

Key Agency Considerations: Overview (Kuwait)

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A Practice Note providing an overview of key issues for foreign counsel to consider when entering an agency arrangement for the sale of goods or services in Kuwait. This Practice Note discusses the legal framework governing commercial agents, primarily under the Agency Law and Commercial Law. It covers essential formalities, such as the requirement for written agreements and mandatory registration with the Ministry of Commerce and Industry. This Practice Note also addresses structuring the relationship, different types of agents, duties implied by law for both the agent and principal, and key provisions for the agency agreement. It highlights practical considerations regarding tax obligations for foreign entities, product liability, intellectual property protection, and competition law. This Practice Note also explores the significant legal and contractual obligations on termination, including an agent's statutory rights to compensation for termination without cause or for non-renewal, and outlines dispute resolution options available under Kuwaiti law.

An agent in the context of the sale or purchase of goods, services, or both in Kuwait is typically a person or entity with authority to negotiate the terms of sale or purchase on behalf of another person or entity (the "principal") but not to buy goods for resale or contract with customers on its own account. In Kuwait, this type of agent is called a commercial agent, and the term "agent" or "agency" as used in this Note refers to commercial agents in the context of the sale or purchase of goods and services.

The appointment of an agent is a commonly used channel for the sale of goods and services in Kuwait and has many benefits for a foreign principal, including that the principal benefits from the agent's knowledge of local laws, trading conditions, and customs. This Note discusses:

- Key legal and regulatory requirements.
- Key considerations for appointing an agent and structuring the agency relationship in Kuwait.
- Key provisions in the agency agreement.
- Issues related to termination of the agency relationship in Kuwait.

For an overview of agents and other participants in the global supply chain, see [Practice Notes, Global Supply Chain: Overview](#) and [Sales Intermediaries in the Supply of Goods: Overview \(International\)](#).

Laws and Regulations

Legal Framework

Agency offers a legal structure for foreign principals wishing to operate in Kuwait without a permanent presence. The process involves appointing a local agent to conduct business activities on the principal's behalf for fee payments or commissions.

The principal laws governing agency in Kuwait are:

- The [Agencies Law, Law No. 13 of 2016](#) (Agency Law).
- The [Executive Regulations of the Agency Law, Ministerial Decision No. 565 of 2017](#).
- The [Commercial Law, Law No. 68 of 1980](#) (Commercial Law).

The Agency Law outlines the procedural and formal provisions for engaging in agencies, while the Commercial law contains the substantive rules for agencies. In Kuwait, agency is defined as an agreement where the principal authorises an agent to sell, promote, or distribute goods or services in exchange for a profit or commission (Article 1, Agency Law).

There are different types of agencies (see [Types of Agent](#)). Kuwaiti law does not distinguish between the agency laws for the sale of goods and services and general agency law. The Agency Law provides

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the same protections to all agents, whether they sell goods or provide services on the principal's behalf.

Contracts in Kuwait must be performed in accordance with their provisions and in a manner consistent with the requirements of good faith and honourable dealings (Article 197, Civil Code, Law No. 67 of 1980 (Civil Code)). This requirement applies to agency agreements. An agency agreement can include any conditions agreed on between the parties that do not conflict with the law (Article 3, Agency Law).

Legal Formalities and Due Diligence

Kuwait has foreign ownership restrictions for entities carrying out commercial activities, and only Kuwaiti nationals or corporate entities with 51% or greater Kuwaiti shareholding can be appointed as agents (see Article 23, Commercial Law). For more information on Kuwait's foreign ownership restrictions, see [Practice Note, Regulation of Foreign Investment in Kuwait](#).

An agency agreement must be in writing and specify:

- The scope of the agency.
- The agent's compensation and assigned territory area of activity.
- The term of the agency contract, if the agency is for specified term.
- The agent's right to use the principal's trademarks, if any.

(Article 274, Commercial Law.)

All agencies must be registered with the Commercial Agencies Department of the [Ministry of Commerce and Industry](#) (MOCI). An agency can be registered within a few days and the fees are nominal. To register, the agent submits an application to MOCI that typically includes:

- The original agency agreement, which must be authenticated by the official entity and Kuwaiti embassy in the principal's home country and the [Ministry of Foreign Affairs](#), in part because Kuwait is not a signatory to the [1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents](#). A true copy of this agreement must also be submitted if the original document is returned to the agent after ensuring that it matches the true copy. In practice, a registered Kuwaiti lawyer can verify that the copy is a true copy to the original agreement.

- An Arabic translation of the agency agreement translated by a certified translator in Kuwait that is submitted to and approved by the [Ministry of Justice](#).
- A copy of the agent's commercial license, which allows the agent to practice the activity indicated in the agency agreement.
- A certificate issued by the [Kuwait Chamber of Commerce and Industry](#) (KCCI) that confirms the agent's registration with the KCCI.
- A compact disc that includes the agency agreement and all related documents.
- A certificate of the agent's registration in the Commercial Register.
- A document proving that the agent is a Kuwaiti national or that the share of the Kuwaiti partners in the company is at least 51% of the company's capital.
- Any necessary approval of the concerned entities regarding the commodities or services indicated in the agreement.

A principal conducting due diligence on an agent can obtain information and documentation directly from the agent or as authorised by the agent. The agent's information is generally confidential and not available to the public, but certain details are made public on the KCCI's website. Additionally, the principal can purchase a commercial extract from the MOCI that contains key information on the agent, including the agent's:

- Commercial registration number.
- Commercial address.
- Incorporation date.
- Capital.
- Management.

Some embassies keep a list of trusted and blacklisted local companies, which can be a good source of reference and offer limited due diligence on local agents.

Authority of Agent

An agency in Kuwait includes an absolute power of attorney on commercial matters within the scope of the agency, which does not extend to non-commercial transactions unless they are expressly included in the agency agreement (Article 260, Commercial Law).

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The agency agreement provides the extent and scope of the agent's authority. A contract in Kuwait must include all required elements, considering the nature of the transaction (Article 195, Civil Code). Additionally, an agency agreement must include:

- The agent's rights and obligations.
- The extent of the principal's liability for the agent's obligations within the scope of the agent's representation.
- Any other conditions agreed on between the principal and agent that do not conflict with the law.

(Article 3, Agency Law.)

The principal can limit the agent's authority in the agency agreement by listing the agent's authority and the extent that authority. For example, the agreement can:

- Limit the agent's authority to sourcing deals that the principal then fulfils.
- Require the agent to obtain the principal's written consent before acting on a deal.

Liability of Agent for Sales Contracts

Agents in Kuwait can be contract agents or commission agents (see Types of Agent). A commission agent is directly liable to the third parties it contracts with (Article 294, Commercial Law). No direct action between a principal and the third parties is available as a recourse relating to the commission agent's contract with the third parties.

An agent that violates the principal's orders is liable for the damages resulting from the violation (Article 262, Commercial Law). Therefore, the agent is personally liable where the agent:

- Was not authorised by the principal to perform a specific transaction or act.
- Exceeds the authority specified in the agency agreement.
- Misrepresents the agency or its scope to a third party.

The principal can indemnify the agent against third-party claims in the agency agreement. However, this indemnity only applies to circumstances within the agency agreement's scope or agent's authority (see Indemnification and Insurance and Limitation of Liability).

Agent's Duties Implied by Law

An agent must act with care and caution when implementing the agency, including after-sales obligations (see After-Sales Services Obligations).

Agents have a duty to avoid conflicts of interest, act in good faith and only act in the principal's interests. While an agent cannot violate the principal's orders, the agent can delay implementing the agency to confer with the principal if the agent realises implementing the agency according to the principal's instructions will cause the principal serious damage. (Article 262, Commercial Law.)

An agent without explicit instructions from the principal can delay implementing the agency until it receives instructions. However, where urgency is needed or the agent is authorised to act within the limits of what is useful and appropriate, the agent can implement the agency according to the principal's interests after taking necessary precautions. (Article 262, Commercial Law.)

Agents must provide their principals with the necessary information and a statement of account. This statement must be true and cannot deliberately include false data. (Article 265, Commercial Law.)

An Agent must preserve its principal's rights and take all necessary measures to preserve these rights, including:

- Providing the principal with information on the market in the area of activity, such as market studies, market trends, products in the market, prices, and competitors.
- Not disclosing the principal's secrets known during the agency, even after the agency ends.

(Article 280, Commercial Law and see Confidentiality and Protection of Personal Data.)

Principal's Duties Implied by Law

A principal must pay its agent the agreed compensation in the agency agreement (Article 277, Commercial Law). The principal must provide the agent with all the necessary information to perform the agency, including the specifications of goods, models, drawings, and other data to help the agent promote and market the goods. (Article 279, Commercial Law.)

A principal that terminates an agency agreement without a breach by the agent must compensate the agent for the damage that the termination

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caused the agent. An agreement that excludes this requirement is void. (Article 9, Agency Law and see Agent's Rights to Compensation on Termination or Failure to Renew.) The principal can agree to indemnify the agent against claims brought by third parties where the agent acted within its authority under the agency (see Liability of Agent for Sales Contracts).

Bribery and Corruption

Corruption crimes and bribery in Kuwait are mainly regulated by:

- The Penal Law, Law No. 16 of 1960 (Penal Law).
- The [Anti-Corruption Law, Law No. 2 of 2016](#) (Anti-Corruption Law).

Private individuals, public officials and employees, companies, agents, and any person who aids or carries out an act of bribery can be penalised under these laws.

The Agency Law has no specific provisions that address an agent engaging in bribery or corruption. Agents have a duty to act in good faith (see Agent's Duties Implied by Law).

A person that offers a civil servant (for example, a government employee) money or a benefit, or promises them the same, can be punished when the bribe is:

- Accepted, with an up to seven-year prison sentence and fine equal to the bribe amount (Articles 114–115, Penal Law).
- Attempted, with an up to one-year prison sentence and fine of up to 750KWD (Article 117, Penal Law).

A private juristic person can also be fined for bribery (Article 22, Anti-Corruption Law).

In practice, agency agreements commonly contain provisions that require the parties to comply with local laws, including anti-bribery laws. The agreements can also reference international anti-bribery acts that the parties should follow, such as UK or US anti-bribery acts. For more information anti-bribery laws in the UK and US, see [Practice Note, Anti-corruption regimes in the UK and US: a comparison of the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977](#).

Regulation of Agent Compensation

Generally, the agency agreement outlines the terms regarding an agent's compensation. The Agency Law has no specific provisions concerning conditions or restrictions on payment

amounts, schedules, timings, or rules on when or how an agent is entitled to commissions. An agent's compensation can be a percentage of a transaction's value (see Contract Agents).

A commission agent undertakes business in its own name on the principal's behalf and receives commission-based compensation (see Commission Agents). This compensation is not subject to a court's estimation. Instead, the commission agent is entitled to a special compensation (Article 296, Commercial Law). The Commercial Law does not provide an exact payment amount formula or payment schedule. The commission terms, including the amounts and timing of payments, are stated in the agency agreement.

An agency agreement can include provisions that determine the fixed compensation the agent is owed if the agreement is terminated or provide a formula for calculation the owed compensation.

Tax and Exchange Control

Kuwait applies a corporate income tax regime under the [Income Tax Law, Law No. 3 of 1995](#). The corporate income tax rate is 15% of an entity's net income.

A foreign principal that carries out business in Kuwait must pay Kuwaiti corporate income tax. Because a foreign principal appointing a local agent is considered carrying out business in Kuwait, the foreign principal must pay corporate income tax on the profits derived from its business in the country.

There is no withholding tax regime in Kuwait. However, there is a tax retention regulation that requires an agent to retain 5% of either:

- A contract's total value.
- All payments made to any person with whom the agent entered into agreements or transactions.

The retained funds are released after the foreign principal provides a tax clearance certificate from the Kuwait Tax Authority.

Competition Laws

Generally, a principal can designate restrictions in agency agreement that do not violate local competition laws or monopolise the market under the [Competition Law, Law No. 72 of 2020](#).

Agency Exclusivity

There is no requirement under Kuwait law to have an exclusive agent or only one acting agent. Generally, a principal can choose to appoint more

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than one agent for the same territory and agency activity. However, an agent cannot act for both a principal and a competitor of the principal in the same territory. (Article 273, Commercial Code.)

A principal and an agent can agree that the agent has the exclusive right to solicit the sale of goods and services within a designated territory. However, this exclusivity does not prevent a third party from importing and providing goods being handled by any agent. (Articles 3-4, Agency Law.)

There are instances where an agent's exclusivity is required. For example, the Ministry of Health limits the supply of pharmaceuticals in Kuwait to one exclusive agent or distributor.

Price Controls

A principal can reject a deal where a commission agent either:

- Sells a good at a lower price than set by the principal.
- Buys a good at a higher price than set by the principal.

A principal that does not promptly notify the agent that it is rejecting the deal after receiving notice that the transaction is complete is deemed to have accepted the price. The principal cannot reject a deal where the agent agrees to bear the price difference. (Article 288, Commercial Code and see Commission Agents.)

Product Liability

Under the Agency Law, agents are responsible for obtaining the required product registration and approvals for importing, distributing, and promoting goods. The agent must ensure that the imported or provided goods:

- Fulfil the international and Gulf Cooperation Council (GCC) conditions adopted in Kuwait.
- Are free from any manufacturing defects.

The agent must also provide:

- Maintenance and repair services for goods that a third party imports, if it is the same type of good the agent handles.
- Spare parts for the goods.
- Maintenance under the good's warranty terms without increasing the price charged to customers.
- Workshops for maintenance and repair, as required, for the goods.

- The guarantees that the manufacture provides under the standard specifications of Kuwait.

The agent must also keep documentation of the goods that contain their prices, insurance, shipping, transport, and tariffs. (Articles 5 and 10, Agency Law and see After-Sales Services Obligations.)

Agents are solely responsible for damage to the goods after receipt from the principals unless the damages are caused by force majeure, unusual circumstances, or inherent defects (Article 263, Commercial Law). Agents must take immediate measures to preserve the goods after discovering they are damaged.

Agents must comply with the product recall requirements under the [Consumer Protection Law, Law No. 39 of 2014](#), which requires businesses to promptly and efficiently act in a recall to ensure consumer safety. The agent must coordinate with the relevant government authorities, such as the MOCI, to comply with recall procedures.

The agency agreement can outline the responsibilities and procedures relating to product defects and recalls and include limited warranties, such as defects in materials.

Appointing an Agent and Structuring the Agent Relationship

Types of Agent

Articles 260 to 296 of the Commercial Law defines the difference types of agencies in Kuwait, which are:

- Contract agents (see Contract Agents).
- Commission agents (see Commission Agents).

Contract Agents

A contract agent continuously promotes its foreign principal's business in Kuwait and negotiates and concludes transactions on the principal's behalf and for the principal's account in a specific area of activity in exchange for compensation. The compensation can be a percentage of the transaction's value, which is calculated based on the sale price to the customer unless otherwise agreed.

A contract agent must exercise the transactions of its agency and manage its commercial activity independently and bear the required expenses alone. A contract agent is entitled to compensation for completed transactions and transactions that are not completed due to an act of the principal.

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The principal can appoint more than one agent in a territory for the same activity. However, the agent cannot act for competitor companies with the same activity or goods in the territory. The principal must compensate the contract agent if it does not renew a fixed term agency or terminates the agency due to no fault of the agent (see Agency Exclusivity).

Where a local agent acts as a distributor for the principal's goods in a specified area in exchange for compensation or a profit percentage, the agent is deemed as a contract agent and governed by the same provisions as a contract agency (Article 286, Commercial Law).

Commission Agents

A commission agent agrees to carry out a legal action in its own name on the principal's behalf for a fee that is not subject to a court's estimation. The agent is not required to disclose the name of a third party it contracted with to the principal (unless the third party permits the agent). This agency model is commonly used in Kuwait.

A commission agent is directly liable to the third parties it contracts with and vice versa. Neither the principal nor third party have a direct action for resource against each other relating to the commission agent's contract with the third party.

Del Credere Agents

Kuwait's agency laws do not directly address del credere agents. The parties can set out obligations on guaranteeing debts in the agency agreement, as the agreement can include any conditions the parties agreed on that do not conflict with the law (Article 3, Agency Law).

Employment Risks

An agency agreement must clearly state the parties' obligations and represent their will, including emphasising the parties' non-employment relationship and that the agreement is registered to be enforced and effective. Agency agreements often include clauses stating that:

- The agent's employees are not deemed employees of the principal.
- The agency agreement does not construe any other form of relationship or formation.

These clauses are needed to avoid the risk of a party claiming rights under labour laws

and conflicts that can arise later in the agency relationship.

Import Requirements

Foreign companies cannot directly import and sell or distribute their goods without a local agent or establishing a local company (see Legal Formalities and Due Diligence). This local presence is required for a foreign company to register its goods and obtain the licenses and registrations for importing into Kuwait.

Agents must obtain the required registration and necessary approvals for importing, distributing, and promoting goods for the principal. The agent must ensure that the imported or provided goods:

- Fulfil the international and GCC conditions adopted in Kuwait.
- Are free from manufacturing defects.

The agency contract must include:

- The rights and obligations of the principal, agent, and distributor.
- The extent of the principal's liability for the agent's obligations in the scope of the agent's representation, including the allocation of different responsibilities.

(Article 3, Agency Law.)

Intellectual Property Issues

An agency agreement grants the agent the right to use the principal's trademark. The MOCI's Trademark Office provides a separate registration for a trademark license agreement where the agent's name is listed as licensed to use the trademark on the trademark certificate.

In practice, registering the agency agreement is sufficient for the agent to use the principal's trademark as authorised in the agency agreement. The agent does not gain trademark or other IP rights by selling the principal's goods. However, the principal should register its IP rights in Kuwait to avoid any ownership claims by the agent.

Online Sales Considerations

A principal can specify the methods by which the agent should sell the principals' goods in the agency agreement. An agent can sell goods or services online if the agent's commercial license that is registered with MOCI allows trading.

The Agency Agreement

Term of the Agreement

An agency agreement must include the agency's duration, renewal mechanism, termination provisions, expiration date, and applicable notice period (Article 3, Agency Law, Article 274, Commercial Law, and see Terminating the Agency Agreement). A principal that terminates or does not renew an agency without fault from the agent must compensate the agent (see Agent's Rights to Compensation on Termination or Failure to Renew).

An agency agreement must have a term of at least five years if it requires the agent to establish either:

- A building for displaying the principal's goods.
- A warehouse for the principal's goods.
- A facility for maintaining or repairing the principal's goods.

(Article 275, Commercial Law.)

Article 12 of the Agency Law provides the application process for renewing or amending an agency registration at the MOCI Agencies Register, which includes submitting a letter of renewal. Unless a party notifies the other of its intent to not renew a fixed-term agency agreement with automatic renewal provisions, the agency registration is renewed when the agent submits a letter to the MOCI that confirms the agency's continuation.

Kuwait law does not specify a notice period for an agency's early termination or non-renewal. To avoid potential disputes, a party seeking termination should:

- Provide written notice within the agency agreement's notice period, which includes the principal's reasons for terminating the agency.
- Follow any contractual requirements for giving a non-renewal notice.

Marketing, Promotion, and Advertising

Principals must provide their agents with:

- Documents required for the agent to perform its responsibilities, including the specifications of goods, models, drawings, and other data that help agents promote and market the goods (Article 279, Commercial Law).
- Support, marketing materials, and training required to promote the goods in Kuwait. Agents must ensure that marketing efforts comply with

local advertising regulations and competition laws that ensure fair competition.

Principals can allocate the responsibility for certain costs to their agents in the agency agreement, such as marketing costs. An agent can claim reimbursement for its own investments and marketing costs where its principal terminates the agency agreement, and the agent was not at fault.

Stocking of Principal's Products

An agency agreement can provide that the agent:

- Pays all shipping, insurance, and customs expenses.
- Provides and maintains the necessary storage space and facilities to properly store and sell the specified goods at its own expense, including specific conditions needed to adequately store the goods, such as storing the goods under specified conditions or separately from other goods.

The agency agreement can specify that:

- The principal is not responsible for goods after they are delivered or imported.
- For goods in the agent's possession, the agent is responsible for damages to goods and related losses or delays that affect the sale to the customer.
- The parties can access each other's documentation, books, and records to ensure compliance with local laws and contract obligations.

After-Sales Services Obligations

Agents must ensure that the goods they handle meet local regulatory standards, which includes after-sales obligations such as:

- Having a sufficient volume of the goods and services required for the agency, including spare parts.
- Providing the necessary maintenance and repair workshops for the supplied goods.
- Ensuring that the guarantees offered by manufacturers conform with Kuwait law.
- Preserving the documentation of the goods that contain their prices from their sources, insurance, shipping, transport, and tariffs.

If the agency agreement is terminated, these obligations continue until the earlier of six months from the termination date or the principal appointing a new agent or distributor. (Articles 5 and 10, Agency Law.)

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The foreign principal is commonly responsible for providing the agent with the required technical support and training to maintain the goods. The agency agreement determines the principal's rights and obligations to provide after-sales services.

Commission and Payments

Generally, the agency agreement outlines the terms regarding commission amounts, payments, and any other agency compensation (see Regulation of Agent Compensation). The Agency Law has no specific provisions concerning conditions or restrictions on payment amounts, schedules, timings, or rules on when or how an agent is entitled to commissions. An agent's compensation can be a percentage of a transaction's value (see Contract Agents). The principal is not legally required to keep an agent's commission in a separate account.

There are no specific provisions on the role of a trustee.

Compliance with Laws and Principal's Policies

Agency agreements do not have to include provisions on complying with local laws, such as bribery or anti-slavery laws. However, it is common for these agreements to require the parties to comply with local laws in performing the agency or impose certain policies that are appended to an agreement. For example, an agreement can specify that agent compensation is subject to all applicable laws and inclusive of all sales and other taxes as they exist now or that may come into force in the future.

Warranties can require the principal and agent, along with their stockholders, employees, agents, and representatives, to:

- Comply with all applicable anti-corruption laws.
- Not engage in any form of bribery or corruption.
- Not make any payments to an individual that can appear as a conflict of interest or an impropriety.

Confidentiality and Protection of Personal Data

An agent cannot disclose the principal's secrets that are acquired during the agency, even after the contractual relationship ends (Article 280, Commercial Law). Clauses on confidentiality and

proprietary ownership are often included in agency agreements.

An agency agreement can require the agent to:

- Return the principal's IP rights, private data, and trademarks when the agency ends or on the principal's request.
- Not disclose confidential information obtained from the agency to third parties during and after the term of the agency agreement.

Non-Compete Covenants

Kuwaiti law does not address non-compete covenants in agency agreements. An agency agreement can include non-compete clauses that prevent:

- The agent from:
 - carrying out the same or similar business activities within a specified geographic area or timeframe after the agreement terminates; or
 - soliciting or approaching any supplier, manufacturer, or provider to sell or supply comparable goods.
- The principal from appointing a new agent in the same territory within a specified timeframe.

Indemnification and Insurance

An agent can be solely responsible for insurance under an agency agreement. Agency agreements commonly include:

- Mutual indemnification clauses for certain claims, such as the principal indemnifying the agent for product liability or IP infringement claims.
- Indemnity clauses for property damage, including intangible property such as profits and reputation.

Limitation of Liability

Parties to an agreement can agree to relieve a party from liability or limit a party's liability for failing to perform its contractual obligations or delays in performance, except for liability due to fraud or gross negligence (Article 296, Civil Code).

Agency agreements commonly set out the different limitations and warranties between the parties. Limited warranties can cover defective goods and typical exclusions relating to the product, including the implied warranties of merchantability and fitness for a particular purpose. Other standard clauses exclude liability for:

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- Delays or non-performance due to force majeure.
- The other party's debts or obligations.

The parties can also agree on damages (see Article 302, Civil Code). However, agreed-on damages are not owed where the owed party did not suffer a loss.

A court can lessen an agreed-on damages amount if the owing party shows that the agreed-on amount is excessively high or that its obligation was partially performed. An agreement to the contrary between the parties is void. When damages exceed the agreed-on amount, the owed party cannot demand a higher amount without proving the owing party acted with fraud or gross negligence (Articles 303-304, Civil Code).

Terminating the Agency Agreement

Legal and Contractual Obligations on Termination

An agency agreement can include termination provisions and required notices (see Term of the Agreement). Kuwaiti law does not specify the grounds for a justified termination. The extent to which a principal can terminate an agency agreement for cause (that is, a breach by the agent) largely depends on the court's discretion on a case-by-case basis.

The agency agreement can state specific:

- Grounds for terminating the agreement for cause, such as fraud, breach of material terms, bankruptcy, or failure to meet debts.
- Events that justify terminating the agreement, such as the agent failing to meet minimum order requirements or assigning the agreement without the principal's express written consent.

Agent's Rights to Compensation on Termination or Failure to Renew

A principal that terminates an agency agreement that the agent did not breach must compensate the agent for the termination. Any agreement to the contrary is void. (Article 9, Agency Law.)

An agent can claim compensation when the principal does not renew an agency agreement after it expires. The compensation must be fair (and is estimated by the court), even if there is agreement to the contrary. A compensation claim requires:

- The agent to not have committed a breach in performing the contract.
- The agent's activity to have led to success in promoting goods or increasing customers.
- In estimating the compensation, a consideration of:
 - the amount of damage the agent suffered; and
 - the principal's efforts in promoting the goods.
- The agent to bring its compensation claim within:
 - 90 days after the agreement's termination date, if the agreement had a fixed term that expired; and
 - three years after the agency agreement's termination date for all other claims arising under the agreement.

(Articles 282-283, Commercial Law.)

Competition Law Issues Related to Termination

A principal can designate restrictions on the sale of comparable goods in a territory post-termination that do not violate local competition laws or monopolise the market under the Competition Law (see Competition Laws).

Choice of Law and Forum

Kuwait's courts have jurisdiction over lawsuits arising from the application of the Agency Law (Article 20, Agency Law). However, the parties can select arbitration as a dispute resolution method if it is clearly stated in the agency agreement.

Kuwait is a signatory to the New York Convention regarding the enforcement of foreign arbitral awards. Kuwaiti courts recognise and enforce arbitration clauses in agreements and do not exercise their jurisdiction over these disputes.

The parties can choose a foreign governing law for an agency agreement. The Kuwaiti court assumes jurisdiction and interprets the agreement in accordance with the chosen law if it does not breach morality and Kuwaiti public policy (Article 202, [Procedures Law, Law No. 38 of 1980](#)).

A Kuwaiti court in any case can exercise its jurisdiction over a dispute unless the agreement states that arbitration is the sole dispute resolution method. Therefore, parties that do not want Kuwaiti courts to hear their disputes should expressly opt for arbitration in the agreement.

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Other Considerations

Principals should carry out adequate due diligence before entering into an agency agreement with a local agent and ensure that the agency agreement

is clearly drafted to express the parties' obligations. The parties should ensure that they are complying with all local laws and regulations in the territory.

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