

# **I - COMMERCIAL AGENCY AND COMMERCIAL REPRESENTATIVES**

## **SECTION ONE : Commercial Agency**

### **General Provisions**

#### **Article (260)**

A Commercial Agency, even if comprising an absolute agency, does not authorize non-commercial acts, unless so specified in an express agreement to this effect.

#### **Article (261)**

- a) The Commercial Agency shall be made in consideration for remuneration, unless otherwise agreed upon.
- b) If the said remuneration is not specified in the relevant agreement, it shall be determined under the profession tariff, the usage or circumstances.
- c) The agent shall not be entitled to the remuneration unless he concludes the transaction entrusted with, or he proves that it has become difficult to conclude the same by reason due to the principal. Apart from these two cases, the agent shall not be entitled to remuneration, except for the efforts exerted by him according to the usage determination.

#### **Article (262)**

- 1) The agent shall not contravene the orders of his principal, otherwise he shall be responsible for the damage resulting therefrom.
- 2) However, if the agent realizes that the performance of the agency according to the orders of the principal shall cause a serious damage to the principal, he may delay the performance of the agency until he communicates with the principal.
- 3) The agent may delay performance of the agency if he has no express instructions from the principal relating thereto until he receive such instructions. Nevertheless, necessity requires urgency or if the agent is authorized to act within useful and convenient units he may perform the agency according to what he deems fit provided that he takes necessary care in this case.

#### **Article (263)**

- 1) The agent shall be held responsible for damage caused to the things he keeps for account of the principal, unless such damage is caused by reasons beyond his control, unusual circumstances, inherent vices in such things or by the nature of the things.
- 2) The agent shall not be liable to insure the things he receives from the principal, unless the principal requests such insurance or it is known to be effected under the usage.

**Article (264)**

- 1) In the event of any damage observed by the agent, which occurred during the course of travel of the goods held for the account of his principal, he shall then take the necessary arrangements to protect the same.
- 2) If the things are liable to damage, fast deterioration or to the risk of fall in value and the agent could not manage to secure a permit from the principal, he may then apply to the Chief Judge of the Court of First Instance requesting a permit to sell the goods in the manner determined by him.

**Article (265)**

- 1) The agent shall furnish the principal with necessary information, regarding his progress on the agency performance, together with the relevant statement of account.
- 2) Such account shall conform with the truth. In case it includes any false statements in purpose, the principal may reject the transactions relating to such statements, besides, his right to claim compensation; and the agent shall not be entitled to any remunerations regarding the aforesaid transactions.

**Article (266)**

- 1) The agent shall have a privilege over the goods and other things consigned, deposited or delivered to him by the principal immediately upon consigning, depositing or delivery.
- 2) The said privilege shall secure the agent's remuneration and all amounts due to him by the reason of the agency as well as any relevant interest whether such amounts were paid prior to the delivery of the goods or the things or paid while they were in the possession of the agent.
- 3) The privilege shall be determined irrespective of the debt whether resulting from the activities relating to the goods or the things which are still in the possession of the agent or relating to other goods or things already consigned, deposited or delivered to him for custody purposes.
- 4) If the goods or the things under such a privilege are sold and delivered to the buyer, the agent's privileges shall move to the relevant price.

**Article (267)**

- 1) The agent shall have no privilege over the goods or the things consigned, deposited or delivered to him for custody, unless they remain in his possession.
- 2) The goods or the things shall be deemed to be in the possession of the agent in the following cases :-

- a) If they are placed at his disposal in the Customs, Public Warehouse or his own warehouse, or in the event of transportation by his own means of transport.
- b) If he has been possessing such goods or things prior to their arrival, under a Bill of Lading or any other carriage documents.
- c) If he exports such goods and remains possessing the same under a Bill of Lading or any other carriage document.

#### **Article (268)**

- 1) The privilege of the agent shall have priority over all other privileges, except the legal expenses and the Government dues.
- 2) In the event of executing an attachment on the goods and things available in the possession of the agent for recovery of his dues, the execution proceedings relating to the commercially pledged things shall be applied.
- 3) However, if the agent has been entrusted with selling the goods or things available in his possession, he may execute the same for recovery of his dues from the proceeds of sale, without necessity to follow the proceedings referred to hereof unless it has become difficult for him to implement the principal's instructions pertinent to sale.

#### **Article (269)**

In case the principal has no domicile known in Kuwait, the domicile of his agent shall be deemed to be his, and he may be prosecuted and served with the notice of official documents therein, regarding all business performed by the agent for his account.

#### **Article (270)**

For any organization pertinent to the practice of Commercial Agency activities, the relevant laws shall be applied.

### **CERTAIN TYPES OF THE COMMERCIAL AGENCY**

#### **A: Contract Agency and Distribution Contract**

#### **Article (271)**

A Contract Agency is a contract whereby a person undertakes, in a certain area of activity to continuously encourage and negotiate the conclusion of transactions for the benefit of his principal in consideration of a remuneration. His undertaking may include conclusion and execution of such transactions in the name of the principal and for his account.

**Article (272)**

The contracts agent shall carry on the business of his agency and manage his commercial activity independently. He shall alone bear the expenses required for the management of his activities.

**Article (273)**

- 1) The principal may utilize the services of more than one contract agent in the same area and for the same branch of activity.
- 2) The contract agent may not be an agent for more than one firm competing in the same activity and the same area, except under the conditions and terms determined by the Minister of Commerce and Industry in agreement with the other competent authorities.

**Article (274)**

The contract agency contract shall be confirmed in writing where it shall specify in particular the agency limits, the remuneration of the agent and the area of his activity, besides the duration of the contract if limited and the trade mark of the commodity subject of the contract, if any.

**Article (275)**

If it is stipulated in the contract that the agent shall establish showroom buildings, commodity-stores or installations for maintenance or repairs, the duration of the contract may not be less than five years.

**Article (276)**

- 1) The contract agent may not receive the rights of the principal, unless the principal gives him such a right. In this case, the agent may not grant any discount or respite with special permit.
- 2) The contract agent may receive the orders pertinent to the performance of the contract which are concluded through him, as well as all complaints relating to non-performance of such contracts. He shall be deemed to be a representative of his principal regarding the actions relating to such contracts whether instituted by or against him in the area of the agent's activity.

**Article (277)**

- 1) The principal shall undertake to pay the remuneration agreed upon to the agent.
- 2) Such a remuneration may be a certain percentage of the transaction's value, duly calculated on the basis of the customers' selling price, unless otherwise agreed upon.

**Article (278)**

- 1) The contract agent shall be entitled to remunerations for any transactions duly concluded or those non-conclusion of which is due to the act of the principal.
- 2) He shall further be entitled to remunerations for the transactions directly concluded by the principal himself or through others in the area assigned to the agent's activity, even if such transactions are not concluded as a result of the latter's endeavour, unless otherwise is explicitly agreed upon by the two parties.

**Article (279)**

The Principal shall provide the agent with all information required for the performance of the agency, and shall furnish him in particular with the commodity specifications, samples, drawings and any other data which may assist him to promote and market the products, subject of the agency.

**Article (280)**

- 1) The contract agent shall undertake to preserve the rights of the principal. He shall take all the precautionary measures required for the preservation of such rights, and shall furnish his principal with the data relating to the market condition in the area of his activity.
- 2) He may not disclose the secrets of his principal which come to his knowledge by the reason of the agency performance, even after the expiry of the contractual relation.

**Article (281)**

- 1) The contract agency shall be concluded for the benefit of both parties jointly. The principal may not terminate the contract without a fault on the part of the agent, otherwise he shall be liable to compensate him for the damage he suffers as a result of his remuneration. Any agreement contradictory to this shall be void.
- 2) The agent shall be liable to compensate the principal for the damages he suffers if he abandons the agency at any unsuitable time and without reasonable excuse.

**Article (282)**

- 1) If the contract is made for a fixed period of time, and the principal deems not to renew it upon the expiry of its period, he shall be liable to pay to the agent a fair compensation as determined by the Judge even in the event of an agreement contradictory to this.
- 2) The entitlement of such compensation shall be subject to the following :-
  - a) That there is no fault or negligence committed by the agent during the performance of the contract.
  - b) That the activity of the agent has resulted in visible success, duly promoting the commodity or increasing the number of the customers.

- 3) For estimation of such compensation, the extent of the damage suffered by the agent and his efforts exerted to promote the commodity or increase the number of the customers which are used by the principal shall be considered.

#### **Article (283)**

- 1) Any action for the compensation referred to in the preceding article shall lapse after ninety days from the expiry date of the contract.
- 2) All other cases resulting from the contract-agency contract shall lapse after three years from the date of terminating the contractual relation.

#### **Article (284)**

In case the principal substitutes the contract agent by a new agent, the new agent shall jointly be held responsible with the principal for the settlement of the compensation determined under a judgement passed in favour of the former agent in accordance with articles 281 and 282 whenever it is established that the termination of the former agent was made as a result of collusion arranged between the principal and the new agent.

#### **Article (285)**

An exception from the rules of the competence specified in the Civil Procedure Code, the Court within whose jurisdiction lies the place of the contract performance shall have jurisdiction over all disputes arising from the contract-agency contract.

#### **Article (286)**

Any distribution contract, under which a merchant undertakes to promote and distribute products of any industrial or commercial firm in specific area, provided that he is the sole agent therein shall constructively be considered a contract agency and consequently it shall be subject to the provisions of Articles 275, 281, 282, 283, 284 and 285 hereof.

### **B: Commission Agency**

#### **Article (287)**

- 1) The commission agency is a contract whereby the commission agent undertakes, in consideration of a remuneration to carry out in his own name any legal disposition for the account of the principal.
- 2) The commission agent's remuneration shall not be subject to an estimation made by a Judge.

#### **Article (288)**

If the commission agent sells for a price inferior to the price fixed by the principal or buys for a higher one, the principal, in case he wishes to reject the transaction, shall have to notify his rejection to the commission agent immediately after receipt of notice of the transaction conclusion. In default he shall be considered as having accepted the price.

The principal may not reject the transaction in the event of the agent's agreement to bear the difference in price.

**Article (289)**

If the commission agent concludes a contract under more favourable conditions than those fixed by the principal, he shall submit an account to the principal.

**Article (290)**

- 1) If the commission agent, for selling, grants the buyer a respite for payment or allows him to pay by instalments without the authorization of the principal, the principal may claim from the commission agent the payment of the entire price immediately. In such a case, the agent may keep the relevant difference if the transaction is concluded at a higher price.
- 2) Nevertheless, the commission agent may grant a respite or allow payment by instalments without authorization of the principal, if the usage at the place where the sale was concluded so requires, save in the event he is bound by the principal's instructions to sell for immediate payment.

**Article (291)**

Where the commission agent sells against immediate payment while the principal's instructions are to sell for a term, the principal may not require him to pay the price prior to the maturity date of the term. In such a case, the agent shall be liable to pay the price on the basis of sale for a term.

**Article (292)**

- 1) A commission agent shall not disclose the principal's name, unless he is authorized by him to do so.
- 2) Unless the transaction is for a term, the commission agent shall not be bound to divulge the name of the third party with whom he contracts to the principal. In such a case, if he so withholds the name of the third party, the principal may consider the transaction as one concluded against immediate payment.

**Article (293)**

Unless so authorized by the principal, a commission agent may not institute himself a second party in a transaction. In such a case he shall not be remunerated.

**Article (294)**

- 1) The commission agent shall be directly liable to a third party with whom he concludes a contract. Consequently, such third party shall also be liable to the commission agent.

- 2) Neither the third party nor the principal shall have recourse for instituting a direct action against the other unless otherwise provided for by the Law.

**Article (295)**

- 1) If the commission agent for selling is declared bankrupt before receiving the price from the buyer, the principal may request the buyer to pay the price directly to him.
- 2) If the commission agent for buying is declared bankrupt prior to delivery of the sold thing, the principal may request the seller to directly deliver the thing sold to him.

**Article (296)**

- 1) The commission agent shall not be held responsible to perform the obligations incumbent upon the other contracting party, unless such a responsibility is explicitly assumed by him or it is of a type determined by usage at the place where he carries on his activities.
- 2) A commission agent instituting himself as a guarantor shall be entitled to a special remuneration.



## **COMMERCIAL REPRESENTATIVE**

### **Article (297)**

Any person entrusted by a merchant to carry out part of his business activities, whether travelling, at the business premises or elsewhere who is bound under a contract of employment shall be deemed to be a commercial representative.

### **Article (298)**

- 1) The merchant shall be held responsible for the transactions and contracts effected by his representative within the limits of the authority he vest upon him.
- 2) In case the representative has been delegated authority by several merchants, the relevant liability shall be shared among them.
- 3) If the authority is delegated to the representative by a corporation he shall be held responsible for his acts, and the liability of the partners shall be in function of the type of the corporation.

### **Article (299)**

- 1) Unless the limits of the authority delegated to the Commercial Representative are specified, such authority shall be considered as general, and shall encompass all transactions relating to the type of commerce the representative is authorized to undertake.
- 2) The merchant may not plead limitation of authority against third parties, unless he established their awareness of such limitations.

### **Article (300)**

The commercial representative shall carry out the authorized commercial activities in the name of the merchant who so authorized him, and shall, upon signing, write besides his full name, the name of the said merchant in full too, with the indication of his capacity as a commercial representative. In default, he shall be held personally responsible for the acts he performs. Nevertheless, the third parties may have recourse directly against the merchant regarding the transactions carried out by the representative, which are relevant to the type of business he is authorized to perform.

### **Article (301)**

The representative may represent the merchant in the legal action resulting from the transactions he undertakes.

**Article (302)**

A commercial representative may not undertake any commercial transaction for his own account or for the account of a third party, unless he obtains the express approval of the merchant who employed him.

**Article (303)**

A travelling commercial representative may not receive the price of the goods which are not sold by him, nor may he reduce or postpone any part of the price thereof, but he may accept orders from the third parties on behalf of his principal, and shall take the necessary measures to safeguard the interests of his principal.

**Article (304)**

A merchant may authorize some of his employees to sell in retail or wholesale in his store. Such employees may, when the receipt of the price is not undertaken by a cashier inside the store, receive the value of the things sold by them upon delivery. The receipts they give in the name of the merchant against the things sold shall be considered a valid proof on the part of the merchant. They may not claim the relevant price outside the store, unless they are authorized by the merchant to exercise such right in writing.

**Article (305)**

A commercial representative is jointly responsible with the merchant to observe the law provisions relating to the unfair competition.

**II - LAW NO. 36 OF 15TH JULY 1964**

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**WE, JABER AL AHMAD AL JABER, VICE AMIR OF KUWAIT;** after taking cognizance of Articles (20) and (61) of the Constitution, the National Assembly approved the following Law stipulated hereof, and we have confirmed and promulgated it.

**ONE**

It shall be prohibited for any person to practice commercial agency business in Kuwait except those who hold Kuwaiti Nationality as a person or as a legal entity, whichever it may be.

**TWO**

For any agency to be valid upon application for registration, it shall be necessary for the agent to be directly related with the principal or his local official representative if it is attested that the latter does not conduct distribution business.

Furthermore, non-registered agency shall not be acknowledged and no claim pertaining to it shall be heard.

**THREE**

The applicant for a permit shall - to be in accordance with the preceding Article - request the registration of his commercial agency in the register designated for that intention at the Ministry of Commerce within a period of two months from the date of obtaining it. As for those agencies standing at the time of the publication of this ordinance, then the application for registration shall be submitted within a period of two months of its coming into force.

**FOUR**

It shall be the duty of the Ministry of Commerce to consider the applications brought forward to it within 15 days from the date of submission, and to provide the agent - upon recognition of his application - with an accredited certificate confirming his registration. Furthermore, the Ministry of Commerce should advertise in the Official Gazette every recognized application together with all the related details pertaining to it.

**FIVE**

The Ministry of Commerce may reject an application for admission provided that the reasons upon which the rejection were based are made known, and the Ministry shall also undertake to notifying the party concerned a copy of the decision enclosed within a registered letter.

Any one who has had his application rejected may proceed to contact the President of the Court of the First Instance within one month from the date of his being notified of the rejection. Complaints shall be duly considered at the earliest convenient time.

**SIX**

It shall be permissible for any person to secure from the Ministry of Commerce an authenticated copy of the entries made in the Register and in case no entry has been made, a relevant certificate is issued to that effect.

**SEVEN**

In accordance with the provision of Law, a fee of K.D.3/- (Kuwaiti Dinars Three only) shall be payable along with every application submitted for registration. Furthermore, a fee of K.D.1.500/- shall be payable on every annotation, amendment or official extract. Application for cancellation or deletions of entries will be free of charge.

**EIGHT**

It shall be the duty of the agent(s) or whoever assumes his status or his heirs in case he dies and also of company managers where the agency agreement has been either revoked or duly expired to submit to the Ministry of Commerce and application for deletion of the agency's records from the Ministry's Register within a period of one month from the date of revocation or expiry on the condition that the application is backed with the supporting documents.

**NINE**

Punishable with a fine of not less than K.D.50/- and a maximum of K.D.500/- any person who contravenes the provisions of the preceding article.

**TEN**

Punishable with imprisonment for a period not exceeding three months or with a fine of not less than KD.100/- or both together, every foreigner who conducts commercial agency business contrary to the provisions of this ordinance, and the clerk of the related Court shall undertake the responsibility to inform the Ministry of Commerce as well as the Chamber of Commerce and Industry of the declared punishment immediately.

**ELEVEN**

Without breaking the provision of another ordinance implementing a heavier punishment, a person shall be punished by imprisonment for a period not exceeding one month and/or a fine not less than K.D.50/- but not more than KD.500/- whenever he wilfully submits to the Ministry of Commerce or to any official party fraudulent data whether such data pertains to the details of the record entry or the annotation. The Court shall of its own accord order that such data be corrected in line with the circumstances and times it deem appropriate.

**TWELVE**

Any person who mentions in correspondence and publications pertaining to his commercial transactions or publishes in any medium of advertising that he is an agent to a merchant or company or an agent to sell or distribute any merchandise or property or products of manufacturers or commercial materials without having such status and without securing his

registration at the Ministry of Commerce shall be punishable according to the rules stipulated in the preceding Article.

**THIRTEEN**

The Minister of Commerce shall publish the statements and executive Decree pertaining to this ordinance.

**FOURTEEN**

The concerned representatives of the Ministry of Commerce shall enjoy the authority of a Court Warrant Officers, and the Public Prosecution shall undertake the responsibility to investigate in the offences breaching the rules of this ordinance.

**FIFTEEN**

The Ministers of Commerce and Justice shall implement this ordinance - each in his own domain - and it shall come into force from the time of its publication in the Official Gazette.

**VICE AMIR OF KUWAIT**

**JABER AL AHMAD AL JABER**

Issued on 15th Rabee Al-Awwal 1384 A.H.  
Corresponding to the 15th of July 1964

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