

## Capacity and Authority to Contract

### 4.1 INTRODUCTION

As a liberal legal system, Qatari law provides for significantly broad contractual freedom. Even so, several limitations are placed not so much on the substantive exercise of such freedom, but on its procedural dimension. Hence, natural persons considered under the law as lacking partial or full competence will have their contractual will substituted (and sometimes even replaced) by a guardian. In equal manner, foreign or other entities desirous of trading in Qatar must do so through a registered Qatari commercial agent. As a result, this chapter will discuss the regulation of personal capacity (*ahliya*) and agency under the civil law of Qatar and will not deal with the issue of competence pertinent to foreign investors,<sup>1</sup> or specific competence of state (or administrative) entities, even if said competence concerns contractual freedom.<sup>2</sup> The chapter deals with the most important types of agency and hence several are missing from this discussion.<sup>3</sup> It will become clear from the

- <sup>1</sup> It is beyond the scope of this chapter to examine the regulation of competence of foreign investors in the Qatari legal order. Foreign investment law and its regulation of investment and investors is *lex specialis* in relation to commercial agency contractual arrangements. Overall, Law No. 1/2019 Regulating the investment of non-Qatari Capital allows for a limited number of instances where a foreign investor possesses autonomous competence and under its own name. Even the decision of the MoCI No. 142/2006, which provides that foreign firms may open representational offices without a local partner, only allows sourcing activities that do not involve financial transactions. See J Truby, 'Free Zones, Foreign Ownership and Tax Incentives for Foreign Direct Investment in Qatar' (2016) *Global Trade & Customs Journal* 11.
- <sup>2</sup> See, for example, Art 2(2) of Law No 2/2017 Promulgating the Civil and Commercial Arbitration Law [Arbitration Law], which requires the approval of the Prime Minister for an agreement to submit to arbitration disputes arising from administrative contracts.
- <sup>3</sup> For example, subsidiary warranty lawsuits are excluded here. This arises where the warranty applicant entrusts its guarantor to enter into an existing dispute between itself and a third party in order to be represented in court and potentially offer compensation in respect of the

discussion relating to personal capacity that several (but not all) principles underpinning classical Islamic law have been incorporated in the Qatari CC, despite the fact that they are to a large degree antiquated and out of touch with Qatar's international obligations.

## 4.2 LEGAL PERSONALITY

### 4.2.1 *Legal Personality and Competence to Contract*

Legal personality, competence or capacity are all synonyms for the deceptively simple notion of having rights and duties under a legal system and a capacity to enforce or have them enforced against the entity in question. The CC confers such capacity upon both physical (or natural) persons, as well as legal persons – the latter under certain circumstances. Just like other legal systems, the Qatari CC further permits delegation of capacity upon a third entity through a contract of agency. It should be noted from the outset that the rights and duties that comprise one's personality may vary in quantity and quality from those enjoyed by other entities. By way of illustration, minors cannot, as a rule, enter into real estate transactions in their own name and corporations cannot enter into marriage contracts.

Article 39 CC stipulates that personality commences upon birth – assuming the person is alive – and ceases upon death. These in turn are the outer limits of contractual freedom. Even so, the *foetus in utero* is capable of rights, provided it is born alive.<sup>4</sup> There is nothing in Qatari law, however, suggesting that the *foetus* can contract in its name or through a third entity.

Legal personality, as described above, and competence, although generally synonymous and overlapping in nature, may at times give rise to subtle differences. An entity, such as a physical person, may generally enjoy broad legal personality (i.e. rights and duties) and yet be temporarily prevented from exercising said rights. Such *incapacity* may come about as a result of consent (e.g. A agrees with B not to engage in business deals with C and D), or by the operation of the law. In the latter case the law might prevent certain people from their ordinary freedom of contract because of perceived defects in their consent, or because of a defective personal status.<sup>5</sup> Article 109 CC goes on to say that persons declared by law to be totally or partially incapacitated shall

damage that the warranty claimant suffers from the ruling in the original lawsuit. See Court of Appeal Judgment 255 and 277/2017.

<sup>4</sup> Art 40 CC.

<sup>5</sup> By way of illustration, under Art 20 CL, persons who have filed for bankruptcy or convicted of fraud-related offences are not considered competent to enter into trading transactions.

not possess legal capacity to conclude a contract. Incapacity will be explored in more detail in a subsequent section of this chapter. Absence or loss of legal capacity, subject to the exceptions mentioned in subsequent sections,<sup>6</sup> invalidates offer and acceptance.<sup>7</sup>

From the point of view of Qatari private international law, article 11(1) CC provides that the legal capacity of persons is governed by the law of the country to which they belong by reason of their nationality.

Paragraph 2 of article 11 CC, however, goes on to note that in respect of financial transactions concluded and being effective in Qatar, if one of the parties is an incapacitated foreigner, where ‘such incapacity is due to a cause neither apparent to nor easily detected by the other party, such cause shall have no effect on the legal capacity of such foreigner’.

#### 4.2.2 Age of Majority and Discretion

Minors are capable of contracting in their own name. The CC distinguishes between the age of *majority* (*bulūgh*) and the age of *discretion* (*rushd*) or *maturity*. The age of majority is 18 years, irrespective of sex.<sup>8</sup> Article 49(1) CC stipulates that a person that has attained the age of majority and in possession of its mental faculties possesses full legal personality to contract in its own name and perform legal acts.<sup>9</sup> Such capacity is suspended under the same provision where the courts have imposed guardianship or custody of the minor and its property, or where the minor is otherwise incapacitated.<sup>10</sup> Article 189 of the Qatari Family Law No. 22 of 2006 stipulates that: ‘A person who has attained the age of majority by attaining eighteen years of age shall have full legal capacity, unless he is placed under guardianship’.<sup>11</sup> However, considering the nature of the family laws, Welchman reminds us that the setting of an age of full capacity is related to the notion of marriage.

<sup>6</sup> See, for example, Art 98(2) CC, which provides that the promisor’s loss of legal capacity shall not preclude the conclusion of the promised contract if it has already been dispatched to and accepted by the promisee.

<sup>7</sup> Art 71 CC.

<sup>8</sup> Art 49(2) CC.

<sup>9</sup> Art 17 CL equally provides that freedom to trade is available for those reaching the age of majority. The age of majority is of seminal importance in Islamic law as it represents the dawn of full capacity. But there exist significant differences concerning the age of puberty. See Nawawī, Yahyā ibn Sharaf, Muhammad Najīb Muṭī, and Abū Ishāq Shīrāzī, *Kitāb Al-Majmūʿ: Sharḥ al-Muḥadḍhab Lil-Shīrāzī*. (Dār Ihyāʾ al-Turāth al-ʿArabī, 2001) 360ff.

<sup>10</sup> See also Art 18 CL, which caters for the guardianship of a minor’s assets in a business activity.

<sup>11</sup> It should not be forgotten, however, that the age of majority in this family law context chiefly relates to capacity for marriage, where capacity is dependent on a guardian for females. L Welchman ‘First Time Family Law Codifications in Three Gulf States’ [2010] Int’l Surv. Fam. L. 163, 166.

The age of discretion is generally perceived as the milestone in a minor's life whereby some degree of maturity has been achieved. As a result, the minor is no longer considered worthy of full protection (i.e. guardianship or other mechanism) and can enter into certain contracts in its own name. Although the age of maturity is a matter of assessment on a case-by-case basis, article 50(2) CC makes it clear that no person below seven years is to be considered as having reached the age of discretion. In respect of particular contracts, the CC combines the minor's age with its discretion/discernment.<sup>12</sup> Hence, article 112 CC stipulates that a discerning sixteen-year old in lawful possession of his or her property may validly undertake any acts related to the management of such property. Article 115(2) CC states that a discerning fifteen-year old possesses partial competence (as the court may place restrictions for the minor's interest) to dispose of wages earned. Moreover, article 116 CC allows discerning sixteen-year olds to conclude wills.

Maturity or discretion is not only a question of age. Article 50(1) CC clarifies that lack of discretion may also arise by reason of 'imbecility (*al-ma'tūh*) or insanity', in which case the person is considered incompetent to exercise its civil rights, including the absolute freedom to contract. Mental incapacity will be considered more fully in a subsequent section of this chapter.

Article 51 CC further limits capacity to contract by stating that persons attaining discretion but not majority, as well as persons that have achieved majority but who are 'prodigal or negligent' lack capacity.<sup>13</sup> No doubt, the latter limitation (i.e. prodigality [*safah*] and negligence) can be abused and does not sit well with western notions of contractual freedom. It is important for the higher courts and the legislator to either specifically limit the application of this provision, or otherwise eliminate it.

### 4.3 CAPACITY OF MINORS

'Minors' are not defined as such, albeit it is clear that the term encompasses persons that have not attained the age of majority. Article 110 CC specifies

<sup>12</sup> This distinction has its origin in Islamic law. The Malikīs and Ḥanafīs set out two types of development in the life of a minor, namely, non-discerning (*ghayr mumayyiz*) and discerning (*mumayyiz*). The Hanbalīs argued that even in respect of a discerning minor, its transactions were valid if authorised by its guardian (*wali*). See Wahbah al-Zuhaylī, *Financial Transactions in Islamic Jurisprudence* (Translated by Mahmoud Al. El-Gamal, Dar al-Fikr, 2003) vol 3, at 358.

<sup>13</sup> On the capacity of the discerning minor, see I Bantekas, J Ercanbrack et al, *Islamic Contract Law* (OUP 2023) chp 4.

that dispositions of property by a minor lacking discretion shall be deemed void. This is clearly the general rule and hence persons contracting with minors must ensure that discretion is fully evident and attested, or that its absence is well compensated by guardianship or other mechanism. Where a minor possesses discretion, disposition of property is valid where its effects as a whole are without doubt to the advantage of the minor.<sup>14</sup> If the effects of such disposition are not overwhelmingly beneficial to the minor, it will be declared void, unless immediately ratified by the minor's guardian, the courts, or the minor itself after attaining the age of majority.<sup>15</sup> In the previous sections it was pointed out that a discerning sixteen-year old may dispose of property lawfully in its possession. Equally, discerning minors entrusted with the administration of property may validly enter into any contract in respect of said administration, save for lease agreements whose duration is longer than a year.<sup>16</sup> Obligations assumed by minors not authorised to transfer, arising from their signatures on bills of exchange as drawers, endorsers or in any other capacity, shall be null and void. This is true even where the holder of the bill of exchange acted in good faith and without realising that its counterparty was a minor.<sup>17</sup>

Apart from capacity to administer and dispose property, which is generally unrestricted, the capacity of discerning minors to conclude an individual employment contract may be limited by a request to the court of the guardian, trustee, or other interested person if this is in the benefit of the minor.<sup>18</sup> In such cases, the courts may terminate the contract.

From the point of view of Qatari private international law, article 22 CC provides that where a person is not Qatari, all matters relating to natural and legal guardianship, trusteeship/receivership and custodianship, and systems established to protect minors, incapacitated persons and absent persons, shall be governed by the law of nationality of the person in question.

#### 4.4 PARTIAL COMPETENCE

The CC distinguishes between mental incapacity and incomplete or partial competence. The terminology is not always consistent. Mental incapacity is defined to in article 52 CC as possessing no, or defective, capacity. Incomplete

<sup>14</sup> Art 111(1) CC.

<sup>15</sup> Art 111(2) CC.

<sup>16</sup> Art 113 CC. See also Art 114 CC concerning property entrusted or delivered to the minor for the purpose of maintenance.

<sup>17</sup> Art 459 CL.

<sup>18</sup> Art 115(1) CC.

or partial competence concerns the contractual freedom of persons that otherwise possess an effective mental capacity, but who are nonetheless deemed as 'suffering from inattentiveness or prodigality'.<sup>19</sup> Incomplete competence also arises in those situations where discerning minors possess limited contractual freedom, as is the case with individual employment contracts. Prodigality and inattentiveness are not defined in the CC and do not constitute recognised disabilities or other forms of impairments that inhibit or otherwise disadvantage contractual freedom.<sup>20</sup> Prodigality has its origins in classic Islamic law where there was considerable agreement between scholars concerning persons squandering the property of their family, therefore justifying interdiction.<sup>21</sup> The competence of persons considered prodigal and inattentive is equated *mutatis mutandis* to that of discerning minors. This is expressly stipulated in articles 120 to 125 CC.

It is not clear how they operate in practice,<sup>22</sup> but in any event, they should under no circumstances be employed arbitrarily by the courts to diminish or limit contractual freedom. Limitation of contractual freedom on these two grounds constitutes a significant violation of personal liberty and fundamental human rights<sup>23</sup> and is inconsistent with Qatar's international obligations. Article 119 CC stipulates that persons with partial (incomplete) competence entering into contracts while claiming to be fully competent may rely on their partial incompetence to escape the legal effects of their offer or acceptance. Exceptionally, however, minors fraudulently concealing their partial incompetence in a way that leads to a reasonable belief of full competence are liable for any damages caused under their contract.

The place of article 126 CC just after the provisions relating to discerning minors suggests that it is applicable thereto and not to the provisions on

<sup>19</sup> See Arts 117 and 118(1) CC. It should be emphasized that Art 118(1) CC makes no distinction between insanity/imbecility (i.e. mental incapacity) and inattentiveness/prodigality. Such a distinction is, however, necessary as the two sets of circumstances are wholly different and cannot possibly produce the same effects. This reasoning seems to also be confirmed by Art 120(1) CC, which stipulates that contracts concluded by prodigal or inattentive persons shall be governed by Art 111 CC, which refers to minors possessing discretion.

<sup>20</sup> See Art 1 Law No 40 of 2004 on the Guardianship over Minors' Funds, which defines several types of incapacity, albeit in very demeaning terms that lack scientific merit.

<sup>21</sup> Abū al-Walīd Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtasid* (Garnet Publishing, Translated by Imran Ahsan Khan Nyazee, vol 1, 1994) 334, in Bantekas and Ercanbrack (n 13).

<sup>22</sup> But see, Art 35, Law No 40/2004 (on the Guardianship over Minors' Funds), which concerns the validity of financial dispositions made by interdicted persons.

<sup>23</sup> Of course, the law must and does place sensible limitations especially where the parties' power imbalance is significant. See F Kessler, 'Contracts of Adhesion: Some Thoughts about Freedom of Contract' (1943) 43 Colum L Rev 629.

mental disability which follow. Article 126 CC allows natural guardians (e.g. parents), legal guardians (e.g. *kafils*)<sup>24</sup> and curators (*qawama*) to contract on behalf of discerning minors within the limits of the law.

#### 4.5 MENTAL INCAPACITY

Article 118(1) CC suggests that persons suffering from insanity (*junūn*) and imbecility,<sup>25</sup> (as well as prodigality (*safah*) and inattentiveness, examined in the previous section) lack contractual freedom altogether. In fact, the courts are under an obligation to *interdict* (*hajr*) such persons and the pertinent judgments must be recorded in special registers.<sup>26</sup> Although insanity is not defined,<sup>27</sup> article 119 CC spells out its effects. A person suffering from insanity and dementia and interdicted on this basis by the courts lacks the competence to enter into contracts. Any contract entered after the interdiction is null and void. Where the contract was entered prior to the judicial interdiction, it shall only be null and void if the other party was aware of the condition or if it was a matter of common knowledge.

The outright and absolute constriction of contractual freedom to persons with mental disabilities constitutes a fundamental violation of article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD), which has been ratified and supported by Qatar.<sup>28</sup> Article 12 CRPD states in relevant part that

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

<sup>24</sup> A *kafala* relationship establishes a bond of legal guardianship between the *makful* and the *kafil* (legal guardian). See U M Assim, J Sloth-Nielsen, 'Islamic Kafala as an Alternative Care Option for Children Deprived of a Family Environment' (2014) 14 AHRLJ 322.

<sup>25</sup> Again, this rather outdated (and offensive) characterisation is a remnant of classic Islamic law. It refers to a person who by reason of intellectual defects its decision-making ability is crucially undermined. 'Abd al-Karīm Zidān, *Wajīz fī Uṣūl al-Fiqh* (Mu'assasat Qurṭuba, n.d.) 104, in Bantekas and Ercanbrack (n 13).

<sup>26</sup> The Court of Appeal in Case 94/2008 made it clear that unless a person has been interdicted by the courts under Art 118 CC, judgments restricting contractual or other freedom produce no legal consequence. Such *hajr* is reflected in various sources, including Art 957 Majallah, which stipulates that 'minors, lunatics and imbeciles are ipso facto interdicted'. See Bantekas and Ercanbrack (n 13) for a more comprehensive discussion.

<sup>27</sup> As already stated, mental incapacity is referred to in Art 52 CC as possessing no, or defective, capacity.

<sup>28</sup> In fact, unlike many states, Qatar was one of the few that did not enter into any reservations. See I Bantekas, 'Reservations to the Disabilities Convention: Peer Engagement and the Value of a Clear Object and Purpose' (2020) 33 NY Intl L Rev 65.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 12 CRPD clearly suggests that persons with disabilities, and irrespective of the disability, are presumed to possess legal competence and personality no less than non-disabled persons, which necessarily encompasses contractual freedom. That disabled persons may require assistance under certain circumstances does not entail that such assistance should substitute their decision-making authority; rather, it should be merely assistive.<sup>29</sup> Article 127 CC seemingly supports decision-making assistance (as opposed to substitute decision-making) to persons with physical, sensory, or mental disabilities, where they are unable to ‘understand the contents or surrounding circumstances of a contract’. In such cases the courts have authority to appoint a judicial assistant to ‘assist such person as may be necessary in its best interests’. Article 128 CC stipulates that where a disabled person under court-ordered judicial assistance undertakes a transaction not authorised by the assistant, this shall be declared invalid. Such an outcome is clearly incompatible with the rationale of assistive decision-making, thus rendering the assistance in article 127 CC in the form of substitute decision-making.<sup>30</sup> In extreme cases of ‘severe debilitating illness’ the courts are authorised to substitute the will of the disabled person through that of the judicial assistant, if failure to act threatens the interests of the disabled person.<sup>31</sup> This is a welcome step towards more assistive decision-making and should be encouraged by the courts in line with Qatar’s obligations under the CRPD.

<sup>29</sup> See L. Series, ‘Article 12: Equal Recognition before the Law’ in I. Bantekas, M. A. Stein, D. Anastasiou (eds), *Convention on the Rights of Persons with Disabilities: A Commentary* (OUP 2018) 350, 364–65. See also CRPD Committee, Concluding Observations on the Initial Report of Qatar, UN Doc CRPD/C/QAT/CO/1/Add.2 (6 December 2017) paras 23–34, where the Committee recommended that Qatar carry out a review of its legislation with a view to repealing regimes of substituted decision-making and replacing them with supported decision-making regimes, which uphold the autonomy, will and preferences of persons with disabilities.

<sup>30</sup> Such an outcome against disabled persons’ personal liberty and freedom of contract could be avoided by reference to Art 144 CC, which provides for invalidation or adaptation of contracts producing ‘excessive injustice’ to a party with limited capacity.

<sup>31</sup> Art 129 CC.



#### 4.6 CAPACITY OF JURIDICAL/LEGAL PERSONS TO ENTER INTO CONTRACTS

Article 54 (chapeau) CC sets forth the principle that juridical persons enjoy juridical (otherwise known as legal) personality.<sup>32</sup> This means that, *inter alia*, they can contract in their own name and incur liability solely in their own person. Paragraph 2 of article 54 CC specifies that the will of the juridical person shall be expressed by its representative, which shall be a natural person.<sup>33</sup> The provisions on agency in the CC apply as residual rules to the authority of the juridical person's representative. More specialised laws may, and usually do, set more specific agency requirements.<sup>34</sup> Articles 295 and 296 of the Commercial Companies Law, for example, stipulate that the authority of the managers or the board of directors ends with the dissolution of the company.<sup>35</sup> In equal measure, a limited partnership company is managed by the general partners in tandem, one of them, or a non-partner manager. It is not permissible for silent partners to take over the management, even on the basis of a power of attorney.<sup>36</sup>

The authority to act as a representative of a juridical person may be express or implied. Express authority is typically conferred by an entity's articles of association (by-laws) or other corporate resolutions. In some instances default authority may be conferred by the law, as is the case with article 242 of the Commercial

<sup>32</sup> It goes without saying that certain entities, which are not *prima facie* natural persons, are not viewed as legal persons. This is the case with sole proprietorships, in respect of which the Court of Cassation has been at pains to emphasize that they lack the qualities of legal persons. See Judgment 19/2016. See Court of Cassation Judgment 283/2019, where the Court defined the essential characteristics of a legal person as follows: (1) there must be a group of natural persons or assets allocated to a specific objective and (2) express recognition by the law of the status of such a group as a juridical person with a separate legal personality; see equally in this respect, namely, the capacity of the legal person to litigate, Court of Appeal Judgment 347/2015.

<sup>33</sup> The Court of Cassation has held that a legal person (in this case a foreign bank) enjoys capacity to claim entitlements owed to individual board members, since the respondent (a Qatari bank) had requested the claimant to appoint said board members and as a result the claimant could pursue actions on their behalf. Court of Cassation Judgment (May 2016, unknown number). Reported by H Hussiem, 'Qatar Court of Cassation Finds Individual Company Members can Represent Company' (June-July 2016), available at: [www.tamimi.com/law-update-articles/qatar-court-of-cassation-finds-individual-company-members-can-represent-company/](http://www.tamimi.com/law-update-articles/qatar-court-of-cassation-finds-individual-company-members-can-represent-company/)

<sup>34</sup> Readers should refer to Law No 11/2015, on Promulgating the Commercial Companies Law (Company Law). Relying on Art 102 of Law No 5 of 2002 on Promulgating the Commercial Companies Law, the Court of Cassation held that a joint-stock company is represented before others and before the judiciary by its chairman of the board and he or she has the right to delegate some of its powers to other members of the board. Court of Cassation Judgment 107/2013.

<sup>35</sup> See, to this effect, Court of Cassation Judgment 208/2014.

<sup>36</sup> Court of Appeal Judgment 12/2018.

Companies Law No 11 of 2015, whereby, unless otherwise stated in the by-laws, managers of limited liability companies possess full managerial authority and their acts, including contracts signed by them on behalf of the company, bind the company.<sup>37</sup> Implied authority may arise either because a particular action is necessary to carry out one's express authority, or because it has otherwise been granted outside the framework of a company's by-laws, for example by tacit approval or orally. A representative or employee of a legal person, while transacting in a personal capacity, does not bind the legal person.<sup>38</sup>

Legal persons, chiefly corporate entities, may also engage with agents that are external to the legal person. The Court of Cassation has held that where a power of attorney is issued by the representative of the legal person, the agent (e.g. a lawyer) submitting an appeal in the courts must deposit with its proxy document proof of the capacity of the legal representative of the legal person who authorised it to file the appeal until the court ascertains that capacity.<sup>39</sup>

The Court of Cassation, relying on Article 3 of the Commercial Registration Law, emphasised that a company branch does not, by registration in the Commercial Registry, acquire a legal personality that is independent from that of the parent company.<sup>40</sup> All rights and duties acquired by a branch equally encumber the parent company and form part of its own rights and duties and all liability is borne by the parent; so, it alone has the capacity to sue and be sued.<sup>41</sup>

From the lens of Qatari private international law, article 12(1) CC stipulates that the legal personality of foreign legal persons shall be subject to the law of the state 'where they have established their respective headquarters'. However, in accordance with paragraph 2 of article 12 CC, where a foreign legal person conducts its main activity in Qatar, even if its headquarters are abroad, it shall be subject to Qatari law.

#### 4.7 AGENCY

Agency is a common feature of the law of contract, which serves to facilitate business and transactions by substituting the principal with another entity to act on its behalf. While agency is recognised in all legal systems as

<sup>37</sup> It is well settled by the Court of Cassation that the effect of Arts 225 and 240 of Law 5 of 2002 [Commercial Companies Law] is that the manager of the LLC has full authority to manage the company unless the Memorandum of Association of the company provided for its authority, and that its acts are binding upon the company. See Court of Cassation Judgment 164/2010.

<sup>38</sup> Court of Appeal Judgment 53/2019.

<sup>39</sup> Court of Cassation Judgment 51/2013; equally, Court of Cassation Judgment 63/2014.

<sup>40</sup> Court of Cassation Judgment 283/2019.

<sup>41</sup> Court of Appeal Judgment 289/2017; equally Court of Appeal Judgment 238/2019.

a contractual relationship between principal and agent, as indeed in Qatar,<sup>42</sup> there is some divergence as to the boundaries of authority conferred on the agent by contract or the operation of law. The legal consequence arising from the agreement of agency is that the principal is bound by contracts entered by the agent acting within the scope of authority conferred upon him or her.<sup>43</sup>

#### 4.7.1 *Agency as a Contract and Power of Attorney*

The establishment of an agency relationship is not a unilateral act and hence must be predicated on the same criteria underlying contracts, namely, offer, acceptance and an intention to be bound.<sup>44</sup> Moreover, the agent must possess sufficient capacity to act on behalf of the principal.<sup>45</sup> The agreement establishing an agency relationship requires some degree of formality under Qatari law.<sup>46</sup> It must be made in writing, signed by the principal, the agent and a witness, as well as be duly authenticated by the authentication department of the Ministry of Justice.<sup>47</sup> The authority conferred by the principal on the agent is known as a power of attorney (POE),<sup>48</sup> which itself may be of a general nature, or otherwise concern well-specified actions. The formality of the POE does not serve to invalidate the *bona fide* actions of the agent undertaken without an authenticated POE. Rather, it is meant to ensure that third parties transacting with the agent are aware of its authority, as well as that the agent does not arbitrarily exceed the authority conferred by the principal. As a result, where the principal commits a mistake that leads a *bona fide* third party to believe that the agency upon which the agent contracted with this third party is still

<sup>42</sup> See Art 81 CC; equally Art 61 QFC Contract Regulations.

<sup>43</sup> Art 84 CC. See, to this effect, Court of Cassation Judgment 242/2015.

<sup>44</sup> Art 716 CC. Hence, the beginning and termination of an agency on the basis of an agreement is crucial, because absent a valid agreement the agent may compete against the principal and act in its own name. See Court of Cassation Judgment 84/2009.

<sup>45</sup> Art 717 CC.

<sup>46</sup> Art 718 CC. See also Court of Cassation Judgment 18/2010, where it was held that a lawyer may not be challenged on the ground that its power of attorney has not been authenticated before the procedure was carried out, unless otherwise stipulated by law.

<sup>47</sup> See Court of Cassation Judgment 64/2011, spelling out some formalities; equally, Court of Cassation Judgment 236/2011.

<sup>48</sup> In some contractual relationships, such as the right of the representative of a new creditor to collect payment, the POE would be in the form of a letter of subrogation, in accordance with Art 362 CC. The Court of Cassation in its Judgment 28/2010 held that representation of the state in litigation is a kind of a legal power of attorney to act on its behalf, and such power shall be made by referring to its source which is the law. In principle, the Minister is the representative of the State regarding the affairs related to its ministry, except where the law delegates a person other than the Minister.

valid, the agent's actions are binding on the principal.<sup>49</sup> This is in line *mutatis mutandis* with article 209 CC, whereby an employer is liable for the acts of its employees during the ordinary course of their employment.<sup>50</sup>

Article 82(2) CC makes it clear that if the principal announces its agent's authority to third parties and such announcement departs (exceeds) from the authority granted under the agency agreement, the authority under the principal's announcement supersedes the authority in the formal agency agreement.<sup>51</sup> The formality of the instrument/deed containing the POE is confirmed by article 90 CC, which compels the agent to surrender the deed immediately upon its expiration.

#### 4.7.2 *The Authority of the Agent*

As a general rule, the agent is limited by the powers conferred upon him or her by the POE.<sup>52</sup> The authority of the agent, where this is unclear, will be assessed on the 'texts and the circumstances in which the power of attorney was issued and the circumstances of the mandate'.<sup>53</sup> According to article 719 CC, the mere designation of agency in an agreement without any further specification of the powers conferred on the agent shall not grant the latter any capacity other than in respect of 'administrative acts'.<sup>54</sup> Anything other than mere administrative acts requires a *special agency*, particularly for gifts, sale, reconciliation, mortgage, acknowledgement, arbitration, oaths and pleadings before the courts.<sup>55</sup> The agent does not possess authority to exceed the powers stipulated in the agency agreement, save if the principal so announces, or subsequently so concedes, in accordance with the discussion in the previous section.<sup>56</sup> The agent may, however, exercise implied powers in accordance

<sup>49</sup> Court of Cassation Judgment 209/2015.

<sup>50</sup> Court of Cassation Judgment 36/2015.

<sup>51</sup> It has been rightly held that the capacity of the representative ceases before the date of the beginning of the contractual representation. It is not permissible for the representative to contract in the name of the principal or to claim authority against third parties on behalf of the principal, except from the day following the fulfilment of the power of attorney. See Court of Appeal Judgment 25/2018.

<sup>52</sup> Art 82(1) CC.

<sup>53</sup> Court of Cassation Judgment 22/2013.

<sup>54</sup> Art 719 CC encompasses within the concept of 'administrative acts': 'leases, provided they do not exceed three years; maintenance and safekeeping works; collection of rights; and repayment of debts'.

<sup>55</sup> Art 721(1) CC.

<sup>56</sup> Art 722(2) CC. In any event the agent may exceed its powers where it is impossible to notify the principal and the circumstances are such that the principal would have consented to the exercise of the excess powers.

with the nature of the task for which the agency is conferred and in accordance with applicable practice.<sup>57</sup> As a result, where a contract is entered into by an agent without the necessary authority, it is the agent and not the principal that is liable for all acts relating to defects of consent.<sup>58</sup> Article 83(2) CC does make the point that where the agent acted in accordance with the principal's authority and precise instructions,<sup>59</sup> the principal may not plead the ignorance of the agent in respect of facts and circumstances which the principal knew or should have known.

#### 4.7.3 *Disclosure of the Agency*

In most cases the agent will be authorised to disclose its relationship with the principal and correspondingly the third party may well require the disclosure of agency. Even so, one should not be oblivious to the fact that a principal may have a serious business interest in not disclosing to potential competitors its commercial intentions. Equally, politically exposed persons may be unwilling to make their assets or acquisitions known to the general public. Undisclosed agency makes sense in all these situations. Such undisclosed agency is generally permitted under Qatari law, but it is not free from consequences. Article 85 CC stipulates that where an agency is undisclosed the contract shall be deemed to have been concluded between the agent in its personal capacity and not on behalf of the principal. This presumption is inapplicable where the third party knew or should have known of the agent's authority, or it makes no difference to the third party whether the contract is concluded between the agent or the principal. This is generally known as *ostensible* or *apparent* authority.<sup>60</sup> Good faith is an integral aspect of the relationship between agents and third parties. This is clear in article 86 CC where agency is deemed to remain valid even where it had terminated, assuming both the agent and the third party were unaware that the agent's authority had terminated, or they could not have known even if they had exercised suitable due diligence.<sup>61</sup>

<sup>57</sup> Art 720 CC.

<sup>58</sup> Art 83(1) CC.

<sup>59</sup> It is of course likely that the agent's instructions are limited. In such circumstances, the agent, if he or she is to take urgent action, must always act in the best interests of the principal and defer to the latter where possible, especially in respect of matters falling outside the agency's express authority. See Art 276 CL.

<sup>60</sup> Despite the clear wording of Art 85 CC, certain practitioners claim that ostensible authority is not recognized under the CC, but only under the QFC Contract Regulations. See F Lucente et al, 'Corporate Authority in Qatar: To Bind or not to Bind?' (2014), available at [www.tamimi.com/law-update-articles/corporate-authority-in-qatar-to-bind-or-not-to-bind/](http://www.tamimi.com/law-update-articles/corporate-authority-in-qatar-to-bind-or-not-to-bind/)

<sup>61</sup> *Mutatis mutandis* stipulated also in Art 288 CL.

It is evident from this discussion that where an entity has not been granted agency authority by a principal, or if an agency exists but the agent exceeds its authority, then the effects of the contract entered between the 'agent' and the third party do not bind the principal.<sup>62</sup> It is, therefore, in the interest of the principal to avoid contracting on its own behalf if such an outcome was not intended. Article 88 CC recognises that agents may under certain (presumably narrow) circumstances be asked by the principal to conclude a contract with their own person (i.e. agent to agent). If these are approved by the principal or are standard practice under the terms of a business custom, they bind the principal. Article 139 CL sets out a mandatory rule against the possibility of a self-contract – absent consent of the principal – by the agent as follows:

Whoever acts on behalf of third party under any agreement or provision may not buy for himself, directly or under a pseudonym, even at auction, an item that he has been entrusted with selling under such representation, except by permission of the judge, and without prejudice to what has been provided for in the law to the contrary.

The same is true in respect of brokers or other experts purchasing property in respect of which the principal authorised them to sell or provide an estimate.<sup>63</sup> Even so, self-contracts under articles 139 and 140 CL are valid if consented to by the principal.

#### 4.7.4 *Standard of Care*

Agency involves a recognizable task undertaken by the agent on behalf of the principal. The appropriate exercise of this agency function is crucial to the interests of the principal. As a result, a certain duty of care must be imputed in the contract or the law. Article 723(1) CC distinguishes between agency with consideration and without. Unless otherwise specified, article 729(1) CC stipulates an agency shall be without consideration, save if the contrary was implicitly understood by the agent. In the event that the agency is deemed to be without consideration, the agent shall use 'the same standard of care as for its own acts, but not beyond that of a reasonable person'. Where the agent is acting with consideration its duty of care is that of 'a reasonable person at all times'.<sup>64</sup> This is an important distinction that is not

<sup>62</sup> Art 87(1) CC. An additional consequence for the 'agent' under such circumstances is that not only is he or she bound by the contract with the third party, but the absence of authority may give rise to an autonomous claim for damages, in accordance with para 2 of Art 87 CC.

<sup>63</sup> Art 140 CL.

<sup>64</sup> Art 723(2) CC.

always expressly made by civil codes. As part of the duty of care, the agent is responsible, unless the agreement or the nature of the transaction otherwise demand, for providing appropriate information about the exercise of the agency to the principal.<sup>65</sup> The Court of Cassation has emphasised that lawyers must refrain from accepting a power of attorney, providing assistance or expressing an opinion to the opponent of their client throughout the period of consideration of the original dispute. This is considered a professional misconduct that exposes lawyers to disciplinary accountability<sup>66</sup> without, however, causing nullity or affecting the validity of the work undertaken or terminating the agency.<sup>67</sup>

The agent, unless otherwise agreed, is not permitted to use the assets of the principal for its own account. If so, the agent is liable to damages against the principal.<sup>68</sup> Such unlawful misuse of the assets of the principal may also amount to a tort.

#### 4.7.5 *Obligations of the Principal to the Agent*

Clearly, in the event of an agency with consideration the principal must pay the agent's fee, or a share in the profits, as explained below in the sections dealing with the various forms of commercial agency. Moreover, given that the exercise of an agency typically involves a series of expenses incurred by the agent, the principal is under an obligation to reimburse the agent for such expenses, 'irrespective of how successful the agent [was] in such performance'.<sup>69</sup> In equal measure the principal must, at the request of the agent, provide him or her with all the necessary amounts for the performance of the agency.<sup>70</sup> Hence, the agent is justified in not performing the agency where pre-payment of expenses was not made by the principal, in which case the principal may also be in breach of the agency contract.

Article 731 CC makes the point that the principal shall be liable for any damage suffered by the agent in the normal performance of the agency, save for any damage incurred as a result of the agent's mistakes. It is, of course, taken for granted that the agent performs its duties in accordance with the appropriate standard of care, as explained in the previous sub-section. Where more than one principal appoints a single agent to perform a common act, all

<sup>65</sup> Art 724 CC.

<sup>66</sup> Art 49 of Law No 23 of 2006 Enacting the Code of Law Practice.

<sup>67</sup> Court of Cassation Judgment 26/2014.

<sup>68</sup> Art 725 CC.

<sup>69</sup> Art 730(1) CC.

<sup>70</sup> Art 730(2) CC.

such principals shall be jointly liable against the agent for the performance of the agency, unless agreed otherwise.<sup>71</sup>

#### 4.7.6 *Delegation by an Agent to a Sub-agent*

Article 89 CC, following well-established international practice, permits further delegation by the agent to another person, as long as pertinent authority was granted in the POE.<sup>72</sup> Where such authority was not granted, the agent shall be liable for the acts of the sub-agent as if such act is the act of the agent itself. In such event, the agent and its delegate shall be jointly liable.<sup>73</sup> Where the agent is authorised to delegate performance of the agency but no delegate is designated, the agent shall be liable only for its mistake in nominating or giving instructions to the delegate.<sup>74</sup>

#### 4.7.7 *Multiple Agents*

Where multiple (joint) agents have been contracted by the principal in respect of the same act, but under a distinct contract, each of them may individually perform the required acts unless the principal authorises the agents to act jointly.<sup>75</sup> Where, however, multiple agents are assigned under a single contract without any authority to act individually, they shall act jointly, unless the exchange of opinion is not required for a specific act.<sup>76</sup>

In accordance with article 727(1) CC, multiple agents shall be jointly liable where the agency is indivisible or where the damage suffered by the principal arises from a common mistake of the agents. Paragraph 2 of article 727 CC limits joint liability where the impugned act of the agent in question exceeds the limits of or abuses the agency.

#### 4.7.8 *Termination of the Agency*

Readers should consult the discussion in Chapter 11. The agency shall terminate upon the completion of the acts described in the agency agreement or upon the expiry of its term. The agency shall also terminate on the death of the agent or the principal unless it is granted in favour of the agent or a

<sup>71</sup> Art 732 CC.

<sup>72</sup> Equally Art 274 CL.

<sup>73</sup> Art 728(1) CC.

<sup>74</sup> Art 728(2) CC.

<sup>75</sup> Art 726(1) CC.

<sup>76</sup> Art 726(2) CC.



third party, or unless it is intended to be completed upon the death of the principal.<sup>77</sup> Article 736(1) CC allows the principal to terminate or limit the agency at any time, even if there is an agreement to the contrary. However, where the agency is issued in favour of the agent or a third party, the principal may not terminate or limit such agency without the consent of such agent or third party.<sup>78</sup> Of course, where the agency is terminated without good cause and in a manner that causes harm to the agent, the latter is entitled to indemnification.<sup>79</sup>

Just like the power of the principal to terminate the agency, so too the agent may at any time withdraw, even if there is an agreement to the contrary, by giving notice to the principal. In this case, the agent shall indemnify the principal where the withdrawal is not without good cause and which moreover causes harm to the principal.<sup>80</sup> Unless the agent has compelling reasons, it may not withdraw from the agency if a third party has an interest therein, provided that such third party shall be notified of such withdrawal in order to offer adequate time to decide what is in its best interest.<sup>81</sup> Where the principal dismisses the agent without good cause or does not renew the agency absent a fault by the principal, the agent is entitled to compensation.<sup>82</sup>

Irrespective of the manner of termination of the agency, the agent shall complete the acts commenced to such stage where no damage may be suffered by the principal.<sup>83</sup>

#### 4.8 COMMERCIAL AGENCY

Commercial agency is regulated by three distinct pieces of legislation, namely, the general provisions of the CC; Law No 8 on the Organization of Business of Commercial Agents 2002 (Agency Law); and articles 272–317 of the Commercial Law. The interpretation of these statutes has been aided by a small amount of case law by the Court of Cassation and in addition the legal profession has made efforts to clarify agency-type arrangements. There is some overlap between the provisions of these three instruments and several rules are thus repeated.

<sup>77</sup> Art 734 CC.

<sup>78</sup> Art 735(2) CC.

<sup>79</sup> Art 735(3) CC.

<sup>80</sup> Art 736(1) CC.

<sup>81</sup> Art 736(2) CC.

<sup>82</sup> Arts 300 and 301 CL, as well as Art 735 CC. See, to this effect, Court of Cassation Judgment 335/2016; equally, Court of Cassation Judgment 163/2016.

<sup>83</sup> Art 737(1) CC.

Commercial agency is an important feature of the Qatari economy. This is because the import, distribution and sale of foreign goods and services can only be effectuated through a Qatari entity<sup>84</sup> in the form of a commercial agent. As a result, all foreign companies intending to do business in Qatar must appoint a Qatari commercial agent. Article 2 of the Agency Law stipulates that the key elements of commercial agency are as follows: a) exclusivity; b) scope of the agency on behalf of the principal; and c) consideration.<sup>85</sup> Exclusivity is fundamental despite narrow exceptions set out in the Commercial Law.<sup>86</sup> The benefits and privileges of commercial agency,<sup>87</sup> predominantly for the agent, arise only if the agency is registered on the Commercial Agents Register<sup>88</sup> held by the Ministry of Commerce and Industry (MoCI).<sup>89</sup> Failure to do so will render the agency void *ab initio*, as well as give rise to criminal sanctions on the part of the fraudulent agent.<sup>90</sup> The tighter regulation of commercial agency was meant to put an end to the practice of non-Qataris trading under a license or registration held by a Qatari entity.<sup>91</sup>

There are several differences between a commercial agency and general agency under the CC. Firstly, commercial agency confers authority on the agent only in respect of business actions.<sup>92</sup> While such POE may be absolute, it does not affect the personal relations of the principal. Secondly, a commercial agency should involve some consideration (unless otherwise agreed),

<sup>84</sup> Art 11, Agency Law, as amended by Law No 2/2016 (Commercial Agents Law).

<sup>85</sup> Iterated in Court of Cassation Judgment 84/2009. In Judgment 24/2009, the Qatari Court of Cassation held that in the commercial agency in question the local agent had failed to successfully establish the scope of the agency on behalf of the foreign company and hence the agency was void. See equally Court of Cassation Judgment 22/2013 to the same effect, albeit this judgment has been criticized on the ground that it did not address the issue of scope, being satisfied that a valid commercial agency agreement had been established by reference to the other two conditions.

<sup>86</sup> Some professional commentators argue that exclusivity depends on the type of agency arrangement and that certain categories, such as sales representatives, are exempted. It is also claimed that legal structuring may serve to bypass exclusivity requirements under the CL and the Agency Law. See Squire Patton Boggs, 'What Rules and Regulations Govern Matters of Commercial Agency in Qatar?' (2012), available at [www.squirepattonboggs.com/en/insights/publications/2012/05/qatar-law-qa-commercial-agency-matters-in-qatar](http://www.squirepattonboggs.com/en/insights/publications/2012/05/qatar-law-qa-commercial-agency-matters-in-qatar)

<sup>87</sup> For example, upon registration, exclusivity over products and services commences, as well as a 5 per cent commission over the value of goods imported, in accordance with Art 5(1) Agency Law.

<sup>88</sup> See Law No 25/2005 (Commercial Registry Law), as amended by Law No 20/2014.

<sup>89</sup> Arts 10–16, Agency Law.

<sup>90</sup> Art 22 Agency Law.

<sup>91</sup> This was achieved by Law No 25/2004, known also as Proxy Law. See, to this effect, Court of Cassation Judgment 60/2016.

<sup>92</sup> Art 272 CL.

typically through the payment of a fee or a commission<sup>93</sup> that may, or may not, be stipulated in the agency agreement.<sup>94</sup> As a result, commercial agents owe a duty of care to the principal and the latter is liable for the agent's fees and expenses.<sup>95</sup> Thirdly, because the commercial agent is typically engaged under a fee and owes a duty of care to the principal, he or she is obliged to adhere to the principal's instructions and is liable for any damage arising from failure to adhere to ordinary standards of care.<sup>96</sup> This duty of care is quintessential in the relationship between commercial agents and principals.<sup>97</sup> Commercial agents owe extensive duties of care and best interests obligations to their principals,<sup>98</sup> irrespective of the fact that article 275 CL specifies that commercial agents possess 'freedom of action' in carrying out their mandates. As a result, blind adherence to the principal's instructions despite overwhelming evidence that damage to the principal's interests will follow is inexcusable. In such circumstances the agent must defer to the principal for further review.<sup>99</sup>

Commercial agents are vested with powers similar to those conferred on ordinary agents under the CC. Such powers must under all circumstances arise expressly or implicitly from the agency agreement. Article 278 CL provides for three types of circumstances under which the agent can contract in its own name (second party) with a third party, in which case, however, the agent is not entitled to a fee for representing the principal.

The duration of commercial agency is inextricably linked to the rights and duties of the parties. The Agency Law recognises two types of commercial agencies in terms of their duration: a) *limited duration*, whose fixed term nature is clearly expressed in the contract; and b) *unlimited duration*, requiring the parties' common consent for termination.<sup>100</sup> As regards the former, commercial agency comes to an end where the agreement expires or the work

<sup>93</sup> The obligation to pay agency fees gives rise to several privileges for the agent by which to secure such fee, particularly through sale of goods in the agent's possession. See, for example, Arts 282–285 CL.

<sup>94</sup> Art 273 CL. See Court of Cassation Judgment 65/2011, which held that in case of lack of agreement, common remuneration or tradition, the court shall have the power to identify the remuneration according to the subject, extent, and results of the agency.

<sup>95</sup> Ibid.

<sup>96</sup> Art 275 CL.

<sup>97</sup> Ordinary standards of care may involve actions that are customary or intrinsic in the exercise of the agency in question, such as insurance under Art 277 CL. See also Art 280 CL, concerning the agent's duty of care in respect of property damaged by transportation. Equally, Art 281 CL requires accurate book keeping.

<sup>98</sup> 'Best interests', subject to reasonable precaution is specifically spelt out in Art 276 CL.

<sup>99</sup> Art 275 CL.

<sup>100</sup> Art 9(a) Agency Law.

is completed.<sup>101</sup> Even so, the privileged position of the agent is emphasised by the fact that successful agents are entitled to compensation when a fixed term agency agreement is terminated by the principal.<sup>102</sup> Moreover, the same is true where the agent becomes bankrupt or incapacitated.<sup>103</sup>

#### 4.8.1 *Contract Agency*

Articles 290–303 CL set out a particular species of commercial agency, namely contract agency. Article 290 CL defines this as ‘a contract under which the agent continuously seeks and negotiates the conclusion of transactions in a specific field of activity for the benefit of the client against consideration’. Typically, the contract agent’s task will be to conclude and implement transactions on behalf of the principal. Just like general forms of commercial agency, the contract agency agreement must be recorded in writing and spell out in detail the parties’ mutual obligations, the agent’s authority and fee,<sup>104</sup> as well as its duration.<sup>105</sup> An important dimension of contract agency is that the agent is to manage the commercial activity independently, through its own business or trade, while bearing all pertinent expenses.<sup>106</sup> Given that the contract agent effectively represents the principal’s services, brands and products in the area managed by the agent, the latter may receive requests for the execution of contracts that are concluded by him as well as complaints about non-implementation of these contracts.<sup>107</sup> It is clear therefore that the contract agent does not assume the financial rights of the principal, absent the latter’s express consent.<sup>108</sup>

Article 292 CL makes it clear that the contract agent assumes a significant financial commitment and is in turn dependent on the principal’s services, brands, or products, as well as the principal’s continued cooperation. As a result, the Qatari legislator is adamant that the contract agent should not be exposed to arbitrary competition by the principal. This is expressly stipulated in article 293 CL. Accordingly and in the same vein, article 294 CL states that where the implementation of the contract requires a significant amount of expense on the part of the agent, the duration of the agency cannot be less than five years.

<sup>101</sup> Art 8(a) Agency Law.

<sup>102</sup> Art 8(c) Agency Law.

<sup>103</sup> Art 287 CL.

<sup>104</sup> Given the nature of this type of agency, the fee may well be a percentage from the sales, in accordance with Art 296 CL. See also Art 297 CL in respect of other expenses that may be claimed by the agent.

<sup>105</sup> Art 291 CL.

<sup>106</sup> Art 292 CL.

<sup>107</sup> Art 295 CL.

<sup>108</sup> Art 295 CL.

Because agency contracts are presumed by the law to be in the joint interest of both parties, article 300 CL stipulates in emphatic terms that the principal may not terminate the contract where the agent was not at fault but shall compensate the agent for damages resulting therefrom. Any agreement contrary to this shall be invalid. Equally, the agent shall also be obliged to compensate the principal for damages arising from the agent's resignation 'at an inappropriate time and without an acceptable excuse'. While the parties may agree a fixed term, if this is not renewed by the principal the latter shall pay a fair amount of compensation to the agent that was diligent and whose work led to a successful promotion of the business interests of the principal.<sup>109</sup> Compensation is also due where the agent is replaced as a result of collusion between the principal and the new agent.<sup>110</sup>

#### 4.8.2 Commission Agency

According to article 305 CL, 'a commission agency is a contract under which an agent legally conducts business under its own name on behalf of the client for a consideration'.<sup>111</sup> Unlike other agency arrangements, articles 306–309 CL consider the principal's instructions as providing general guidelines to the agent; the latter may well deviate from these according to its business judgment and if the price received as a result is higher he or she may retain the difference. If this turns out to be lower, then the difference to the principal should in principle be compensated. In any event, the general principles of commercial agency apply *mutatis mutandis* to commission agency. A particularity of the commission agency model is that unless otherwise agreed the agent must not disclose the identity of the principal and in equal manner the agent must not disclose the identity of the third party to the principal.<sup>112</sup> Moreover, the commission agent contracts in its own name and is bound in its own name, with the third party, and subsequently, the principal is not bound to the third party and neither can have recourse against the other.<sup>113</sup>

The agent is entitled to reimbursement of expenses related to its mandate, save if they arose from the agent's mistake.<sup>114</sup> The same rule applies where the agent incurred harm or damage arising from the mandate.<sup>115</sup>

<sup>109</sup> Art 301 CL.

<sup>110</sup> Art 303 CL.

<sup>111</sup> Court of Cassation Judgment 65/2011. The Court emphasised that it may be proven by all methods of evidence, even a presumption.

<sup>112</sup> Art 311 CL.

<sup>113</sup> Art 315 CL.

<sup>114</sup> Art 312 CL.

<sup>115</sup> Art 313 CL.

### 4.8.3 *Distributorship*

Article 304 CL is the only provision in the CL specifically discussing distributorship arrangements. Since it is situated in the part of the CL dealing with commercial agency, it too is regulated by the agency provisions of the CL and the CC.<sup>116</sup> Some commentators note that where a distributor does not fall within the definition of a commercial agent under the Commercial Law and/or the agency is not registered (as discussed above), article 304 CL still allows the distributorship agreement<sup>117</sup> where

a trader undertakes to market and distribute products of an industrial or commercial establishment in a particular territory shall be considered to be a commercial agency provided that he is the sole distributor of such products.

The Court of Cassation has held that in order for the distribution contract to be considered a commercial agency contract, it must meet two conditions combined: a) the first is that the contract is accompanied by a condition whereby the producer or the wholesaler assigns to a local distributor the right to limit the sale of its products only to others in a specific area, and b) that the distributor does so within the scope of the agency and on behalf of its client, in return for a consideration, whether profit, commission, or wages. If both conditions are fulfilled in the contract, the contract is considered a commercial agency and falls within the scope of the Commercial Agents Regulation Law No 8 of 2002.<sup>118</sup> A contract for distributing the products of an industrial or commercial establishment in a specific area is considered a commercial agency if the distribution is exclusive to the product.<sup>119</sup>

### 4.8.4 *Trade Representative*

Unlike the preceding forms of agency, a trade representative is engaged in a contract of employment with the trader to carry on trading activities on behalf of and in the name of the trader.<sup>120</sup> As an employee, the trade representative cannot contract in its own name<sup>121</sup> and the trader or traders so employing

<sup>116</sup> In fact, Art 304 specifies that distributorship is governed by Arts 294, 300–303 CL.

<sup>117</sup> Al Tamimi, 'Doing Business in Qatar' (2019), at 22, available at [www.tamimi.com/wp-content/uploads/2019/04/Doing-Business-in-Qatar.pdf](http://www.tamimi.com/wp-content/uploads/2019/04/Doing-Business-in-Qatar.pdf)

<sup>118</sup> Court of Cassation Judgment 171/2013.

<sup>119</sup> Court of Cassation Judgment 335/2016.

<sup>120</sup> Art 318 CL.

<sup>121</sup> In fact, the trade representative's employee status prevents him or her from conducting own business or that of another person, without the express permission of the trader(s), in accordance with Art 323 CL.

the representative are liable for all contracts entered into by him or her.<sup>122</sup> It is therefore imperative that the trade representative disclose at the time of contracting the full identity of the trader.<sup>123</sup> Where the authority of the representative is not expressly stipulated in the agreement, this 'shall be deemed to include all transactions relating to the type of trade that he has been authorized to conduct'.<sup>124</sup>

#### 4.8.5 *Brokerage*

The contract of brokerage involves authorisation, for a fee,<sup>125</sup> to a broker by a client to find and negotiate with a second party a specific contract under conditions laid down by the client.<sup>126</sup> The existence of a brokerage agreement is a question of fact that may be deduced on the basis of available documentation, witnesses and the circumstances.<sup>127</sup> Unless otherwise agreed, the broker may not be a party to the contract it is authorised to negotiate and conclude. If it does become a party he or she is not entitled to a fee.<sup>128</sup> In accordance with article 340 CL, 'where a number of brokers are authorized in a single contract, they shall be jointly responsible for the work assigned to them, unless each is licensed to work individually, or specific duties are assigned to a particular broker'.

<sup>122</sup> Art 319 CL.

<sup>123</sup> Art 321 CL.

<sup>124</sup> Art 320(1) CL.

<sup>125</sup> For a determination of the fee, see Arts 328–33 CL.

<sup>126</sup> Art 327 CL. See Court of Cassation Judgment 102/2010; see also Court of Cassation Judgment 175/2016.

<sup>127</sup> Court of Cassation Judgment 126/2009.

<sup>128</sup> Art 334 CL.