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The Commercial Agency

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Abstract:

This research compares the Iraqi and French commercial agency laws. It illustrates the two laws' definitions as to commercial agents, the requirements for agents, licenses, and registrations, applications and procedures to obtain licenses, rights, and duties of commercial agents, termination and compensation of the contracts, choices of laws, jurisdiction, and arbitration clauses. The research argues that the two laws theoretically share many similarities but seem to have slightly different practical effects on commercial development. The Iraqi law sets out many conditions for the person who wants to be a commercial agent. The conditions consequently result in slow commercial development in the country. The law also entails some gaps on the issues of the duration of the contract, termination of the contract, and the rights and obligations of the parties of the contract. The research concludes that Iraq ought to amend its commercial agency law and comply with international commercial standards .

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الوكالة التجارية

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الملخص:
يقارن هذا البحث بين قوانين الوكالة التجارية العراقية والفرنسية. ويوضح تعريفات القانونين فيما يتعلق بالوكلاء التجاريين، ومتطلبات الوكلاء والتراخيص والتسجيلات، والتطبيقات والإجراءات للحصول على تراخيص وحقوق وواجبات الوكلاء التجاريين، وإنهاء العقود والتعويض عنها، واختيارات القوانين، والاختصاص القضائي، وشروط التحكيم.ويرى البحث أن القانونين يشتركان من الناحية النظرية في العديد من أوجه التشابه ولكن يبدو أن لهما تأثيرات عملية مختلفة قليلاً على التنمية التجارية. يحدد القانون العراقي العديد من الشروط للشخص الذي يريد أن يكون وكيلاً تجارياً. وبالتالي تؤدي الظروف إلى بطء التنمية التجارية في البلاد. كما يتضمن القانون بعض الثغرات في مسائل مدة العقد، وإنهاء العقد، وحقوق والتزامات أطراف العقد. ويخلص البحث إلى أنه يجب على العراق تعديل قانون الوكالة التجارية والامتثال للمعايير التجارية الدولية.

الكلمات المفتاحية:
التجارة، الوكالة التجارية، الوكيل التجاري، قانون الوكالة التجارية العراقية، القانون التجاري الفرنسي، عقد الوكالة، التحكيم.

Introduction

Today, commerce plays an essential role in the economic life of every country. Therefore, states have regulated it very strictly through laws and regulations. The commercial agency is an economic phenomenon of modern life. It is the outcome of commercial developments that resulted in the initiation of the World Trade Organization and international commercial agreements.

A commercial agency is the representation of a foreign company in a country to sell its products or distribute its services. The commercial agent is the one who performs the representation of the

principal company and can be a natural or legal person. A commercial agent, in other words, is someone natural or legal with the authority to negotiate and conclude a contract to sell or lease products or provide services on behalf of foreign manufacturers or other commercial entities.

The Iraqi Commercial Agency Law and the Iraqi Civil Code regulate the commercial agency in Iraq. The laws contain certain provisions that govern matters about commercial agencies, including the prerequisites for doing business, registration, the rights and responsibilities of agents, the conclusion and termination of contracts, contract infringement, the relevant legislation, and the appropriate court.

The Commercial Code's sections L 134–1 to L 134–17 now include the regulations governing commercial agencies in France. The regulations provide thorough legal direction for carrying out commercial agency. To put it another way, the French Commercial Code has a few general rules that ensure the rights of both the primary business and the commercial agent and supply the information needed to conduct commercial agency.

Even though commercial agencies have been the subject of much research, there is currently no thorough legal comparison of commercial agencies between the applicable laws in Iraq and other countries, such as French law. Research like this advances commercial agencies both conceptually and practically.

This study provides answers to the following queries: A commercial agency: what is it? The commercial agent is who? How does Iraqi law protect business agents and what makes it permissible for them to do so? What are the regulations under French law concerning commercial agencies? What are the legal rights and responsibilities of business agents in France?

There are four primary arguments in the research. The idea of commercial agency is discussed in the first argument. The Iraqi

Commercial Agency Law's provisions are examined in the second argument. The French Commercial Code's regulations are examined in the third argument. The study ultimately offers a comparative analysis of the French Commercial Code and the Iraqi Commercial Agency Law.

This research looks at the regulations in France and Iraq that deal with using middlemen and commercial agents. The term "agent" refers to those who work as expediting and procurement agents, among other marketing representative services. Socialist and capitalist political and economic systems can be distinguished among the nations under study. The governments of socialist-leaning Iraq and France have severely restricted the operations of private-sector operatives. The study focuses on these nations' agency law requirements, namely their statute law. Since genuine "agents" with the ability to bind their proprietors are uncommon in these nations, the word "agent" is not restricted to formal agents acting on behalf of their principals. The study emphasizes how crucial it is to comprehend these nations' legal systems to control the usage of commercial agents.

I. Background

The socialist government of Iraq prohibits commercial agents from interacting with government agencies and ministries, or when a public sector monopoly exists for a specific good. The Law for Punishment of Illegal Intermediaries Law No. 8 of 1976 and the Law Organizing Commercial Agencies Law No. 208 of 1969 are the appropriate legislation for commercial agents.

Regarding Law No. 208/1969 defines commercial agency as any business conducted in Iraq by a person acting as an agent for a foreign entity, including commercial agencies, commission agencies, and trade representation of brokerage. This definition covers all functions of an agent or intermediary in transactions. However, under Law No. 8/1976, commercial agents are only allowed for private sector procurement of

items not covered by state monopolies. Moreover, a commercial agent must be an Iraqi citizen, resident of Iraq, registered with a chamber of commerce, and have a business in Iraq, as per Law No. 208/1969, Article 2, and be entirely owned by Iraqis or other Arab nations.

Hence, Iraqi law prohibits foreign regional agents from choosing an Iraqi sub-agent as a "hidden agency" due to the requirement for a business agent to be a resident and citizen of Iraq, allowing one agent to represent multiple companies. Furthermore, the Iraqi public sector is expanding into new sectors, which may not be able to import directly from private companies, as per Article 4 of Law No. 208/ 1 969, which prohibits agency agreements for goods whose importation is limited to monopolies in the public sector.

Government agencies and public sector organizations in Iraq are prohibited from using private brokers to handle sales to foreign suppliers. Foreign companies using agents must inform relevant departments or risk having their government contracts revoked. Agents are no longer involved in bids, contracts, or tenders in Iraqi agencies. Government officials who act as middlemen or unfairly taint the bidding process face the death penalty. All agents in Iraq must register with the Directorate General of Company Registrations and Control, as per Law No. 8/1976, Article 2. The Income Tax Directorate, Central Bank, and Ministry of External Affairs require agency appointment documentation to be translated into Arabic, notarized, and approved by the Iraqi Consulate. The documents include an affidavit of Israel Boycott Principles.

Under Affirmative Obligations Law No. 8/1976, a principal must guarantee their agent's performance without restriction, take accountability if an agent fails, and sign an affidavit outlining the Israel Boycott Principles on their behalf. The affidavit must state that the factory does not have a branch in Israel, operates an assembly plant in Israel, has no central offices or general agents in the Middle East, uses their name in Israel without authorization, does not work with Israeli

businesses, offers their knowledge or counsel to Israeli businesses, and has no business ties to Israel and is not subject to an economic boycott. This is typically required to comply with the Export Administration Act of 1969.

Regarding, Law No. 8/1976 imposes severe penalties on foreign corporations that designate agents or intermediaries without following required processes. It risks blacklisting and boycotting, and violators may face jail time. Business entities violating the law may be fined at least 10,000 Iraqi dinars. The agency's assets could be liquidated, and the guilty party could face a jail sentence. Government employees who act as middlemen or breach contract terms in exchange for a fee or significant advantage face life or death sentences. Acting as an agent without a license or violating Law No. 208/1969 can result in up to Iraqi dinars punishment.

The Commercial Agency Law (Law No. 51/2000, which supersedes Laws No. 26/1994 and No. 11/1983) is the primary piece of law controlling commercial agency and distribution in Iraq[(1)]. There have been various ambiguities over the validity of the Commercial Agency Law since the Coalition Provisional Authority (CPA) Order No. 39 was passed in 2003[(2)] and the Ministerial Instruction No. 149/2004[(3)] on the Registration of Branches and Representative Offices that followed. According to Section 1(5) of the Ministerial Instruction, Law No. 51 of 2000[(4)] on Commercial Agency is "nullified" as a result of CPA Order No. 39.[(5)]

(1) The Commercial Agency Law (Law No. 51/2000, replacing Laws No. 26/1994 and No. 11/1983). Available at: <https://investpromo.gov.iq/wp-content/uploads/2013/06/Law-for-the-Regulation-of-Commercial-Agency-No.-51-For-2000-EN.pdf > . Last access (9/Nov/2023

(2) Coalition Provisional Authority (CPA) Order No. 39 in 2003.

(3) Ministerial Instruction No. 149/2004.

(4) Section 1(5) of the Ministerial Instruction.

(5) No. 51 of 2000 on Commercial Agency.

This is although order No. 39, which addressed general concerns about foreign direct investment in Iraq, made it clear that it was the sole law that superseded "all existing foreign investment law."[1] There was no indication in it that the Commercial Agency Law was no longer relevant. Nonetheless, it is now widely acknowledged that Law No. 51/2000 is still in effect and is used in reality as a result of the repeal of CPA Order 39.[2]

The French legal system has always acknowledged the unique responsibilities of the business agent, granting them certain protections as early as 1958.[3] Indeed, the safeguards afforded by European law were inspired by French legislation controlling commercial agencies.[4] The original French legislation, known as the Registre Spécial des Agents Commerciaux (RSAC),[5] is a decree dated December 23, 1958, 1958, that establishes particular safeguards and sets up a registration procedure. This legislation did not significantly alter until June 25,1991, when the CEE Directive 86-653, issued December 18, 1986, was incorporated into French law.[6] An implementing decree was issued on June 10, 1992, based on the law passed on June 25, 1991. The December 23, 1958 statute still has some of its provisions in effect (RSAC provisions).[7]

(1) Order No. 39.
(2) CPA Order 39, Law No. 51/2000.
(3)Arnaud Moquin, Vatier & Associés, France, Commercial Agency Contract: France. Available at: <https://eiure.com/pdf/agency/2007/france.pdf >. Last access (14/Nov/2019)
(4) Nils Jansen, Reinhard Zimmermann, Commentaries on European Contract Laws, oxford, 2018, p 593.
(5) ibid
(6)Jan Engelmann, International Commercial Arbitration and the Commercial Agency Directive, springer 2017, p173.
(7) Ibid.

The statute of June 25, 1991, went into effect gradually and only became applicable to contracts made after 1994.(1) It now covers all contracts, regardless of when they were signed. Sections L 134-1 to L 134-17 of the Commercial Code now codify the norms of French law regarding commercial agencies.(2) Apart from legislative provisions, case law has significantly contributed to the delineation of regulations that are relevant to commercial agents.(3)

II. The Concept of Commercial Agency

A relationship wherein one person or legal entity, known as the agent, works on behalf of another person or legal entity(4), known as the the principal, and is bound by the principal's requests or instructions.(5) A relationship formed solely by a written contract or power of attorney, signed by a principal and someone appointed to act on the principal's behalf within the parameters of the written contract or the attributions of the power of attorney, is how the role of commercial agencies is more narrowly defined in some other countries.(6) A Model of International Commercial Agency Contract governs the interactions between agents and their major customers in international trade.(7)

The Iraqi Law for the Regulation of Commercial Agency No. (79) 2017 in Article 1 defines the commercial agency as:

(1)Asian Regional Forum Annual security, 2017. Available at: <file:///C:/Users/IT/Desktop/agency%20contract/ARF-Annual-Security-Outlook-2017%20(1).pdf>. Last access (14/Nov/2023),

(2) French law commercial agency L 134- 1 to L 134-17 of the Commercial Code.

(3) Roger LeRoy Miller, Business Law: Text & Cases - Commercial Law for Accountants, fourteenth edition, Miller, Cengage, 2016, p460.

(4) Edward G. Hinkelman, Glossary of international trade [electronic resource], world tread press, 5th edition, 2009, p11.

(5) ibid

(6) Vladimir Orlov, Vladimir Popondopulo, Agency, Representation, Delegation and Commission, Athens Journal of Law - Volume 2, Issue 3 – 2016, Pages 159-180.

(7) International Commercial Agency, Model Contracts for Small Firms Legal Guidance for doing International Business, 2010.https://legacarta.intracen.org/wp-content/uploads/7-international-commercial-agency.pdf.

"A contract whereby a natural or legal person is entrusted to sell or distribute goods or products or products or to provide services within Iraq in the capacity of an agent or a distributor or the owner of a franchise for the principal outside Iraq against a profit or a commission or providing after sale services and maintenances works and supply of spare parts for products and goods that he markets". (1)

The law also defines a commercial agent as "*The Iraqi natural or legal person who conducts any business of the commercial agency*". (2) The French Commercial Code (Article L134-1) defines a commercial agent precisely as:

"The commercial agent is an agent who, as an independent professional, without being bound by an employment contract, is in a permanent position to negotiate and eventually to enter into contracts for the sale, purchase, rent/hire or performance of service in the name and on behalf of manufacturers, industrialists, traders or other commercial agents".(3)

III. Commercial Agency in Iraqi Law

As of right now, neither the governmental nor the private sectors of exporting goods to Iraq need foreign suppliers to designate commercial representatives.(4) Registered agencies are not the only ones who can import.(5) The public sector and Iraqi authorities are required by Article 14 of the existing Commercial Agency Law to deal directly with international suppliers in order to avoid using commercial

(1) Iraqi Law for the Regulation of Commercial Agency No. (79) 2017 in Article 1.
(2) Dr. Florian Amereller, LL.M. and Dr. Stephan Jäger and Ahmed S. Al-Janabi, Legal Guide to Doing Business in Iraq, 5th Edition, Baghdad, Amereller Rechtsanwälte, 2010.
(3) French Commercial Code (Article L134-1)
(4) Frederic Wehrey, Dalia Dassa Kaye, Jessica Watkins, Jeffrey Martini, Robert A. Guffey, The Iraq Effect: The Middle East After the Iraq War, Rand, 2016, p7.
(5) Agency Contract Application, The Administrative Company, Seven Corners, Inc. (The "Company"), and the Undersigned Applicant (The "Agent").

agents.[1] Given the lack of necessity for the designation of commercial representatives, a foreign supplier may consider fulfilling agreements for a restricted time or sending products directly to clients.[2]

An agent must register and get a license in the form of a certificate issued by the Commercial Registrar in order to be permitted to function as a commercial agent.[3] However, in practice, registration was often left unfinished. According to legislation No. 51/2000 amendment, in order to be eligible for an agency license, an agent must be a resident of Iraq, a native of Iraq, be at least 25 years old, and be a member of one of the chambers of commerce in the nation. An agent must also carry out certain civic duties, do business in Iraq, and refrain from government employment.[4]

A business agent that is a legal company must be owned entirely by Iraqi nationals. The license application must be filed to the Commercial Registrar together with the supporting documentation proving compliance with the aforementioned standards. After receiving the application, the Commercial Registrar will notify the applicant of the decision within 30 days. The applicant has another 30 days to appeal the decision to the Minister of Trade. The Trade Minister's decision is final. Commercial agents may apply for registration after receiving a license and submitting a commercial agency contract.[5]

(1) Article 14 of the Iraqi Commercial Agency Law.
(2) Dr. Florian Amereller, LL.M. and Dr. Stephan Jäger and Ahmed S. Al-Janabi, Legal Guide to Doing Business in Iraq, 5th Edition, Baghdad, Amereller Rechtsanwälte, 2010.
(3) alwaqai aliraqiya, the official iraqi gazette of the republic of iraq,N4469, 2017. Available at: <http://www.iraq-jccme.jp/pdf/archives/20180131/the-Law-No79.pdf>. Last access (14/Nov/2023).
(4) Law for the Regulation of Commercial Agency No. 51 for 2000, Article 8/9/10.
(5) Dr. Florian Amereller, LL.M. and Dr. Stephan Jäger and Ahmed S. Al-Janabi, Legal Guide to Doing Business in Iraq, 5th Edition, Baghdad, Amereller Rechtsanwälte 2010.

Licenses must be renewed within 60 days of the expiration of the two years after the date of issuance, if not sooner.(1) If the license is not renewed within this time frame, a daily fee of 1,000 dinars will be assessed. If licenses are not renewed after a further sixty days, they will be canceled. Fees and charges must be paid before a license is granted and renewed. If a license's conditions are no longer met or if a commercial agency contract is not presented to the licensing registrar within ninety days of the license being issued, the Commercial Registrar will cancel the license. The decision may be referred for review to the Minister of Trade.(2) In contrast to other Gulf States, the registration of a new agency does not need the friendly termination and de-registration of any previous agency. A license will be issued for 25,000 dinars, and there will be a 15,000-dinar registration charge. The Ministry of Trade may change these fees at any time.(3)

There are guidelines for maintaining books and records that are outlined in the Commercial Agency Law. The pages of the required books and records, which are numbered and stamped, are not subject to modification by commercial agents. These documents, which are examined every year, list all commissions received, broken down by currency, the total amount of contracts, and the names and addresses of the parties to each contract. Within sixty days of the year's end, annual reports detailing the agent's earnings must be notarized, and bank statements must attest to the financial activities.(4) Penalties are outlined in Law No. 51/2000, Articles 16 and 17. workers of the public sector who act as commercial agents are guilty of a crime and face life in jail.(5) Similarly, workers of the public sector who violate Article 14 of the legislation, which forbids government agencies from doing

(1) ibid
(2) Law for the Regulation of Commercial Agency No. 51 for 2000, Article 6/1-2-3.
(3) Mena Associates, Legal Guide to Doing Business in Iraq, 2013.
(4) Articles 16 and 17 of law No. 51/2000.
(5) Ibid

business with commercial agents, may face either life or term imprisonment (Art. 17).[1] If commercial agents violate the accounting laws, they may be fined between 10,000 and 100,000 dinars. Repeat offenders may be sentenced to a brief period of imprisonment (Article 18).[2]

Regarding commission and exclusivity or non-exclusivity, neither the Iraqi Civil Code nor the Commercial Agency Law make any mention of them.[3] As such, the parties' consent is required to resolve these matters. All agency or distribution agreements should be either non-exclusive or exclusive only upon the achievement of specified sales targets. If a foreign supplier offers a variety of products, the agreement's scope should be limited to those products, at least during a trial period.[4]

According to Article 946 of the Iraqi Civil Code, an agency ends when any of the parties pass away, the work covered by the agreement is finished, or the agency's time has passed. In addition to these legally mandated grounds for contract termination, the question of termination is also up to the parties' agreement and ought to be governed by the contract.[5] Contracts should, wherever feasible, have fixed sales objectives that allow for termination for noncompliance. Additionally, contracts must have a set duration or be susceptible to termination without cause after a certain notice period.[6]

If an agent is fired without reason at an "inopportune moment," they are entitled to compensation under Article 947 of the Iraqi Civil Code. There are no provisions on compensation in the Commercial

(1) Commercial agents (Art.17).
(2) Commercial agents (Art.18).
(3) Mena Associates, Legal Guide to Doing Business in Iraq, 2013. Available at <file:///C:/Users/IT/Downloads/Guide_Iraq%20(5).pdf> . Last access (19/Nov/2023)
(4) ibid.
(5)American University of Iraq, Sulaimani, Commercial Law I: Contracts Pub. 2013.
(6)Article 946 of the Iraqi Civil Code.

Agency Law. Under Iraqi law, commercial agents who are refused a renewal of a fixed-term contract after it expires are not entitled to compensation.(1) Contracts should, however, clearly state that agents will not be entitled to payment if their agreements are not renewed.

According to Article 25 of the Iraqi Civil Code, the parties' common law residence or, if they do not have a common residence, the law of the location where the contract was executed, will apply.(2) The aforementioned rule, however, does not apply in cases where the parties agree on a different controlling law or if the circumstances demand the application of a different law.(3)

The parties' ability to arrange for non-Iraqi jurisdiction is unrestricted by any stated clause in Iraqi Commercial Law. Judges in Iraq, however, have a history of being hesitant to apply these clauses.(4) clauses.(4)

Articles 251-276 of the Iraqi Code of Civil Procedure govern arbitration and provide that any dispute that may be resolved amicably may be arbitrated. Foreign arbitration may be agreed upon by the Parties.(5)

IV. Commercial Agency in French Law

Article L134-1 of the French Commercial Code defines the agent as independent, meaning that the agent is allowed to set up his or her own company and employment activities.(6) This idea is crucial because because it increases the likelihood that the contract may be prequalified

(1)Article 947 of the Iraqi Civil Code.
(2)Art. 25 of the Iraqi Civil Code.
(3) Commercial agency contract. Available at: <http://www.mot.gov.iq/upload/upfile/ar/167E-wkala_tyjareya.pdf>. Last access (18/Nov/2019)
(4) André Nollkaemper, August Reinisch, Ralph Janik, Florentina Simlinger, International Law in Domestic Courts: A Casebook, Oxford, 2018, p451.
(5)Articles 251-276 of the Iraqi Code of Civil.
(6)French Commercial Code (Article L134-1).

by courts as an employment contract for a sales representative the more the agent participates actively in the main activity's organization.(1)

It is important to be very careful when drafting a contract and in the spirit of the relationship to avoid confusing an agent with a sales representative who,(2) under French law, is an employee with more rights and compensation in the event of a contract termination.(3)

The agent's place of residence's Registry of the Commercial Court requires registration in the Register of Commercial Agents.(4) While it is not required, it is highly advised to use the written form. According to the Commercial Code's Article L134-2, any party may ask for the contract and any addenda to be in writing.(5)

The contract's duration may be either fixed or undefined. The parties may freely specify the fee or commission. (6) Because of its significance, the region needs to be precisely defined; broad, general terms like "world" should be avoided.(7) When it comes to exclusivity, the provision needs to be very clear about whether it applies to the area, the clientele, or both, and whether the principal retains the right to step in. Article L134-11, paragraph 3 of the Commercial Code specifies that

(1)Antoin Simon, Attorney, Commercial Agent Indemnity Under French Law, 2017. Available at: <https://www.village-justice.com/articles/Commercial-agent-indemnity-under-French-law,24225.html>. Last access (1/Dec/2023)

(2) Tchekhoff, Pochet and Associes of Paris,Rights and Entitlements of a Commercial agent upon termination of an agency contract in France,2011. Available at: < http://www.agentlaw.co.uk/site/eu/france.html>. Last access(24/Dec/2023)

(3) Marika Devaux, France – The commercial agency contract,2 January 2018, Available at: <https://www.legalmondo.com/2018/01/france-commercial-agency-contract>. Last access (24/Dec/2023).

(4) ibid

(5) Article L134-2 of the Commercial Code.

(6) Baker McKenzie, International Agency and Distribution Handbook, Emea,2018 Emea,2018 Available at: <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/04/bk_international-agency-distribution_apr18.pdf?la=en>. Last access (11/Nov/2023).

(7) Ibid

the notice of withdrawal must be sent within one month of the first year, two months of the second year, and three months of the following year.(1)

Post-contractual non-competition agreements are covered by Article L134-14 of the Commercial Code; as such, they must be in writing and are only permitted for a maximum of two years after the contract.(2)

The non-competition provisions restriction (territory, customers, and goods) must not be so stringent as to preclude the agent from functioning after the conclusion of the contract.(3) Customers and items covered by the agreement must, therefore, be rivals of the kind of goods covered by the agency contract.(4)In the event that the agent is not compensated, the courts will deem the provision to be void and nonexistent. Compliance with this provision is not compensated for under French law.(5)

According to Article L134-12 of the Commercial Code, the agent is entitled to indemnification for termination as compensation upon contract termination.(6) Since it is a public order regulation, the provision allowing for this entitlement's exemption will be deemed to be void. The agent has a year to claim severance compensation. Although it's not necessary to preserve it in writing, it's a good idea to draft a notice of receipt to serve as documentation of the termination.(7)

(1) (Article L134-11, paragraph 3 of the Commercial Code).
(2) Article L134-14 of the Commercial Code
(3) Charles Boundy, Business Contracts Handbook, rout ledge, London and new york, p214
(4) French business law, Commercial agency agreement (French contract law),10 Mar 2012. Available at: <http://www.french-business-law.com/commercial-agency-agreement-french-contract-law-article35.html >. Last access (27/Oct/2023).
(5) Donald Charrett, The International Application of FIDIC Contracts: A Practical Practical Guide, routledge, 2019
(6) Article L134-12 of the Commercial Code.
(7) Marika Devaux, France – The commercial agency contract,2 January 2018. Available at: <https://www.legalmondo.com/2018/01/france-commercial-agency-contract/ >. Last access (15/Dec/2023)

The amount of the payout is equivalent to the agent's two years' gross commissions. This should be viewed as a maximum measure, and the burden of proof rests with the principal to demonstrate the agent's right to a lesser salary. In the event of a lawsuit, the courts will assess the request's amount at their discretion for a maximum of two years. Situations where payment is not owed: Assignment of the contract to another agent; Termination of the contract by the agent; severe non-fulfillment of the contract by the agent. (1)

If significant terms in the contract are not fulfilled, or if they need to be reviewed periodically with legal counsel, there may be a serious violation of the agreement. When the agent stops working and retires, they are also entitled to pay and indemnification for termination.(2)However, the jurisprudence of French courts, particularly the Court of Cassation, mandates a more thorough examination of the grounds for contract termination: the agent must not only assert his entitlement to a retirement pension but also that he is no longer physically capable of working.(3)

The character of the contract remains civil, if the agent is a trade corporation. As a result, the court that has jurisdiction over a claim depends on who filed it. The options "tribunal de grande instance" and "tribunal de commerce" are available to the agent if he is the claimant. However, if the principal is the one making the claim, he or she must do it in front of the "tribunal de grande instance." (4)

Conclusion

A commercial agency is generally the representation of a foreign commercial manufacturer in a country to distribute its goods or

(1) Ibid
(2) Ibid, Baker McKenzie
(3) French International Case-law, French Universities, 2016 to 2017, p592. Available at: <https://www.u-paris2.fr/sites/default/files/document/cv_publications/29._rdia-french_international_caselaw.pdf last access (14/Nov/2023)
(4) Article L611-2, Commercial Code,

services. Under Iraqi Commercial Agency Law and Iraqi Civil Code, a Commercial agent is someone natural or legal who sells products on behalf of a foreign company in Iraq. The definition is almost similar to the French Commercial Code. In other words, the Iraqi and French laws define commercial agents alike. The Iraqi laws allow a foreign company to import products and sell them directly in Iraq. The laws do not include any requirement for foreign manufacturers to have agents inside the country. According to French law, commercial agents must act in the name of or on behalf of foreign companies. The law excludes the employee contracts of sales representatives, insurance, real estate agents, travel agents, intermediaries in banking or exchange activities, and agents who conduct advertisements. The Iraqi law sets forth some preconditions for people who want to become commercial agents. The requirements are being an Iraqi national, residing in Iraq, not being less than 25 years of age, and being a member of one of Iraq's Commerce Chambers. The law also requires that agents must fulfill certain civic duties, perform commercial agency inside Iraq, and not be employees in the public sector. But the French law does not include any of these preconditions. The Iraqi Commercial Agency Law conditions license and registration for commercial agencies. The agents must first apply for commercial licenses at the office of the commercial registrar. After obtaining the license, commercial agents have to submit their commercial contracts for registration at the mentioned office. The relevant rules of the French Commercial Code, however, similarly require commercial agents to register at the Registry of the Commercial Court at his/her place of domicile, they are not based on bureaucratic procedures that the relevant Iraqi government institutions require agents to follow. The Iraqi law considers the performance of commercial agency by public sector employees as an offense and the punishment for it is imprisonment while the relevant French rules do not entail such consideration and even public sector employees may conduct commercial agency. The Iraqi law conditions that the

commercial agency contracts must be written down in an official document but the rules of the French Commercial Code recommend the writing form for commercial agency contracts. Both the Iraqi Law and French laws leave the issues of duration of the contract and territory (exclusivity and non-exclusivity) to the will of the parties. However, the laws recommend that the provisions on such issues be clear and precise, as they may be the subject of legal disputes more than any part of the contract. According to the Iraqi Civil Code, the parties must perform their obligations with good faith as prescribed in the contract. In case of any infringement of the provisions, the parties may ask for compensation from one another. The Iraqi Civil Code grants commercial agents the right to claim compensation when the contract is terminated based on non-legal and prescribed contractual reasons. French law similarly grants agents compensation in case of termination of the contract with no legal basis. The difference between the Iraqi and French laws in the termination and compensation of commercial agency contracts is that the French law is more detailed and precise and focuses more on the agent's rights and benefits. Regarding the applicable law, the Iraqi Civil Code states that the law of the domicile of the parties is the applicable law or, in case of the absence of a common domicile law, the law of the country in which the contract was signed is the applicable law. However, the law does not prevent the parties from making agreements on another law. The French law also includes relevant provisions. Accordingly, the domicile law or the law where the contract has initially been signed or the law on which parties agree will be the applicable law. Although the Iraqi Courts are competent to adjudicate the commercial disputes arising out of commercial agency contracts, the Iraqi Commercial Law does not prohibit the parties from referring such cases before foreign courts. In addition, the Iraqi Civil Code allows the parties to submit their cases to arbitration. Also, there is no legal ground that prevents the parties from resorting to foreign arbitration. However, French law differentiates

between the sides of the contract when they want to submit their case to litigation. If the claimant is the agent, he can choose the court of first instance or the court of commerce but if the claimant is the principal, it must seek the competence of the court of first instance. In brief, the French Commercial Code is more detailed, precise, and practical but the Iraqi Commercial Agency Law and Iraqi Civil Law which govern the commercial agency contract issues include some legal gaps, specifically on the preconditions of commercial agency, and the bureaucracy that the license and registration of the commercial agency practically require. However, the Iraqi Laws are more liberal in the judicial mechanisms to which the parties can refer their contract issues.

Recommendation

The author recommends that the Iraqi Commercial Agency Law be amended and the international commercial standards be incorporated into it. The preconditions for conducting commercial agency and the bureaucracy in the process of application for obtaining licenses and registration are removed so that commercial development is faster, steadier, and practical. The new law also ought to include some precise and detailed provisions regarding the duration and termination of commercial agency contracts and the rights and obligations of the sides of the contract.

References

Books:

1. André Nollkaemper, August Reinisch, Ralph Janik, Florentina Simlinger, *International Law in Domestic Courts: A Casebook*,Oxford, 2018.
2. Charles Boundy, *Business Contracts Handbook*, routledge, London and New York.
3. Edward G. Hinkelman, *Glossary of international trade [electronic resource]*, world tread press, 5th edition, 2009.

4. Frederic Wehrey, Dalia Dassa Kaye, Jessica Watkins, Jeffrey Martini, Robert A. Guffey, *The Iraq Effect: The Middle East After the Iraq War*, Rand, 2016.
5. Jan Engelmann, *International Commercial Arbitration and the Commercial Agency Directive*, springer 2017.
6. Nils Jansen, Reinhard Zimmermann, *Commentaries on European Contract Laws,* oxford, 2018.
7. Roger LeRoy Miller, *Business Law: Text & Cases - Commercial Law for Accountants,* fourteenth edition, Miller, Cengage, 2016.

Journals:

1. alwaqai aliraqiya, the official iraqi gazette of the republic of iraq,N4469, 2017, http://www.iraq-jccme.jp/pdf/archives/20180131/the-Law-No79.pdf
2. American University of Iraq, Sulaimani, Commercial Law I: Contracts Pub. 2013.
3. Antoin Simon , Attorney, Commercial Agent Indemnity Under French Law, 2017 , https://www.village-justice.com/articles/Commercial-agent-indemnity-under-French-law,24225.html
4. Arnaud Moquin, Vatier & Associés, France, Commercial Agency Contract:france, https://e-iure.com/pdf/agency/2007/france.pdf
5. Asean Regional Forum Annual security, 2017, file:///C:/Users/IT/Desktop/agency%20contract/ARF-Annual-Security-Outlook-2017%20(1).pdf
6. Baker McKenzie,International Agency and Distribution Handbook, Emea,2018 https://www.bakermckenzie.com/-/media/files/insight/publications/2018/04/bk_international-agency-distribution_apr18.pdf?la=en
7. Commercial agency contract, http://www.mot.gov.iq/upload/upfile/ar/167E-wkala_tyjareya.pdf
8. Donald Charrett, The International Application of FIDIC Contracts: A Practical Guide, Routledge, 2019.

9. Dr. Florian Amereller, LL.M. and Dr. Stephan Jäger and Ahmed S. Al-Janabi, Legal Guide to Doing Business in Iraq, 5th Edition, Baghdad, Amereller Rechtsanwälte, 2010.
10. french busness law, Commercial agency agreement (French contract law),10 Mar 2012, http://www.french-business-law.com/commercial-agency-agreement-french-contract-law-article35.html
11. French International Case-law, French Universities, 2016 to 2017, p592. https://www.u-paris2.fr/sites/default/files/document/cv_publications/29._rdia-french_international_caselaw.pdf
12. International Commercial Agency,Model Contracts For Small Firms Legal Guidance For Doing International Business,2010. https://legacarta.intracen.org/wp-content/uploads/7-international-commercial-agency.pdf
13. Jonathon Wise Polier, Commercial Agents in France, Paris & New York), https://paris-law.com/assisting-b-paris/commercial-agents-in-france-2/
14. Legal Guide to Doing Business in Iraq, 6th edition, mereller, 2004-2014 http://amereller.com/wp-content/uploads/2016/10/Amereller-Iraq-Business-Guide-2014.pdf
15. Marika Devaux,France – The commercial agency contract,2 January 2018, https://www.legalmondo.com/2018/01/france-commercial-agency-contract/
16. Mena Associates, Legal Guide to Doing Business in Iraq, 2013, file:///C:/Users/IT/Downloads/Guide_Iraq%20(5).pdf
17. Tchekhoff, Pochet and Associates of Paris, Rights and entitlements of a commercial agent upon the termination of an agency contract in France,2011, http://www.agentlaw.co.uk/site/eu/france.html
18. Vladimir Orlov, Vladimir Popondopulo, Agency, Representation, Delegation and Commission, Athens Journal of Law - Volume 2, Issue 3 – 2016.

Laws and Regulations:

1. Iraqi Code of Civil Articles 251-276, Article 947, Article 946
2. French Commercial Code Article L134-1, Article L134-2 and Article L134-11, Article L134-14, Article L611-2, Article L134-12 , Article L134-1, L 134- 1 to L 134-17
3. Coalition Provisional Authority (CPA) Order No. 39 in 2003
4. Ministerial Instruction No. 149/2004 Section 1(5)
5. Iraqi Law for the Regulation of Commercial Agency No. (79) 2017 in Article 1. Article 14
6. Iraqi Law for the Regulation of Commercial Agency No. 51 for 2000, Article 8/9/10. Article 6/1-2-3. Articles 16 and 17
7. Commercial agents Art 17, Art18, Art 25