the penalties set forth in the Commercial Agents Regulation and amendments thereto. The Board's decisions are subject to appeal to the Minister of Commerce within fifteen days from the date on which the complainant, or his representative, was notified of a decision; otherwise, such decisions become final and binding at the end of the said period after being ratified by the Minister of Commerce.

V. Transitory Provisions

Article 22

All agents and distributors existing on the date this decision comes into effect, whether registered or not, are required to apply for registration according to this decision within one year from the said date. They are not allowed to continue work after this period unless they are duly registered.

Those who have been previously registered are only required to attach to their applications a proof that the agency agreement is still effective, together with a certificate from the Chamber of Commerce that the subscription fee due is paid.

Appendix B

Suggested Form of Agency Contract

Kingdom of Saudi Arabia
Ministry of Commerce
Internal Trade Department

Agency Contract . . .

On ___/___/14__H, corresponding to ___/___/19__ at the city of _____ it has been agreed between:

1. ___ whose headquarters ___ commercial registration ___ dated ___ at the city of _____ represented in this contract by _____

First Party: Principal

2. ___ whose headquarters ___ commercial registration ___ dated ___ at the city of _____ represented in this contract by _____

Second Party: Agent

As Follows:

Article 1

The two parties have agreed that the second party shall, as an agent/distributor for the first party in the Kingdom of Saudi Arabia, carry on transactions in connection with the products and services covered by this contract in the name of _____ and on behalf of _____.

Article 2

The subject of this agency is the products and services provided from the first party as described herein: _____

Article 3

The territory of this contract shall be _____. The first party shall not appoint another _____ in this territory during the term of this contract.

Article 4

The term of this contract shall be _____ which shall start from _____ and shall be automatically renewed for a period or other periods unless one

of the parties informs the other in writing at least __ months before the expiration of its term that he does not desire to renew the contract.

Article 5

The second party shall provide the place where he shall conduct his agency in the Kingdom and shall perform the work with his own employees and laborers. He shall be completely independent in conducting his agency in accordance with this contract.

Article 6

The second party shall be entitled to commission equal to ____ which shall be paid as follows: _____

Article 7

The second party shall perform all the services required to implement this contract in the specified territory. He shall exert the effort necessary to promote and market the products or services subject of the contract in accordance with its nature and commercial custom.

Article 8

The second party shall have in the course of implementing the contract the right to use the trademark of the first party without any additions or changes and shall work to make it well known in the markets.

Article 9

The first party has the obligation of providing the second party with spare parts and maintenance requirements which are necessary for the material and the products periodically and on appropriate dates or immediately after the agent has ordered them. The first party shall guarantee the good quality of the products in accordance with the Standard Specifications recognized in the Kingdom of Saudi Arabia.

Article 10

The second party shall always secure the spare parts requested by the consumers at reasonable prices. He shall also provide the maintenance necessary for the products covered by this contract and guarantee the quality of the manufacturer.

Article 11

The contract shall be terminated if its performance by one of the parties becomes impossible or at the death of one of the parties or his incapacity or bankruptcy. The contract shall also be terminated by cancellation for a material breach committed by one of the parties.

Article 12

The parties shall perform the contract in accordance with its provisions and commercial custom and the requirements of good faith. This obligation includes what is considered a requirement of the contract in accordance with the commercial transactions.

Article 13

Any breach on the part of the agent of the guarantees provided in the implementing regulations without a valid cause shall give the right to whoever sustained damages to proper compensation from the agent/distributor.

Article 14

The commercial agent and the distributor shall have the right to claim compensation for all damages sustained by them as a result of the breach by the principal of the latter's obligations under the contract or the commercial custom.

Article 15

The commercial agent or distributor may claim reasonable compensation for his efforts which actually led to the apparent success in the agency or distribution work, promotion thereof, discovering and developing customers, in case the principal refuses to renew or continue the contract and as a consequence the new agent or distributor has obtained benefit from the previous activity.

Article 16

The principal may claim compensation from the agent for damages he sustained in case the agent withdraws from the agency in an inappropriate time or in case he breaches the agency contract.

Article 17

The commercial agent or distributor shall be responsible for his own personal mistakes and the mistakes of his servants and subagents whom he appoints without express authorization from the principal.

Article 18

The commercial agent and the distributor shall be obligated to preserve the goods kept in his possession in accordance with the provisions of the contract and shall be responsible for any damages which occur to the goods unless such damage results from the fault of the principal or his servants or unless the damage was the result of a defect in the product itself or a force majeure.

Article 19

The disputes arising from performing the contract shall be settled amicably between the parties unless such settlement is not possible and in such case the competent committee for the settlement of commercial disputes in the Kingdom shall settle the matter.

Article 20

This contract shall be subject to the regulations in force in the Kingdom of Saudi Arabia and in particular the regulation for commercial tribunal and the regulation for commercial agencies and its amendments and implementing regulations.

Article 21

Three copies of this contract have been drawn. Each party has kept a copy and the second party shall present an authenticated copy to the registry of agents and distributors at the Ministry of Commerce in the Kingdom of Saudi Arabia to complete the registration procedures.

First: (Principal)

Second Party: (Agent)

Name

Name

Signature

Signature

