

Kluwer Arbitration Blog

Are Commercial Agency Disputes Arbitrable in the UAE?

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One of the questions that the legal community in the United Arab Emirates (“UAE”) has been grappling with is whether or not commercial agency disputes are arbitrable. Decisions have been issued invalidating arbitration agreements in the context of commercial agency disputes. However, contrary decisions upholding arbitration agreements have also been issued. This post examines one recent decision upholding an arbitration agreement.

The Commercial Agencies Law

Activities of commercial agents in the UAE are governed by the [Federal Commercial Agencies Law no. 18 \(1981\)](#) (“Commercial Agencies Law”). Agency agreements that are subject to the Commercial Agencies Law must meet certain requirements, including (1) exclusivity, (2) Emirati nationality¹⁾ and (3) registration with the Ministry of Economy.

When these requirements are met, the Commercial Agencies Law affords a commercial agent with a high level of protection, in particular by rendering the termination of the agency agreement by the principal a very difficult task. To ensure that the Commercial Agencies Law is applied to all qualified disputes between agents and principals arising from commercial agency agreements (and thereby guaranteeing the envisioned protection), as elaborated below, jurisdiction for such disputes is granted to UAE courts.

Jurisdiction of UAE Courts

Article 6 of the Commercial Agencies Law states that disputes arising out of commercial agency agreements shall be heard by UAE courts and that an agreement to the contrary is not valid. Consequently, Article 6 is a mandatory provision.²⁾

If Article 6 is mandatory and parties to an agency agreement cannot agree to bring their dispute before a forum other than UAE courts, then they would not be allowed to arbitrate any potential disputes. In line with this view, a number of [decisions](#) have confirmed that an arbitration agreement cannot be upheld in agency agreements disputes (*See Federal Supreme Court Case No. 270/judicial year 16 and Federal Supreme Court Case No. 99/judicial year 20*). As a result, it was

often [reported](#) that agency disputes are not arbitrable.

Summary of the Dispute

The dispute arose out of a commercial agency agreement (“Agreement”) between a French manufacturer of a specific type of vehicles (“Principal”) and their commercial agent (“Agent”). The Agreement was exclusive for the entire territory of the UAE, which meant that the Agent would be entitled to commission for all sales done within the country even when such sales were concluded without the Agent’s involvement. The Agreement was registered with the Ministry of Economy in line with the Commercial Agencies Law since 1992 and was still valid when the dispute arose between the parties around the end of 2017.

The Principal concluded a transaction for the sale of vehicles to a governmental entity in the UAE without the involvement of the Agent. The latter learned of the transaction, in spite of its confidential nature, and claimed commission in line with the provisions of the Agreement. The Principal refused to pay the commission. The Agent filed a complaint with the Ministry of Economy’s Commercial Agencies Committee (“Committee”), which is the administrative body designated to issue a determination in disputes between agents and principals.³⁾ As part of its claim, the Agent requested an order for the payment of almost four million euros as commission for the concluded transaction. The Committee issued a decision in favor of the Agent, stating that the Agent is entitled to commission in line with the Agreement and it directed the Agent to resort to courts to claim its entitlements.

On the basis of the Committee’s decision, the Agent filed a request, amongst other, for the appointment of an expert by Abu Dhabi Courts to determine the exact value of the commission that the Agent is entitled to and an order against the Principal for the payment of the determined amounts.

The Principal raised a number of defenses amongst which a challenge to the jurisdiction of the court on the basis of the arbitration clause in the Agreement, which provided that all disputes arising between the parties shall be settled through arbitration. On the basis of the arbitration clause, the Principal requested the court, to dismiss the claim for lack of jurisdiction.

The Courts’ Reasoning

The Court of First Instance (“CFI”) accepted the Principal’s defense and dismissed the case on the basis of the arbitration agreement. The CFI simply explained that the defendant had invoked the arbitration clause in line with the [UAE Federal Arbitration Law](#) and the court should therefore dismiss the case on that basis.

The Agent filed an appeal before the Court of Appeal (“CA”) (*see Case 2652/2018 Commercial*). The CA upheld the decision of the CFI, agreeing that the case should be dismissed on the basis of the arbitration clause and provided a detailed reasoning for its decision. The Agent then challenged the CA decision before the Court of Cassation (“CC”) (*see Case 362/2019 Commercial Cassation*), which upheld the decision of the CA adopting the same reasoning.

According to the CC, the exclusive jurisdiction of UAE courts provided for in Article 6 of the Commercial Agencies Law is “*conditional upon the dispute being related to the commercial agency itself in terms of its existence, its scope and the extent to which its provisions are complied with, determining the area it covers, or when the dispute relates to its being, or hanging on to its survival or its continuation or determining who should practice it according to its definition in the law or the non-compliance with its obligations or its execution principles*”. The language used by the CC is not clear and requires a closer examination, and may be better understood in the context of the full decision.

The CC goes on to explain that the rules of the Commercial Agencies Law aim at protecting the exclusive agent from the potential of the products, subject matter of the agency agreement, being distributed through someone other than the agent in the territory of exclusivity of the agent. However, if the request of a party to the agency agreement is to settle the account between the parties with respect to transactions resulting from the agency agreement, then the arbitration clause is not a violation. This is so because the claim relates to the entitlements of a party with respect to acts performed by such party and which have benefitted the other contracting party.

The CC then concludes that, given that the Agent’s claim is to appoint an expert to determine the amount of commission it is entitled to and request an order for payment of amounts determined by the expert, then the dispute between the parties relates to settling their account. It does not relate to the terms of the agency, its area or its continuation and as such the arbitration clause remains valid.

Final Observations

The reasoning is difficult to understand at first, but it is clarified when considered against the backdrop of the scenarios in which disputes arise between an agent and a principal.

The first scenario arises where the principal, when unsatisfied with the performance of the agent, would want to terminate the agency agreement and cancel its registration with the Ministry of Economy. When looking at the text of the judgment closely, we note that the CC is primarily concerned with protecting the agent’s territory. Such protection requires maintaining the registration of the agency agreement, resisting its cancelation and eventually preventing the appointment of another agent (as another agent may not be appointed unless the previous agency is canceled). The CC uses too many words to simply say that disputes relating to the existence, registration and maintenance of the agency agreement fall within the jurisdiction of UAE courts.

The second scenario arises where the agent seeks commission for sales performed in its territory, whether through the agent’s involvement or not and whether these were performed by the principal on its own or through another agent. Clearly, this scenario is what the current case is about and the courts upheld the arbitration provision. The CC explained that when the issue relates to payments a party is entitled to then arbitration would be upheld. In other words, claims relating to an agent’s commission are arbitrable.

The confusing and rather convoluted language used in the courts’ decisions makes it hard to determine in a conclusive manner the distinction made above. One would hope that future decisions would shed further light on the envisaged distinction and make it easier for practitioners to predict the potential outcome of inserting an arbitration clause in a commercial agency agreement.

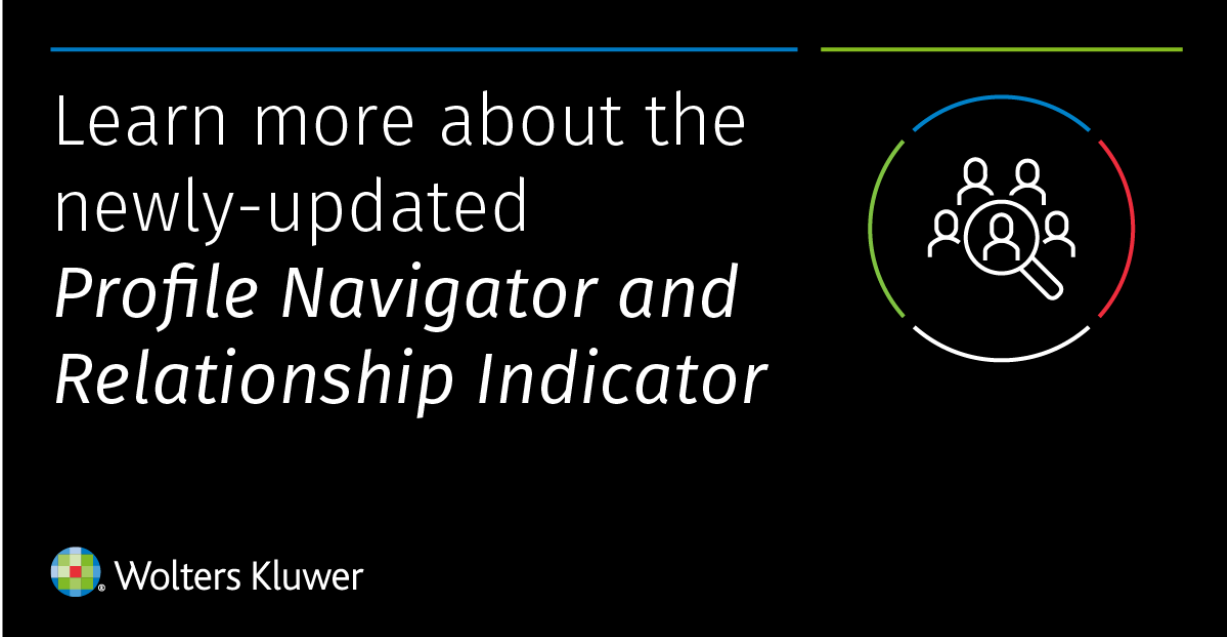
The author of this Blog post has been involved in the case discussed.

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References

Until recently, the Commercial Agencies Law required that the agent be a UAE national or a corporation that is entirely owned by UAE nationals. There has been a recent amendment of this requirement which introduced a limited expansion of types of entities that can act as commercial agent.

This provision has been introduced in 1988 and has been maintained since then although the Commercial Agencies Law itself was subject to a number of amendments over the last two decades.

According to the Commercial Agencies Law, no claim can be filed to the courts before submitting the claim to the Committee. The decision of the Committee can then be challenged before the courts.

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