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## New commercial agency law enacted in Kuwait

By Kendal Tyre and Nia Newton

For more than fifty years, commercial agencies in Kuwait were governed by Law No. 36 of 1964. As of March 13, 2016, this long-standing law has been overturned and superseded. After years of deliberation and research, the Kuwait National Assembly has ratified a new Commercial Agency Law (CAL), Law No. 13 of 2016, to address the evolving issues and questions that relate to the country's commercial agencies.

### Inclusion of new terms

Under the new law, the definition of “commercial agency” has been amended and clarified to specifically include the terms “franchisee” and “licensee.” Due to their inclusion in the commercial agency definition, franchisees and licensees are now treated as commercial agents and are expressly subject to any restrictions or requirements as well as the protections of the new law.

### Dismantling exclusivity

Article 2 of Law No. 13 of 2016 dismantles the monopolies of agents, inadvertently created by the “exclusivity” principles of the prior law, by permitting principals to have more than one agent and/or distributor in the same territory. Moreover, Article 4 of the CAL “doubles-down” on the provisions set forth in Article 2 by disallowing local Kuwaiti agents to be the exclusive agents or distributors of products and services. Article 4 also allows for the import of goods and services to a territory from any third party, regardless of whether there may have been a registered and exclusive agent for such goods and services. If enforced, this change in the law could have a material impact in the arrangements between franchisees and franchisors operating in the country.

### Registration of agents

Under the old CAL, local agents were entitled to compensation when their principal (i) terminated the agency agreement without proving breach of contract by the agent or (ii) refused to renew the agency agreement when it expired without any evidence of material breach. While Law No. 13 of 2016 does not deny a local agent's right to be compensated under those conditions, it does clarify in Article 6 that only those commercial agencies registered with the Ministry of Commerce and Industry will be considered and heard by the courts of Kuwait. Agents will no longer be permitted to bring such compensation cases to the Kuwaiti courts if their agency arrangements are not registered. If they do so, their claims will be dismissed by the Kuwaiti courts.

## Obligations of agents post-termination or expiration

The new CAL also obligates agents and distributors to continue their duties of supplying, maintaining and repairing, when necessary, the goods of the principal the earlier of (i) a period of six months after the date their agency agreement expires or (ii) until a new agent or distributor is appointed. The new law subjects violators of this provision to new financial penalties.

The newly enacted commercial agency law includes core elements of the prior Law No. 36 of 1964. Nevertheless, those companies or individuals that may engage in commercial activity within Kuwait, particularly those interested in licensing and franchising, should be aware of the important changes made to this new rule. The Ministry of Commerce will issue executive regulations to Law No. 13 of 2016 within six months from March 13, 2016. As implementation of the new laws begins, it is important that parties consider the potential impact of these changes when drafting agreements.<sup>i</sup>

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<sup>i</sup> Parts of this alert were based on excerpts from *International Franchising 2016: Legal and Business Considerations*, a book edited by Kendal H. Tyre (Nixon Peabody LLP) and Diana V. Vilmenay-Hammond (Gray Plant Mooty), to be published in late 2016 and covering over 40 countries. It will be the fourth book in the *Franchising In* international book series published by LexNoir Foundation. Other titles include [Franchising in Africa 2014: Legal and Business Considerations](#) and [Franchising in Asia 2015: Legal and Business Considerations](#).