

**AGENCY AND DISTRIBUTION AGREEMENTS
IN JORDAN**

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1- INTRODUCTION

1.1 Meaning of Selling Locally

The term sale has only one meaning in Jordanian Law. It is defined by Article (465) of the Civil Code as a contract by which a person transfers to another the property of a thing or any other financial right for consideration. This definition is wide and contains some other contract, although none of them are regarded as sale according to the code itself. An example of this may be found in lease and barter contracts⁽¹⁾ where each is an exchange of a financial right for consideration, but is not a sale in the strict legal sense. In reviewing the meanings given in the code to other contracts, one may say that a contract of sale is an agreement by which a seller transfers the property of a thing for money consideration.

It is necessary to distinguish between a contract of sale and a promise to sell, which means an agreement to enter into a contract of sale in the future. The latter is a mere promise, not a final sale. In order to be valid, such a promise must contain at least two provisions⁽²⁾:

⁽¹⁾ Article 658 of the Civil Code defines a lease contract as an agreement by which a lessor transfers the benefit of something for a specific period of time for fixed consideration. Article 552 defines a barter as an agreement by which there is an exchange of something for consideration not of money.

⁽²⁾ Article 105/1 of the Civil Code.

1. The essential elements of the final sale, which are the subject matter of the sale, i.e., the thing to be sold, and the price.
2. The time the contract of sale shall be concluded, such as one month or seven days.

In addition, if the intended sale is formed, a promise to sell must comply with such formality⁽³⁾. Generally speaking, every contract under Jordanian law, including a contract of sale, is made by a mere consent of the contracting parties without any formality whatsoever⁽⁴⁾. In exceptional cases, the law may require a specified formality, without which a contract is void⁽⁵⁾, such as the sale of a car where its registration at the Traffic Department is essential⁽⁶⁾. In that case, the promise also is void unless it complies with the formality so required.

A sale of goods can be made directly by the owner, which is common in practice, or through an intermediary who may be an agent or distributor. The difference between them will be explained below. Suffice to say here that although a foreign supplier may use either of these two intermediaries for selling his goods, it is important to note that it is strictly prohibited for a foreigner to deal with business in Jordan where such business is confined to importing and selling

⁽³⁾ Article 105/2 of the Civil Code.

⁽⁴⁾ Article 87 and 90 of the Civil Code.

⁽⁵⁾ See, for example, Court of Cassation, Judgment No. 850/86. Bar Association Journal (BAJ), 1987, p. 1190; No. 609/86, (BAJ), 1987, p. 1185; No. 153/85, (BAJ), 1987, p. 1347.

⁽⁶⁾ By virtue of Article 4 of the Traffic Act No. 14/84. See also, Court of Cassation, judgment No. 609/86, (BAJ), 1987, p. 1185.

goods in the country⁽⁷⁾. This applies to traveling salespersons who are employees of a foreign supplier, and to local branches and subsidiaries of that supplier. In short, selling goods in Jordan may take place by Jordanians only.

1.2 Agents and Distributors

The Jordanian Commercial Code makes a distinction between civil and commercial agents. Where the object or subject matter of an agency (wakalah) contract is a commercial matter, the agency is commercial (tijari), otherwise it is civil⁽⁸⁾ (madani). The commercial matters include, inter alia, the purchasing of goods for the purpose of selling them with the intent of obtaining profits, and the selling of such goods regardless of whether the seller has achieved profits⁽⁹⁾. In particular, an agency shall be commercial when it is for a commission (umoula), the agent acts in his own name or under a commercial title, i.e., a commercial artificial name, and for the account of the principal. If an agent acts in his principal's name and for his account, the agency is civil. While the agency in the former case is subject to the commercial law, the latter is governed by the civil law⁽¹⁰⁾.

According to the Commercial Agents and Intermediaries Act No. 44/985, (hereinafter referred to as the Act), a commercial agency includes a distributor (muwazz'a) who deals either for his own account or the account of a foreign company of a merchant whose head office is

⁽⁷⁾ Article 5 of the Ordinance No. 4/974 relating to the control of foreign works in Jordan.

⁽⁸⁾ Article 80/1 of the Commercial Code.

⁽⁹⁾ Article 6/1, a, and c of the Commercial Code.

⁽¹⁰⁾ Article 80/2 and 3 of the Commercial Code.

outside Jordan⁽¹¹⁾. where the distributor acts for the account of a foreign company by way of commission, he is governed by the rules applicable to the commission agent. Again, it should be noted that a commercial agent in all cases must act in his own name.

There are other groups, which include brokers and dealers, who are known as commercial intermediaries. The function of an intermediary (waseet or simsar) is to facilitate business by reconciling two different views until the parties concerned reach an agreement⁽¹²⁾. For instance, A may wish to sell his goods for JD 10 while B wants to buy them for JD 7. As an intermediary, C interferes, and as a result, A and B conclude the contract of sale between them for JD 9. In such capacity, C is not an agent, though the agency rules generally apply to the agreement he has already made with A, B, or both. His remuneration is to be determined in accordance with that agreement or, if the agreement is silent, according to the custom. Otherwise, the court shall determine it depending on all surrounding circumstances⁽¹³⁾. It is important to note that C has no claim for the remuneration unless he has registered his name as an intermediary in the Register of Agents kept by the Register at the Ministry of Industry and Trade in Jordan⁽¹⁴⁾ (hereinafter referred to as the Ministry).

Another type of intermediary may be called a messenger (rassoul). His only function is to transfer a message, exactly as it is, from one person to another. While an agent, when concluding

⁽¹¹⁾ Article 2 of the Act, and Article 99 of the Commercial Code.

⁽¹²⁾ Id.

⁽¹³⁾ Article 100 of the Commercial Code.

⁽¹⁴⁾ Article 3 of the Act.

the agreement expresses his own will, the messenger expresses the will of another person⁽¹⁵⁾.

Indeed, a messenger is not more than a message courier although he may be called an agent. This type of intermediary may exist in all transactions, including commercial sales.

Franchising, or the permission to use a trademark for certain services by the franchisor to the franchisee, may be regarded as an agency depending on the real interpretation of the contract. As was mentioned, a person is an agent in each case where he acts for another person or where he is a distributor acting for his own account. If a franchising contract bears either of these two meanings, it is an agency. Otherwise, it is an un-nominated contract⁽¹⁶⁾ and shall be governed by the general principles applied to every contract⁽¹⁷⁾ and to the rules applied to that specific contract to which the franchising is more closely related.

1.3 Legal Framework

1.3.1 Legal System

Jordan law generally follows the Civil Law system. It contains two categories of rules; civil, which are codified in the Civil Code (43/1976), and commercial, which are

⁽¹⁵⁾ Al- Sanhoury, Civil Law (Al-Wassit), Vol., 1, 85.

⁽¹⁶⁾ A nominated contract is one the legislature regulates by specific provisions, such as sale, lease, agency, and insurance contracts. Otherwise, a contract is un-nominated.

⁽¹⁷⁾ Article 89 of the Civil Code.

include in the Commercial Code No. 12/1966⁽¹⁸⁾. As has been stated, the Civil Code applies to civil matters and the Commercial Code applies to commercial ones. It must be noted that the applicable to the agreements is uniform and does not differ from one place or group to another in Jordan.

The Civil Rules of Law, whether they exist in the Civil Code or elsewhere, are one of the main sources the judge must refer to when the Commercial Code is applicable but silent about the matter concerned⁽¹⁹⁾.

The distinction between the civil and commercial rules has no effect on the enforceability of agreements. In other words, a valid agreement is enforceable in Jordan regardless of whether it is governed by the civil or commercial law. This also applies to agency and distribution agreements.

1.3.2 Applies Laws

The principal Laws applicable to the appointment, use, and termination of local agents and distributors are as follows:

- 1.** The Commercial Code No. 12/1966 (Article 80 - 105), including the provisions concerned with brokers (Article 99 - 105).

⁽¹⁸⁾ There are some specific rules, commercial or civil, which have been enacted in private acts, such as the Companies Act No. 1/1988 and the Land Lord and Tenant Act No. 29/1982.

⁽¹⁹⁾ Article 2 of the Commercial Code.

2. The Civil Code No. 43/1976 (Article 833-867).
3. The Commercial Agents and Intermediaries Act No. 44/1985.

Copies of these laws appear in the appendix to this chapter.

No other specific law is relevant to agreements with intermediaries for selling foreign goods in the local market. Of course, importing, whether made directly by the intermediary or any other person, is subject to some regulations, which may vary according to the circumstances. For example, importing of electrical items, such as video and television sets, was admissible until November 1988 when the Cabinet issued a decree absolutely prohibiting importation of such goods until December 31, 1989. Likewise, obtaining foreign currency for importing is subject to certain measures and should pass through official channels, including the Central Bank. If an intermediary violates these regulations without the participation of the foreign manufacturer or supplier, such as obtaining foreign currency from the black market, he bears the liability alone while the latter may not be liable at all.

1.3.3 Courts and Administrative Agencies

Local courts have jurisdiction over agreements with local agents and distributors⁽²¹⁾.

This jurisdiction applies to the whole agreement, including its formation and the mutual rights and obligations ensuing from it.

⁽²¹⁾ Article 20 of the Act.

Generally, no government authority has the power to interfere in appointing, using, or terminating the contract of local agents and distributors. However, a person must register in the Register of Agents at the Ministry before acting as an agent or distributor⁽²²⁾.

1.3.4 Choice of Law / Choice of Forum

The parties to a contract generally are free to choose the forum for referring dispute, including reference to arbitration. However, this does not apply to agency contract. By virtue of Article 20 of the Act, the forum of the place the agent performs his activities is competent with respect to any dispute arising out of the agency contract, regardless of any agreement to the contrary. It has been held that this rule is of public order and cannot be violated⁽²³⁾. The result is that competent court in Jordan has exclusive jurisdiction over any dispute between a local agent and his foreign principal.

Similarly, the generally principal underlying Jordanian law⁽²⁴⁾ is that the parties are free to choose the law applicable to their contractual obligations. If there is no agreement to this effect, the applicable law is that of the country where the parties have their mutual domicile, or the law of the country where the contract was concluded. However, this general rule is subject to Article 18 of the Act, which provides, inter alia, that if the

⁽²²⁾ Article 3 of the Act.

⁽²³⁾ Court of Cassation, Judgment No. 411/84 (BAJ), 1985, p. 152.

⁽²⁴⁾ Article 20 of the Civil Code.

principal terminates the agency without default by the agent or any other justified reason, the agent shall have the right to claim damages for his (actual) loss or the loss of profit⁽²⁵⁾ sustained by him. This rule is also of public order and the parties cannot avoid it. In brief, the law applicable to the agency may be foreign by agreement or otherwise but without prejudice to Article 18 of the Act or any other provision of public order.

2- AGENTS AND DISTRIBUTORS

2.1 Basic Concept

It is important to note, first of all, that a foreign supplier may sell goods to a Jordanian importer without an intermediary. This applies to all type of goods, including military items.

As was mentioned, an agency may be either civil or commercial. Each is an agreement, but while the agent in the former acts in his principal's name , in the latter the agent acts in his own name⁽²⁶⁾. On the other hand, a civil agent always acts for the account of his principle. While this is also the case in a commercial commission agency, the situation is different where the agent is a distributor who acts for his own account and, as we have already stated, commercial agency includes these two type of agencies.

⁽²⁵⁾ The text literally says "or" the loss of profit, while it seems the legislature meant "and," "including," or the like.

⁽²⁶⁾ Article 80 of the Commercial Code. Cf., Article 845 of the Civil Code.

An agent must be distinguished from an employee, who is a person over whom a master has a direct control and supervision. An agent is not subject to such control or supervision although he is obliged to execute his obligations according to the instructions given to him by the principal⁽²⁷⁾. When an employee exercises a legal act on behalf of his master, such as selling or buying goods, he is an agent to this extent only, whereas an agent may not be an employee.

2.2 Obligation to Register

A person may not act as a commercial agent or intermediary unless he is registered in the Register at the Ministry⁽²⁸⁾. For the registration, an agent or intermediary must be a Jordanian and registered at one of the Jordanian Chamber of Commerce. In addition, the following requirements must be met⁽²⁹⁾:

- 1.** If he is a natural person:
 - a.** His age must not be less than 20 years.
 - b.** His domicile must be in Jordan.
 - c.** He should have business premises or an office in Jordan.
 - d.** He must be registered in the Commercial Register at the Ministry.

⁽²⁷⁾ Al-Sanhuri, op. cit, Vol. 7/1, 211.

⁽²⁸⁾ Article 3 of the Act.

⁽²⁹⁾ Article 4 of the Act.

2. If he is an ordinary company:
 - a. The major part of its capital must be owned by Jordanians.
 - b. It should have an office in Jordan.
3. If he is a shareholding company, the majority of its Board of Directors or the Management Committee must be Jordanians.

A person who intends to be an agent of a foreign supplier must submit an application to the Ministry accompanied, *inter alia*, with the agency agreement, or a ratified copy of it, and a document from a competent authority, which is the Ministry of Finance, certifying that the supplier is not on the boycott list⁽³⁰⁾. Any changes in the agency agreement, including its renewal also must be registered in the relevant file at the Ministry within two months from the date the change took place⁽³¹⁾.

If an agent fails to comply with his duty of registration, he is bound to pay as a fine the sum of one hundred Jordanian dinars⁽³²⁾. According to at least one precedent, the only sanction for such violation is the payment of the fine, and that does not lead to releasing the contracting

⁽³⁰⁾ Article 5 of the Act.

⁽³¹⁾ Article 10 of the Act.

⁽³²⁾ Article 21 of the Act.

parties from their obligations under the agency agreement⁽³³⁾. It is to be noted, however, that there is no sanction against the supplier or principle if the agent fails to register or if the registration is fraudulent.

2.3 General Duties and Powers of Agents

Many duties are imposed on the agent. Some of them are provided for in the Commercial Code while others are imposed by the Civil Code⁽³⁴⁾. As has been stated, the judge cannot refer a matter to the Civil Code except if the Commercial Code is silent on the matter⁽³⁵⁾. The most important duties imposed on an agent are:

1. He must perform the instruction given by the principal in person. He cannot delegate the performance to another person unless he is authorized to do so by the agreement or custom, or there are circumstances that obligate him to delegate such performance.
2. He may not conclude the intended agreement with himself without the consent of his principal⁽³⁶⁾. For example, A, who is an agent to sell B's car, cannot, as a general principal, buy it for himself.

⁽³³⁾ Court of Cassation, Judgment No. 456/78 (BAJ), 1979, p. 1513.

⁽³⁴⁾ Article (89 ff) of the Commercial Code, and Articles 840 ff of the Civil Code.

⁽³⁵⁾ Supra Section 1.3.1.

⁽³⁶⁾ Article 90 of the Commercial Code.

3. He is under an obligation not to sell his principal's goods for delayed payment; otherwise he bears the responsibility and risks of doing so.
4. He must do what he has undertake to do, and to obey his principal's instructions, and he must not go beyond the limits of the agency except for what is more beneficial to the principal.
5. In performing his obligations, he must exercise the care of an ordinary man on the assumption that the agency is for remuneration⁽³⁷⁾.
6. He is bound to provide the principal with all necessary information about the performance of the agency and with a detailed statement of account.

As for commission agents and distributions, the principal may not be held liable or responsible toward third parties for contracts they concluded with the agent or distributor⁽³⁸⁾. This is due to the fact that the latter enters into such contracts in his own name⁽³⁹⁾ and, accordingly, he personally holds the responsibility or liability towards the other contracting parties. This principle applies regardless of whether the agent or distributor has acted within the scope of the agency.

⁽³⁷⁾ It always is presumed that a commercial agency is for remuneration (Article 81 of the Commercial Code). Where the agency is gratuitous, especially when it is civil, the care required is that the agent exercises is his own business (Article 841/1 of the Civil Code).

⁽³⁸⁾ Article 88 of the Commercial Code.

⁽³⁹⁾ Supera Section 2.1.

Generally, speaking, all provisions concerning the duties and powers of an agent are not of public order, which means that the parties may set them aside by an express or implied agreement.

2.4 General Powers and Duties of Principal

Two main duties are imposed on the principal in a commercial agency payment of remuneration and payment of actual costs incurred by the agent for performing the agency, which will be discussed later on. There is no specific rule concerning other general duties such as to support agent and to accept orders. These matters are governed by the general principles applied to every contract, which are that each party is bound to perform the contract according to its provisions and in good faith⁽⁴⁰⁾. Where the contract is silent and no provision exists in the Commercial Code for solving a question, a judge must apply the rules of the civil law to the extent they are in conformity with the principles of Commercial Code⁽⁴¹⁾. Commercial custom is also a main source of commercial matters⁽⁴²⁾, to the extent that some writers argue that a judge should resort to it before resorting to the civil law, and even previous to consulting the Commercial Code unless the relevant text is of public order⁽⁴³⁾.

⁽⁴⁰⁾ Article 202 of the Civil Code.

⁽⁴¹⁾ Article 2.2 of the Commercial Code.

⁽⁴²⁾ Article 3 of the Commercial Code.

⁽⁴³⁾ Samir Sharkawi, Commercial Law, Vol. 1, Cairo, 2.

It seems acceptable under the general principles of Jordanian law, and in accordance with commercial custom as well, that a principal is under a general duty to support his agent, if this is necessary, in performing his functions under the agency, provided that the agent cannot perform without such support.

Also, the principal is bound to accept orders from the agent. He does not have to accept orders from third parties since he has no legal relationship with them unless, of course, the agency agreement provides otherwise. It already has been said that in commercial agency, where an agent acts in his own name, the agent and not the principal is the person responsible and liable toward third parties⁽⁴⁴⁾.

2.5 Maintenance of Inventory

There are no specific rules concerning the maintenance of inventory in Jordan nor is there any precedent to this effect and, therefore, the matter remains subject to the agreement between the agent and principal and to the rules applicable to every agreement in general. A principal generally may insert in the agreement whatever provision he finds appropriate for protecting his interests, including provisions relating to the inventory.

⁽⁴⁴⁾ Supra section 2.3.

2.6 Exclusivity

The term exclusivity is not defined by Jordanian legal texts nor could it be inferred from commercial custom or otherwise. Also, no provision can be found in the law to the effect that an agency, once given, is generally exclusive in a specific territory or another. On the contrary, it may be that the general rules of contractual freedom underlying the Jordanian Law would suggest that an agency is not, in principle, exclusive unless otherwise agreed by the parties.

2.7 Remuneration of Agents

2.7.1 Basis and Limitations

As a general rule, a commercial agent has a right to remuneration unless the agreement provides otherwise⁽⁴⁵⁾. The parties have the right to determine the amount of remuneration and how it should be paid. There is no specific rule restricting or affecting the amount to be paid to the agent. If there is no agreement to this effect, the matter will be resolved according to the quotation prepared in the relevant profession or by custom or usage of the particular trade⁽⁴⁶⁾. It should be noted that none of the trade professions in Jordan have quotations regarding remuneration, nor

⁽⁴⁵⁾ Article 81/1 of the Commercial Code.

⁽⁴⁶⁾ Article 81/2 of the Commercial Code. C.f., Articles 55 of the Code, which says that where the parties do not determine the commission it will be determined by the custom in the trade concerned.

can it be said that there is a clear customary basis for it. Therefore, it may be wise to suggest that a reasonable remuneration be payable. What is reasonable depends on the circumstances. In practice, however, it is rare that an agency agreement ignores such an important matter.

It frequently happens that the remuneration takes the form of a commission payable on the basis of percentage of the amount actually received for the goods sold. However, it may take another form depending on the agreement, such as a fixed amount for every item sold, or a percentage commission in addition to a fixed amount.

The contracting parties are free to determine when the remuneration is deemed earned. If there is no agreement, it is payable, particularly when it takes the form of a commission, immediately after the agreement with the third party is reached, i.e., upon concluding the contract between the agent and that party even though the latter has not performed his obligations under the contract⁽⁴⁷⁾. However, if the nonperformance is due to a default by the agent, such as when he sells the goods to a person whose credit worthiness is deficient, he cannot recover commission⁽⁴⁸⁾ at least until the third party performs his obligations. Where the agreement has not been made and this is due to reasons not caused by the principal, the agent is not entitled to commission. In such a case, he may claim compensation if doing so is recognized

⁽⁴⁷⁾ Article 93/1 of the Commercial Code.

⁽⁴⁸⁾ Article 93/3 of the Commercial Code.

by custom⁽⁴⁸⁾. In practice, it is difficult to conclude that such custom exists in Jordan.

On the other hand, the commission is payable even if the deal has not been made, provide that this is caused by the principal⁽⁴⁹⁾. An example of this is where the principal in violation of the agency agreement, fails to provide the agent with the required goods on time.

The basis of calculating the commission is the sum value of the deal, including any other additional cost, unless there is a contractual term to the contrary⁽⁵⁰⁾. To illustrate, suppose that the commission is 5 percent of the deal and the agent sold the goods for \$ 1,000 but the principal received only \$ 900 because \$ 100 was paid as storage costs. The commission would be \$ 50, not \$ 45.

As to goods imported for the benefit of the government or any of its institutions, the importer must declare the name of the agent through whom the deal is to be made, if any, and the amount or percentage of the commission to be paid to him. Otherwise, the commission will be considered as a debt to the government, and its percentage will be determined by the Minister of Industry and Trade but should not be less than I percent⁽⁵¹⁾. Although this provision is vague, it seemingly applies to a

⁽⁴⁹⁾ Article 93/2 of the Commercial Code.

⁽⁵⁰⁾ Article 94 of the Commercial Code.

⁽⁵¹⁾ Article 13/d of the Act.

situation where the deal was made through an intermediary for a commission and the importer ignored that. In such a case, the importer should pay the commission to the government. The commission is in fact a sort of fine.

In addition to remuneration, the agent is entitled to be paid for all costs expended by him on behalf of his principal, as well as the interest on such costs⁽⁵²⁾. The maximum rate of interest is 9 percent per annum and the parties may agree to a lesser rate⁽⁵³⁾. The agent also is entitled to claim for storage costs and transportation, but not for wages payable to his employees⁽⁴⁵⁾. Again, this rule is not of public order and the parties may agree otherwise, such as an agreement that the commission covers all costs paid by the agent in the territory where the agency operates.

2.7.2 Restrictions on Payment

There is particular mode that needs to be followed for payment of remuneration. Thus, such payment may be made in cash, by check, bank remittance, or otherwise. The only restriction is provide for in Article 12 of the Act, which states that a commercial agent or intermediary must transfer to Jordan all commissions due to him abroad through an authorized bank or money changer. This duty is imposed on the agent or intermediary, who will bear the responsibility of failure to comply with it. This does not affect the relationship between the principal and his agent. It may be

⁽⁵²⁾ Article 95/1 of the Commercial Code.

⁽⁵³⁾ Article 1 of Netham Al-Murabaha, which is an Ottoman Law and still operates in Jordan.

⁽⁴⁵⁾ Article 95/2 of the Commercial Code.

useful to repeat here that the only sanction for violating the provision is payment by the agent or intermediary of a fine amounting to 100 Jordanian dinars⁽⁵⁵⁾.

2.7.3 Reporting and withholding

The remuneration must be mentioned in the document submitted by the importer to the Ministry for the process of importation, regardless of whether the goods are to be imported to the government or to the private sector⁽⁵⁶⁾. This duty is imposed on the importer not on the agent or the foreign supplier. Moreover, the agent must declare the remuneration he received or earned to the Income Tax Department at the end of his fiscal year⁽⁵⁷⁾. This duty is not imposed on the foreign supplier either.

The principal cannot hold the remuneration except where there is an order by the court, regardless of its reasons, or where the agent refrains from performing his obligations under the agency agreement without a justified reason⁽⁵⁸⁾.

⁽⁵⁵⁾ Article 21/a of the Act.

⁽⁵⁶⁾ Article 13 of the Act.

⁽⁵⁷⁾ According to the Income Taxation Act No. 57/985.

⁽⁵⁸⁾ This is a general principle provided for in the Civil Code (Article 203).

2.8 Term and Renewal

An agency agreement may be of a definite or an indefinite term. Neither the Commercial Code nor the Act contains provisions as to the term of the agreement. Not even the Civil Code regulates this matter except where it states that an agency comes to an end automatically, *inter alia*, by the effluxion of its time⁽⁵⁹⁾. However, general principles may suggest that a commercial agency of a definite terms since it creates mutual rights and obligations, may not be terminated by either party during its term, whereas an indefinite term agency, in principle, may be terminated by either party at any time. This may be one difference between these two types of agencies. Moreover, it is not clear whether the indemnification provided for in Article 18 of the Act, which will be discussed later, applies only to the indefinite term agency or also includes the definite- term one. If a First Instance Court precedent adopting the former view is to be followed⁽⁶⁰⁾, then this indemnification issue will be another difference between the two types of agency.

As a general rule, an agency with a definite term is not renewable automatically. There must be an agreement to this effect or the parties continue with performance of the agency even after expiration of its term. Behavior as such most probably will be construed as an implied renewal of the agency according to the conditions and terms already agreed

⁽⁵⁹⁾ Article 862/2 of the Civil Code.

⁽⁶⁰⁾ First Instance Court of Zarqa, Judgment No. 210/87 of 12/5/1989 (not published).

upon⁽⁶¹⁾. It is difficult to conclude that successive renewals as such, apart from other circumstances, shall be deemed to render the agreement one of indefinite duration.

2.9 Termination

2.9.1 With Cause

A principal can terminate the agreement at any time during its course for cause due to the agent or for any other cause justifying termination. There are no specific causes of this type designated by the law. However, one can say that the agent's bankruptcy or insolvency would justify termination⁽⁶²⁾. There is no doubt that the agent's failure to perform his obligations under the agreement would give the principal the right to terminate it⁽⁶³⁾, for example, the agent's failure to sell a certain amount of goods per year as required by the agreement.

⁽⁶¹⁾ By virtue of Article 93 of the Civil Code, a declaration of the will may take any form since it expresses the intention of the person issuing it.

⁽⁶²⁾ The Jordanian Law differentiates between bankruptcy, which is concerned with commercial persons only (merchants and commercial companies), and insolvency, which relates to others who may be called civil persons (see Chapter 4 of Commercial Code, and Articles 375 ff of the Civil Code). But it is important to note that the agency by its very nature is commercial and is subject to the Commercial Code (Article 6).

⁽⁶³⁾ Article 246 of the Civil Code adds that a court may grant a debtor a period of grace for performance, depending on the circumstances. However, Article 56/1 of the commercial Code prohibits the court from granting such a period except in exceptional circumstances.

In principal, the parties may insert in the agreement other circumstances that shall be deemed as causes for termination⁽⁶⁴⁾. This principal is subject to an important rule provided for in Article 18 of the Act, which states that termination of an agreement by the principal without default by the agent or any other legal cause would give the agent a right to claim for indemnification. There is no explanation in the Act nor in precedents to the term legal cause, but since it is inserted in addition to the reference to the agent's default, such cause necessarily would be other than the said fault. However, whether there is a legal cause justifying the termination or not is to be decided by the court, taking into account all surrounding circumstances.

2.9.2 Without Cause

The parties may agree that a principal is allowed to terminate the agency without cause⁽⁶⁵⁾. This applies to both the indefinite agency at any time during its course, and the definite one while its time has not yet expired. If such a right has not been granted, the importance of distinction between the two types of agency becomes clear. As mentioned above, a principal cannot terminate a definite - term agreement without cause, but he can do so regarding an indefinite one. In the latter case, however, an agent is given the right to claim for indemnification, as will be seen below.

⁽⁶⁴⁾ Articles 164, 199, and 202 of the Civil Code.

⁽⁶⁵⁾ Article 176 of the Civil Code. C.f., Article 177/1, which adds that the parties must state in their agreement the period within which the termination may be exercised. See also Article 164, which allows the parties to insert in the agreement any condition or term that is for the benefit of either.

2.9.3 Required Notice

The principal must give notice of his intention to terminate the agreement, such notice should be sent through the notary public⁽⁶⁶⁾. However, the parties may agree not to apply this rule. For example, they may agree that the agreement will be terminated automatically upon the occurrence of some event⁽⁶⁷⁾, or that the notice may be any mode of communications and not through the notary public.

2.9.4 Nonrenewal

It is obvious that renewal of an agreement is connected only with a definite - term agreement where it is presumed that such term has expired. In that case, the agreement shall terminate automatically unless it is agreed otherwise. Thus, the nonrenewal is assumed and this situation terminates agreement. To this extent the nonrenewal is equivalent to termination. Beyond that, termination seems to be different from nonrenewal in at least one point concerned with the indemnification, as will be shown in the next subsection.

⁽⁶⁶⁾ Article 246 of the Civil Code.

⁽⁶⁷⁾ Article 245 of the Civil Code.

2.10 Consequences of Termination

2.10.1 Right of Indemnification

Article 97 of the Commercial Code provides that an agent is entitled to indemnification when his principal terminates the agreement without a justified cause. Also, Article 18 of the Act gives a similar right and adds to the justified cause "or a default by the agent". Neither the legislative texts nor the precedents give guidelines as to what extent these provisions apply, or to the meaning of the term justified cause. As previously stated, this is a matter of interpretation and circumstances to be decided by the court. However, the following points may be suggested:

1. A default by an agent is definitely considered a justified cause and this is expressly stated in the Act.
2. The situation where the agreement comes to an end because its period expires in a definite - term agreement must be distinguished from termination. While the provisions concerning indemnifications do not apply to the former, they do apply to the latter. This principle has also been adopted by a least one precedent⁽⁶⁸⁾.

⁽⁶⁸⁾ First Instance Court of Zarqa, Judgment No. 210/87 of 12/5/89 (not published).

3. The provisions apply to the case where the agreement is an indefinite term one even if the principal is expressly entitled in the agreement to terminate it. This is because a provision as such, in these circumstances, has no legal value as the principal generally has the right to terminate such an agreement.

A similar principal may also apply to the situation where a principal terminates a definite term agreement before the expiration of its time. Here again, a contractual provision given such right to the principal does not deprive the agent from his right of indemnification.

In other words, a mere provision entitling the principal to terminate the agreement may not constitute good grounds for avoiding payment of indemnification, regardless of whether an agreement is definite or indefinite.

2.10.2 Basis for Indemnification

The only penalty for termination of the agreement without justified cause is indemnification⁽⁶⁹⁾. It includes both the actual costs and the loss of profit⁽⁷⁰⁾. There is no

⁽⁶⁹⁾ It should be noted that the general principal in Jordanian Law is that the creditor has the right, subject to certain conditions, to demand specific performance (Article 313 of the Civil Code). According to Article 97 of the Commercial Code and Article 18 of the Act, it may be that the principal does apply to the agency to the extent that a principal has a right to terminate the agreement while the agent is entitled to recover indemnification when the termination is without a justified cause.

⁽⁷⁰⁾ Article 18 of the Act literally to the cost "or" lost profit, while the true intention is "and".

definite manner for evaluating the indemnification and the matter is left to the judge in light of the evidence before him and taking into consideration all the circumstances.

2.10.3 Waiver of Right

The agent's waiver of his statutory right in the agreement concerning the indemnification is void and unenforceable. This is settled expressly by Article 18 of the Act, which says that an agent is entitled to indemnification in case of terminating the agreement without a justified cause irrespective of any agreement to the contrary. In fact, there is no way a principal can avoid the indemnification or minimize such liability in case of termination.

2.10.4 Continuing Commissions

Commission is payable immediately upon concluding the purchase contract with a third party. Where an intermediary is not a commission agent in the meaning given above⁽⁷¹⁾, but merely broker, he is entitled to remuneration as soon as the information disclosed by him or the negotiations he made have led to the contract between a foreign supplier and a third party⁽⁷²⁾. This would suggest that a broker has the right to remuneration for orders solicited prior to termination or from customers solicited by him. It seems that this rule is not of public order and, therefore, the parties may depart from it by

⁽⁷¹⁾ Supra section 1.2.

⁽⁷²⁾ Article 101/1 of the Commercial Code.

agreement. For example, they may agree that the remuneration is earned upon the happening of an event or certain conditions⁽⁷³⁾. This means that unless the parties agree otherwise, the agent who acts as a broker will not be entitled to commission with respect to orders solicited by him unless such orders are accepted before termination.

2.10.5 Termination of Registration

An agent must register his name in the Register of Agents at the Ministry, and deposit there a true copy of every agency agreement he has concluded. If there is any change, such as termination of the agreement, an agent must inform the Ministry of the change. If he fails to do so, the principal may give the necessary information directly to the Ministry, which must correct its records according to the new situation.

However, it is strongly advised that a principal send the document containing the termination through a notary public notice or a Jordanian consular abroad. Doing so gives him more protection from third parties with whom the agent might deal in the future.

2.11 Competition Law Issue

By agreement, the principal may prohibit the agent from soliciting outside its assigned territory and from presenting other products that compete with those of the

⁽⁷³⁾ Article 101/2 of the Commercial Code.

principal. There is no rule designated specially for this purpose, but it clearly can be inferred from general principles⁽⁷⁴⁾.

2.12 Tax Issue

A foreign principal may not be subject to local income taxation if his role was merely the appointing of an agent in Jordan. However, Article 18 of the Income Tax Act No. 57/1985 provides that where a person in Jordan pays to another person residing abroad an income, which is subject to taxation according to the Act, such as interest on a loan or commission for a bargain, he must deduct 10 percent of that income and submit it to the Income Taxation Department. The extent and limit of this provision is not clear is there any practical application of it.

As has been stated elsewhere in this work, an agent is different from an employee. While the latter exercises his function under the control and supervision of the employer, the former does not. This is a matter of facts and circumstances to be determined by the judge. If the judge concludes that the relationship is of employment, and not of agency, the rules of Labour Law and other employment laws apply, including the social security rules. It is assumed here that other requirements for such application are met, as, for instance, the number of employees who are working with the same employer⁽⁷⁵⁾.

⁽⁷⁴⁾ Article 164, 199/2, and 202/1 of the Civil Code.

⁽⁷⁵⁾ See, e.g., Article 2/6 of the Labor Law No. 21/960, which refers to five employees for applying certain provisions of the law.

2.13 Intellectual Property Issues

For selling his goods in Jordan, the principal does not need to license his patents, trademark, or other intellectual property to the agent. But if he wants to protect his rights relating to such property, he must register the same at the Ministry. This can be done by filing a request to investigate whether there are similar trademarks, which shall be followed by submitting an application for registering the trademark⁽⁷⁶⁾.

The local law does not contain special provisions requiring the principal to indemnify the agent from infringement claims against the principal's products. Therefore, this matter is subject to general principal according to which a judge may conclude, most probably, that there is an implied condition in the agreements between the principal and the agent to the effect that the former guarantees the the noninfringement of others' intellectual property⁽⁷⁷⁾, or, which seems difficult to adopt, he may base the liability on the illegal conduct, i.e., it is in tort. In this connection, Article 256 of the Civil Code provides that every injurious act shall render the person who committed it liable for damages.

2.14 Miscellaneous Clauses

The general principle under Jordanian law, applicable to every contract, including agency contracts, is that the contracting parties are free to insert in their contract whatever

⁽⁷⁶⁾ By virtue of the Act No. 33/952 and the regulations and ordinances issued under to it.

⁽⁷⁷⁾ See, by analogy, Articles 503 ff of the Civil Code.

condition by they find appropriate unless it is expressly forbidden by the legislature or against public order. In either of these cases, the condition is void while other conditions of the contract maintain, unless the voidable condition was the motive for making the contract, in which case the whole contract shall be deemed void⁽⁷⁸⁾.

An example of an admissible clause can be found in the assignment of the agreement. The general rule is that an agent cannot assign his obligations nor his right under the agreement except with the consent of the principal⁽⁷⁹⁾. Therefore, the agreement may provide for giving such right to the agent. Another example is that the parties are at liberty to insert a force majeure clause in their agreement determining its scope and effects.

⁽⁷⁸⁾ Article 164 of the Civil Code.

⁽⁷⁹⁾ Article 996 of the Civil Code.