UAE Supreme Court: Commercial agency de-registration requires enforcement of foreign judgment

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Brief

In July of 2022, the Supreme Court adjudicated whether a bankruptcy judgment in a foreign jurisdiction provided sufficient grounds for the Ministry of Economy in the United Arab Emirates to de-register a company from the commercial agency register.

Commercial agency registrations

Foreign companies entering the UAE market from abroad can do so through commercial agency structures.

These relationships are registered with the Ministry of Economy and are distinct from general unregistered contractual relations, distributorships, or otherwise.

Commercial agencies are governed by a specific law (Commercial Agencies Law No. 18/1981) and grant the agent protections that are to an extent safeguarded by the Ministry of Economy.

The Ministry of Economy registers commercial agencies and de-registration of agencies requires the consent of the parties (agent and principal), or court order, or a decision by a special Commercial Agencies Committee.

The legislative purpose of restricting deregistration is to

protect the agent.

Ergo to ensure the efforts and investments of the agent made in developing a market for a principal are not abused by the principal through abrupt terminations.

Commercial agency litigation

Disputes between the agent and principal are generally governed by the contractual relationship between the parties.

However, disputes related to registrations or the general status of a commercial agency registration arise from decisions issued by the Ministry of Economy and are subject to the jurisdiction of the Federal Courts (as Federal administrative disputes).

Case facts

An Emirati company was registered with the Ministry of Economy as the commercial agent for three Japanese companies.

In 2019, two of the companies filed a joint request with the Ministry of Economy to de-register the third company from the commercial agency register on the basis that the third company had been liquidated since 2005.

The Commercial Agencies Committee accepted the request and de-registered the third company.

The agent was not informed of the de-registration decision issued by the Committee.

The agent argued before the Federal Courts that it had no knowledge of the liquidation of the Japanese company since 2005 and that in 2015 the agent was informed that the apparent restructuring was due to a change of name, and the agency relationship continued between the parties.

In 2021 the agent challenged the decision of the Ministry of

Economy (the Commercial Agencies Committee) before the Federal Primary Court.

The agent argued that the liquidation order of the courts of Japan has no effect on the rights of the agent (including his registration rights) because (i) the agent was not a party/litigant in the liquidation proceedings before the courts of Japan, and (ii) the agent was not informed or notified of the decision thereafter.

Supreme Court decision

The Supreme Court reasoned that:

"Article 16 of the Commercial Agencies Law No. 18 of 1981 and its amendments states that every commercial agency registration, amendment, or cancellation from the commercial agencies register must be accompanied by the documents supporting it.

The commercial agency [principal] of the appellant has been judicially liquidated by a ruling issued by one of the courts of Japan, and therefore the effects of this ruling before the courts of the United Arab Emirates do not apply until after the competent [UAE] judge issues the order to implement [the foreign judgment] pursuant to Article 85 of the Executive Regulations of the Civil Procedures Law.

In the appealed ruling, the court ruled on the legality of the Ministry's decision to de-register the foreign company from the commercial agencies register based on a foreign judgment that was not confirmed domestically, which renders the judgment defective and must be rescinded."

Article 85 of the Civil Procedures Law Regulations

The decision by the Supreme Court is that foreign orders and judgments that may affect the status of the registration of a commercial agency in the UAE cannot be presented to the

Ministry of Economy to action without first obtaining recognition by the UAE courts.

Article 85 of the Civil Procedures Law Regulations governs the procedure for enforcement of foreign judgments, orders, and bonds.

When an application to the court is filed for enforcement of a foreign judgment, such enforcement order may be appealed by any concerned persons.

In this situation, agents would have the opportunity to sound or present any reservations or contentions to foreign orders that may affect their commercial agency relationship and registration.

Author: Mahmoud Abuwasel

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com