

2014

**OVERVIEW ON FRANCHISING
INTERNATIONALLY AND DOMESTICALLY**



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May 2014

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WHAT IS A FRANCHISE

Franchise is an appealing business method consisting mainly on offering a concept created by a franchisor to a franchisee who will be operating on its own behalf the franchisor business system in exchange for payment of fees and royalties to franchisor. The concept offered by the franchisor is associated with a trademark, service mark, trade name or logotype, comprehensive business plan, trade secrets, know-how and a system to operate the commercial brand. Franchising touches upon many different categories of industries and International Franchise Association now lists more than 75 different categories to describe its members ranging from accounting services to weight loss clinics.

In the modern commercial environment, franchising has become a specific and prevalent method of doing business and of business expansion.

ESTABLISHING A FRANCHISE BUSINESS

There are three critical components of most of the franchise systems: the brand, the operating system, and the ongoing support and training provided by the franchisor to the franchisee.

The franchisee undertakes to conduct a business or sell a product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor undertakes to assist the franchisee through advertising, promotion and other advisory services.

Therefore, in order to establish a franchise business the franchisor should be an owner of a certain commercial brand or trademark and an inventor of a business concept comprising a system that regulates and manages all steps and process necessary to operate such concept.

The franchise system may be organized through different types of arrangement: single-unit franchise, multi-unit franchise, area development franchise, master franchise (sub-franchising), area representative franchise.

Master franchise agreement is the most common type of franchising in international context and other forms mentioned above may be classified as direct franchising agreements where there is not intermediary between franchisor and franchisee.

LEGAL REGULATION OF FRANCHISE

Worldwide

Franchising is a concept which covers a number of different types of contracts in various aspects of business activities and therefore it is related to many different areas of law such as contract law, agency law, industrial and intellectual property law, competition law, corporate law, taxation which are usually regulated by national

legislation. As a result, we notice many countries regulating franchising either through enacting provisions on franchising in their civil code or through including provisions related to the franchising in existing laws which regulate other aspects of economic life other than franchising such as Mexico and Spain. Nowadays approximately 30 states have incorporated rules on franchising in domestic regulations.

Despite the above, franchising remains a unique business legal model of complex nature which requires a specific franchising law that regulates it. A few countries perceived this fact, noticed the expansion of such business form and concluded the benefits of enacting and adopting specific franchising law and we name specifically the United States of America and Australia.

From observing the existing franchise-specific legislation, franchising can be regulated with three different aspects of laws: disclosure law, relationship law and registration law. *“The disclosure law which has been invented in the U.S. legislative history requires a franchisor to provide certain information before entering into an agreement with franchisee (regulate the content of certain presale disclosure to prospective purchasers usually called FDD), whereas the relationship (obligation) law regulates contractual relationship between franchisor and franchisee. The registration law is indented to the administrative procedure which prescribes obligation of notification or registration of the franchising agreement prior or after its conclusion”.*

Middle East (including Kuwait)

Back to the Middle East, including Kuwait, it is noticeable that the Middle East countries did not cause to issue any special laws to regulate franchising. Franchise transactions, despite its specific nature, are governed by analogue application of existing laws specifically the commercial agency laws as most of Middle East countries, including Kuwait, recognize franchises as an agency. Franchisee may elect to be registered as an agent to the franchisor who will be regarded as principal and both parties will be governed by the provisions of the registered commercial agency.

While franchising holds similarity with other business forms such as agency, distributorship, licensing, partnership, it is however noticeably distinguished from such other business forms. Since most of Middle East countries recognize franchises as an agency, it is of importance to highlight the significant difference between franchise and agency. While an agent is a legal representative who undertakes to promote the principal’s business on behalf of and for the benefit of the principal, a franchisee is an independent business operating the franchised business on its own behalf and for its own benefit with no authority to work on behalf of the franchisor. Sometimes a sign is placed in the franchised unit to inform customers that the business is a franchise and not an agency or other kind of commercial or legal relationship.

FINAL CONSIDERATIONS

Franchising has undeniably become a prevalent business method worldwide and domestically and Kuwait is no stranger to that as it is a territory active with franchise business where many franchises are operated in the country and many international

companies, interested in operating franchise business in the Middle East, have decided on Kuwait to expand their grounds. It is herein necessary to reiterate the benefits of enacting franchise dedicated laws tailored for the specific characteristics of the franchise, managing and regulating the structure, problems and difficulties arising from such business form. The existence of franchise-specific legislation will serve not only domestic citizens interested in operating such concept but will further encourage the foreign investments.

Meanwhile, in the absence of specific legislation, the franchise agreement becomes the key document and shall be therefore carefully created and observed in order to insure that the rights and obligations of the parties have been well detailed, outlined and described.

References:

- The Main Directions in Comparative Franchising Regulation –Unidroit Initiative and its Influence;
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