

Key Distribution Considerations: Overview (Kuwait)

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A Practice Note that provides an overview of the key issues for foreign suppliers to consider when entering into distribution arrangements in Kuwait. This Practice Note outlines the principal laws governing distribution, including the Agency Law (Law No. 13/2016) and the Commercial Law (Decree-Law No. 68/1980), which treat distribution agreements as commercial agencies. It discusses the legal formalities for appointing a local distributor, such as the requirement for Kuwaiti ownership and registration of the agreement with the Ministry of Commerce and Industry (MOCI) to ensure enforceability. The note also addresses crucial topics such as tax requirements for foreign entities, competition law considerations under Kuwait Law No. 72/2020, product liability, and intellectual property protection. Key provisions within the distribution agreement are explored, including exclusivity, online sales, confidentiality, and liability limitations. This Practice Note also examines the significant considerations surrounding the termination or non-renewal of a distribution agreement, highlighting the potential for distributor compensation claims and the rules governing choice of law and dispute resolution forums.

Distributors purchase goods from manufacturers or other suppliers and resell them to others in the supply chain, such as resellers and end users. Distributors also often provide services for the manufacturer, such as product marketing and post-sale support services. Distribution is a commonly used vehicle for sale of goods in Kuwait and has many benefits for a foreign supplier, including that the supplier benefits from the distributor's knowledge of local laws, trading conditions, and customs.

This Note discusses:

- Key legal and regulatory requirements.
- Important considerations for appointing a distributor and structuring the distribution relationship in Kuwait.
- Key provisions in the distribution agreement.
- Issues related to termination of the distribution relationship in Kuwait.

Legal Framework

The principal laws governing distribution are the same laws that govern agency in Kuwait:

- The Agency Law (Law No. 13/2016) (**Agency Law**) and its Executive Regulation (Decision No. 565/2017) (**Agency Regulation**) (together, the **Agency Legislation**).
- The Commercial Law (Decree-Law No. 68/1980) (**Commercial Law**).

A “commercial agency” is defined under Article 1 of the Agency Law as:

“Every agreement by which a person (natural or juristic) authorizes an individual or a company to sell, promote, or distribute goods or services in the capacity of an agent and distributor or a franchisee or holder of the product's license in exchange for profit or commission.”

As such, all requirements and procedures involving distribution arrangements and agreements in Kuwait, as they relate to the sections covered in this Note, are subject to the same provisions as commercial agencies under the Agency Legislation. Under the Commercial Law, distributors are deemed to be contract agents and are subject to the same provisions as contract agencies. (For more information on agency laws and transactions in Kuwait, see [Key Agency Considerations: Overview \(Kuwait\)](#).)

Key Distribution Considerations: Overview (Kuwait)

In practice, this does not impact the basic concept of a distribution arrangement in Kuwait and registering an agreement as a distribution agreement (as opposed to an “agency” or “franchising” arrangement”). In this Note, the relevant parties to the distribution agreement are recognized as the (local) distributor and the (foreign) supplier.

An implied principle under Kuwait law is that contracting parties must act in good faith, including those in agency and distribution agreements. Under Article 197 of the Kuwait Civil Code (Law 67/1980), “contract[s] shall be performed in accordance with the provisions contained therein, and in a manner consistent with the requirements of good faith and honorable dealings”.

Legal Formalities

As a general rule, foreign entities and individuals are prohibited from carrying out commercial activities in Kuwait except through certain vehicles, such as:

- Appointing a local agent or distributor.
- Establishing a company with a Kuwaiti individual or corporate partner who owns at least 51% of the share capital (the **Foreign Ownership Restriction**) (Article 23, Commercial Law).

The local agent or distributor must be:

- A Kuwaiti national or a Kuwaiti company with at least 51% Kuwaiti ownership.
- Registered in the Commercial Register at the Ministry of Commerce and Industry (**MOCI**).
- Licensed to conduct the specific activities encompassed by the agency or distributorship. (Article 2, Agency Law).

Requirements of a Distribution Agreement

Distribution agreements must include the following information:

- The names and nationalities of the distributor and supplier.
- The goods, products, or services involved in the agreement.
- The rights and obligations of the distributor and supplier, including the extent of the supplier's liability for actions undertaken by the distributor on its behalf.
- The geographical scope of the distributor's duties.
- The duration of the distributorship, along with termination and renewal procedures.

(Article 3, Agency Law.)

Registration of a Distribution Agreement

Under the Agency Legislation, all distribution, agency, and franchise agreements must be registered with the Commercial Agencies Department at MOCI. Pursuant to Article 2 of the Agency Regulation, applications for registering distribution agreements must be submitted on two original copies of the official MOCI form and accompanied by:

- The original distribution agreement, duly authenticated by:
 - the competent authorities in the supplier's country;
 - the Kuwaiti Embassy in the supplier's country; and
 - the Ministry of Foreign Affairs in Kuwait.
- A certified true copy of the distribution agreement, as the original document is returned to the distributor after verification. In practice, a registered Kuwaiti lawyer can verify that the copy is a true copy of the original agreement.
- An Arabic translation of the distribution agreement (if not signed in Arabic originally) by a certified translator in Kuwait.
- A CD containing copies of the distribution agreement and all related documents.
- A copy of the distributor's certificate of registration in the Commercial Register.
- A document proving that the distributor is a Kuwaiti national or that the share of the Kuwaiti partner(s) in the company is not less than 51% of its capital. This information can be found in the company's Articles of Association, as well as its Ultimate Beneficial Owner filing.
- A copy of the distributor's commercial license allowing them to perform the activities encompassed by the distribution agreement.
- A certificate issued by the [Kuwait Chamber of Commerce and Industry \(KCCI\)](#) that confirms the agent's registration with the KCCI.
- The approval of the entities concerned, if necessary, regarding the commodities or services indicated in the agreement. For example, an imported product may require government approval(s), which must be verified to ensure the distributor can legally distribute it.

Once the distribution agreement is registered, MOCI issues a certificate of registration and advertises the registration of the distribution agreement in the official Gazette (Article 7, Agency Law).

Tax Requirements

Kuwait applies a corporate tax regime. A foreign entity's obligation to pay income tax under Kuwait Tax Law (No. 3/1955) is triggered if they are deemed to carry out business in Kuwait. Appointing a local distributor is one way a foreign entity carries out business in Kuwait, so the foreign supplier will be liable for corporate tax at a flat rate of (currently) 15% on profits derived from their business in the country.

There is no withholding tax regime in Kuwait. However, under Article 37 of the Kuwait Tax Law, all entities, public bodies, agents, and distributors are required to retain 5% of either:

- The total contract value.
- All payments made to any person with whom they enter into agreements or transactions.

The retained 5% is released once the foreign party provides a tax clearance certificate from the Kuwait Tax Authority.

Competition/Antitrust Laws

Vertical Pricing

Under Kuwait Law No. 72/2020 on the Protection of Competition (Competition Law), vertical pricing practices, such as agreements between suppliers and distributors to set minimum or maximum resale prices, are carefully regulated to ensure they do not harm market competition.

Article 7 of the Competition Law addresses vertical relationships and prohibits any agreements or coordinated practices that may restrict, limit, or prevent competition. This means that if suppliers and distributors agree on resale price controls, such agreements could be considered illegal if they negatively affect competition in the market.

The Competition Law also empowers the Competition Protection Agency to define the criteria for identifying which vertical agreements obstruct free competition.

Horizontal agreements are those between parties at the same level of the supply chain (for example, competing manufacturers, distributors, or retailers). Articles 5 and 6 of the Competition Law primarily focus on prohibiting anti-competitive practices in horizontal agreements, including:

- Fixing the production, distribution, or sale quantity with respect to goods.
- Determining the method or means for provision of services.

- Imposing restrictive commercial terms on the sale or distribution of a product.
- Any other means that undermine the market mechanism.

Exclusivity and Dual Distribution

The parties may agree whether a distributor is to be appointed as an exclusive or non-exclusive distributor. If the distributor is an exclusive distributor, the principal cannot appoint additional distributors to the exclusive distributor's territory. However, Article 4 of the Agency Law clarifies that a third party can import the product into that territory even if the distributor is an exclusive distributor. Article 5 of the Agency Law specifies that the local registered distributor (or agent) is responsible for the maintenance of all products in the territory.

If foreign suppliers comply with the Agency Legislation and do business in Kuwait through a registered distribution agreement, they can include certain operational stipulations, such as retaining control of e-commerce sales to Kuwaiti customers. To do this, a supplier can manage online orders directly through their website and task their registered distributor with fulfilling the orders in Kuwait. This practice is common and permissible in distribution agreements.

Restrictive Clauses

The parties are free to impose non-compete clauses in the distribution agreement to prevent:

- Distributors from carrying out similar business activities within the same territory and timeframe.
- The supplier from appointing a new distributor in the same territory within a specified timeframe.

The agreement can also include provisions for non-solicitation, for example, undertakings that:

- The distributor shall not engage directly or indirectly in the activity or product or any similar products in the territory for a specified period after the termination or expiry of the contract.
- The distributor may not solicit or approach any supplier, manufacturer, or provider to sell or supply products comparable to the products of the distributorship.

There are no statutory limits on the scope of restrictive clauses, however the courts have discretion to deny enforcement of any clauses which they consider to be overly restrictive or unreasonable.

Product Regulation and Product Liability

Distributors are responsible for:

- Obtaining the required product registration and approvals for importation, distribution, and promotion of the products.
- Ensuring that the goods imported or provided:
 - fulfill the international and GCC conditions adopted in Kuwait; and
 - are free from any manufacturing defects.
- Supplying spare parts for the product and providing maintenance under the same warranty terms, without increasing the prices charged to customers (Article 5, Agency Law).
- Providing workshops for the maintenance and repair of goods, as required, and providing guarantees from the manufacturer in compliance with legal requirements (Article 10, Agency Law).

The distributor is liable for any damage caused to the supplier's products or goods while in the distributor's possession, unless such damages result from force majeure, unusual circumstances, or inherent defects. Upon discovering any damage, the distributor must immediately take all necessary steps to mitigate further loss.

Distributors must also act promptly and efficiently in the event of a product recall to ensure consumer safety (Customer Protection Law (No. 39/2014)). Distributors are responsible for coordinating with government authorities such as MOCI to comply with any procedures for recalls.

Subject to the Consumer Protection Law, parties to a distribution agreement are free to divide responsibilities and procedures relating to product defects and recalls as they choose and can include clauses for limited warranties such as defects in materials.

Appointing a Distributor and Structuring the Distribution Relationship

Types of Distribution Arrangements

Any distribution agreement with a local distributor must:

- Comply with the Agency Legislation and the relevant provisions of the Commercial Law.
- Be registered with MOCI to be enforceable and benefit from the protection of the Agency Law

(for example, in the event of termination or non-renewal).

The terms of the agreement should set out the nature of the distribution relationship between the parties. For example, the agreement should specify whether the distributor is an exclusive or non-exclusive distributor. For information on exclusive distribution, see Exclusivity and Dual Distribution.

Relationship of the Parties

It is important to ensure that the distribution agreement:

- Clearly sets out the obligations and represents the intentions of the parties.
- Explicitly states the parties' relationship as one of independent contractors, disclaiming any employer-employee nexus.
- Is registered with the Commercial Agencies Department at MOCI in order to be enforced and effective.

Distribution agreements often include clauses to the effect that no employee of the distributor shall be deemed an employee of the supplier, and that the agreement shall not construe any other form of relationship or formation. These clauses reduce the risk of any party claiming labor law rights and minimise the chance of conflicts that may arise.

Import Requirements

Foreign companies cannot directly import, sell, or distribute their goods without operating through a local agent or distributor or establishing a local company. This local presence is required for a foreign company to register its products and obtain the licenses and registrations for importing into Kuwait. Agents and distributors are responsible for obtaining the required product registration and necessary approvals for importation, distribution, and promotion of products for the supplier or principal. See Product Regulation and Product Liability.

Intellectual Property Issues

Distributors do not gain rights in the supplier's trademark or other IPRs by selling the supplier's products. Under the distribution agreement, the distributor is usually granted the right to use the supplier's trademark. The Trademark Office provides for a separate registration of trademark license agreements between the supplier and the distributor, and the name of the distributor should appear on the trademark certificate as an

entity licensed to use the trademark. In practice, registration of the distribution agreement is sufficient for the distributor to use the supplier's trademark if that use is authorized in the distribution agreement. However, it is prudent for suppliers to register their IPRs through the Trademark Office at the MOCI to protect against any IP claims by the distributor.

Online Sales Considerations

A supplier can stipulate how the distributor sells their products. Distributors who have a registered trading license can sell products or services online.

The Distribution Agreement: Important Provisions

Term of the Agreement

Under Article 3 of the Agency Law, the distribution agreement must include:

- The duration of the distributorship.
- The terms of its renewal.
- Termination or expiry provisions, including notice periods.

The agreement must state the duration of the distributorship if it is for a fixed term (Commercial Law, Article 274). The agreement will stipulate the terms for automatic renewal or the termination provisions for agreements without a fixed term. If the agreement stipulates that the distributor must establish buildings for display, warehouses for the goods, or facilities for maintenance and repair, then the term of the agreement cannot be less than five years (Commercial Law, Article 275). If the supplier terminates the agreement or decides not to renew without fault on the part of the distributor, the supplier is liable to pay compensation to the distributor. A fault is typically a material breach of contract, which can be specified in the contract.

Article 12 of the Agency Regulation sets out the process for renewing the registration of the distribution agreement and amending the information contained in the agreement. If a fixed-term distribution agreement provides for its automatic renewal, then, unless one of the parties notifies the other of its intention of non-renewal, the registration of the agreement is renewed by the distributor submitting a letter to MOCI confirming the continuity of the distributorship.

Kuwaiti law does not specify a notice period for early termination or non-renewal of the

distributorship. Suppliers should provide written notice to the distributor (in accordance with the notice period and terms stipulated in their agreement), stating their reasons for termination or non-renewal, to avoid potential disputes.

See Terminating or Non-Renewal of the Distribution Agreement.

Marketing and Promotion

It is common for distribution agreements to require distributors to market and promote supplier products in Kuwait. The supplier should provide the distributor with the necessary information and support to promote their products.

Pricing and Payment Terms

Suppliers are free to set terms on resale prices provided the terms are balanced and comply with local competition laws (see Competition/Antitrust Laws). The Agency Law does not place conditions or restrictions on payment amounts or schedules.

Article 5 of the Agency Law provides that the distributor must supply spare parts for the supplier's products and provide maintenance under the same warranty terms, without increasing the prices charged to customers. Guarantees, letters of credit, and security interests in the goods or other forms of security are all common payment mechanisms in Kuwait and often used in distribution arrangements.

Compliance with Laws and Supplier's Policies

Although it is not mandatory under the Agency Legislation that distribution agreements include provisions on compliance with laws such as bribery or anti-slavery laws, distribution agreements often include such obligations and impose certain policies in appendices to an agreement. The parties may warrant in the agreement that they (and their stockholders, employees, agents, and representatives) will comply with all applicable anti-corruption laws and will neither engage in bribery or corruption, nor make payments that may constitute a conflict of interest or an impropriety.

Confidentiality and Protection of Personal Data

Clauses on confidentiality and protection of personal data are often included in distribution agreements. The supplier can impose restrictions on the use of their confidential information by the distributor, including, for example, that:

- All supplier IP rights, private data, and trademarks are returned at the end of the distributorship or upon their request.
- Any confidential information obtained by the distributor is not disclosed to third parties, even after the contract ends.

Indemnification and Insurance

The agreement may stipulate that the distributor bears sole responsibility for all insurance coverage. It is common in distribution agreements to include indemnification clauses for certain claims, such as for the supplier to indemnify the distributor for product liability or intellectual property infringement claims, or for each party to indemnify the other party for damage to property including intangible property such as profits and reputation.

Limitation of Liability

Distribution agreements commonly set out liability limitations and warranties by each party. These often include:

- Express warranties covering topics like defective products.
- Standard exclusions or disclaimers for implied warranties such as merchantability and fitness for purpose.
- Exclusions of liability for delay or non-performance due to force majeure.
- Exclusions of liability for the debts or obligations of the other party.

By law, the parties cannot agree to waive liability arising from their own fraud or gross negligence (Article 296 of the Civil Code).

The parties may agree in advance the amount of any compensation for damages (Article 302 of the Civil Code). However, agreed damage amounts are not owed if the liable party can prove that the other party did not suffer any loss.

The court may lessen the damages agreed if the liable party shows that the agreed sum was excessively high or that their obligation was partially performed. Any agreement to the contrary between the parties is void. When the damages exceed the amount agreed by the parties, the claimant cannot demand a higher amount unless they prove that the liable party acted with fraud or serious fault (Articles 303 and 304, Civil Code).

Terminating or Non-Renewal of the Distribution Agreement

Legal and Contractual Obligations on Termination

Parties can agree on termination and notice terms in the distribution agreement.

The law does not specify grounds for justified termination. However, Article 9 of the Agency Law provides that the supplier cannot terminate the contract without a breach by the distributor. Otherwise, the distributor is entitled to compensation from the supplier for damages the distributor sustained as a result of such termination. Any agreement or provision to the contrary is void. The extent to which the supplier may terminate the agreement on the basis of cause (that is, breach by the distributor) is largely dependent on the discretion of the Kuwait courts.

The distributor also has a right to claim compensation from the supplier for non-renewal of the agreement upon expiry of its term. The compensation must be fair (and will be estimated by the court), even if there is an agreement to the contrary. As a common feature of the Kuwaiti court system, the relevant claim is likely first reviewed by an appointed expert from the Experts Department (depending on the relevant industry or subject matter of the transaction) who produces a report based on their review. Operating within the Ministry of Justice, the Experts Department evaluates technical, financial, and specialized court matters, furnishing analyses to inform judicial decisions. The court, in making its decision, will largely base its ruling on the expert's report.

For such compensation to be payable, the following conditions must be met:

- The distributor did not commit a fault in the performance of the contract.
- The distributor's activity led to success in the promotion of goods or an increase in clients.

When estimating the compensation due, the expert will consider several factors, including:

- The amount of damage suffered by the distributor.
- The efforts of the supplier in the promotion of the product.

(Article 282 Commercial Law)

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The distributor has:

- 90 days to bring a claim for compensation if the agreement has a fixed term which has expired.
- Three years for all other claims.

(Article 283, Commercial Law).

The law does not provide an exact formula for payment amounts or a payment schedule, and these terms are often set out in the agreement. The parties are free to include provisions that determine a fixed amount for compensation owed to the distributor in the event of termination or provide a formula for the calculation.

The agreement may establish grounds for termination for cause (for example, fraud, breach of material terms, bankruptcy, or failure to meet debts). Other grounds for termination may also be outlined upon the occurrence of specific events such as failure of the distributor to meet minimum order requirements or assigning the agreement without the express written consent of the supplier.

Choice of Law and Forum

Article 20 of the Agency Law provides that the Kuwaiti courts have jurisdiction over all judicial lawsuits arising from the application of the

Agency Law. Parties to a distribution agreement are free to agree to arbitration as a method of dispute resolution, so long as this option is clearly stated in the agreement (Article 173, Procedures Law No. 38/1980). Kuwait is a signatory to the New York Convention regarding enforcement of foreign arbitral awards, so the Kuwaiti courts will recognize and enforce arbitration clauses in agreements and not exercise their jurisdiction over the same.

Kuwaiti law permits parties to choose a foreign governing law for their contract. If the Kuwaiti court assumes jurisdiction over such a contract, it will interpret the contract in accordance with the chosen law as long as it does not breach Kuwaiti morality and public policy (Article 202, Procedures Law (No.38/1980)). Kuwaiti courts retain general jurisdiction over disputes unless the parties have validly agreed to arbitration as the exclusive method of dispute resolution. Therefore, parties who select a foreign governing law and wish to avoid Kuwaiti court jurisdiction should explicitly incorporate an arbitration clause into their agreement.

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