

THE NEW SAUDI ARABIA'S FRANCHISE LAW

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Abstract. The new Saudi Arabia's Franchise Law [M/22 of 1441H (2019)] was approved by the Saudi Council of Ministers on 8th October 2019 and was expected to come into effect on 22nd April 2020. The amended new franchise law was expected to promote commercial franchising operations in the KSA, protect franchisors and franchisees as well as clarify their duties and obligations under the concession agreement. This paper provides a critical analysis of the implications of the new Saudi Arabia franchise law (October 2019).

The study employs content analysis of published documents. Specifically, the study undertakes a narrative synthesis of the Saudi Franchise Law (October 2019) to undertake a critical analysis on implication of the new law for the franchising operations in the state. The research plan is to critical assess the strengths and weaknesses of the new law and offer suggestions to improve its effectiveness.

The analysis indicates that the new Saudi Arabia's franchise law has better terms when compared to the Franchising law of 1962. Among the benefits of the new law include the promotion of innovation among the local franchisors, provision of mandatory training opportunities to locals. However, its limitations include overburdening the franchisors and failure to improve the negotiating position of the franchisees. The suggestions include the review of mandatory renewals, the sharing of commercial burden between the franchisors and franchisees, as well as the review of Art. 8 and 11 to protect the franchisees.

Keywords: Franchise law, Franchisors, Franchisees, Franchising.

قانون الامتياز الجديد بالمملكة العربية السعودية

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(قدم للنشر في ١٤ / ١ / ١٤٤٢ هـ، وقبل للنشر في ١٧ / ٦ / ١٤٤٢ هـ)

ملخص البحث. تمت الموافقة على قانون الامتياز السعودي الجديد من قبل مجلس الوزراء السعودي في عام ١٤٤١ هـ (م/ ٢٢ لعام ١٤٤١ هـ) في ٨ أكتوبر ٢٠١٩ م وكان من المتوقع أن يدخل حيز التنفيذ في ٢٢ أبريل ٢٠٢٠ م. كان من المتوقع أن يعزز قانون الامتياز الجديد المعدل عمليات الامتياز التجاري في المملكة العربية السعودية، وحماية أصحاب الامتياز وأصحاب الامتياز بالإضافة إلى توضيح واجباتهم والتزاماتهم بموجب اتفاقية الامتياز. تقدم هذه الورقة تحليلاً نقدياً للأثار المترتبة على قانون الامتياز السعودي الجديد (أكتوبر ٢٠١٩ م). تستخدم الدراسة تحليل محتوى الوثائق المنشورة. على وجه التحديد، تتولى الدراسة توليفاً سردياً لقانون الامتياز السعودي (أكتوبر ٢٠١٩ م) لإجراء تحليل نقدي حول تأثير القانون الجديد على عمليات الامتياز في الدولة. تهدف خطة البحث إلى تقييم نقاط القوة والضعف في القانون الجديد وتقديم اقتراحات لتحسين فعاليته. يشير التحليل إلى أن قانون الامتياز السعودي الجديد له شروط أفضل مقارنة بقانون الامتياز لعام ١٩٦٢ م. ومن بين مزايا القانون الجديد تعزيز الابتكار بين مانحي الامتياز المحليين، وتوفير فرص تدريب إلزامية للسكان المحليين. ومع ذلك، فإن قيودها تشمل إثقال كاهل مانحي الامتياز والفشل في تحسين الموقف التفاوضي لأصحاب الامتياز. تتضمن الاقتراحات مراجعة التجديدات الإلزامية، وتقاسم العبء التجاري بين مانحي الامتياز وأصحاب الامتياز، بالإضافة إلى مراجعة المادتين (٨) و (١١) لحماية أصحاب الامتياز.

الكلمات المفتاحية: قانون الامتياز، مانحو الامتياز، أصحاب الامتياز، حق الامتياز.

Introduction

Saudi Arabia is a “constitutional monarchy” state situated in the Arabian Peninsula, which mainly comprises of young people in its entire population (Dastrup, 2019). The basic system of governance in Saudi Arabia is a constitutional monarchy where the King is required to comply with the Islamic Shariah law and the Quran. Based on the constitution in 1412 AH (1992 AD), which applied during the reign of King Fahd bin Abdulaziz Al Saud through a Royal Decree No. A/90, Saudi Arabia is currently in a smooth constitutional transition. Throughout the state's 90 years of existence, Saudi Arabia has transformed into a country that is governed by a system of rules and laws, including the Islamic Shariah law. The state has enacted several legislations, including the Companies Act (Royal Decree No. M3), the New Mining Investment Code, and the Foreign Investment Law (Royal Decree No. M1) among other legislative enactments. That notwithstanding, the state is well known for its productive oil wells that have brought in many investors from all corners of the globe. Currently, well-established franchise multinationals are operating in the state. Considering that a third of the state's population is comprised of predominantly professionals, laborers, and immigrants, the country has restrained itself from receiving visitors though it permits tourists, pilgrims, GCC citizens, and visa holders to conduct their business freely within the state (Julia, 2019). With the growth of the world's economy, the accumulation of wealth within Saudi Arabia continues to grow, and more Saudis are securing a desire for international competitive brands and franchises.

Notably, the number of visitors and international investors working for the acknowledged brands in the state has as well risen, indicating that the country's key institutions are undergoing liberalization, a factor that will eventually lead to an increase of international brands due to market penetration. Additionally, the state has, in the recent past, enacted policies that encourage innovation to support the local people to produce more products not only for the Kingdom of Saudi Arabia, but also to the GCC region and the world at large. It is because of this reason that the state authorities passed the new Saudi Arabia's franchise law (October 2019) to replace the franchise law of 1962 (Adam, 2019). It is conceivable that the current franchise law will positively enhance the franchising relationship in the Kingdom by increasing local productivity, improving the overall valuation, and increasing profitability, among others.

The new law also protects the franchisor by establishing assignment thresholds (Art. 13). In doing so, the franchisee cannot change the controlling person, assign business to a third party or assign the franchise agreement without the franchisor's written consent. The new law also provides for grounds against which the franchisor can withhold the written consent. Examples of such reasons include a situation where the proposed assignee declines to assume the franchisee obligations as outlined in the franchise agreement, the proposed assignee does not demonstrate financial capabilities to implement franchisee obligations as outlined in the franchise agreement, and the proposed assignee does not satisfy the criteria or standards stipulated by the franchisor for a selection of new franchisees.

The franchisor may also withhold the requested written consent should the franchisee fail to pay up monies that they owe to the franchisor (Art. 13). To this extent, the franchisor retains control over the direction the franchise is to take should there be change in the original franchisee.

Strengths of the Law

The new Saudi Arabia's Franchise Law (October 2019) and its associated implementing regulations were enacted by the state authorities to govern any commercial operations in the state, which include, but not limited to, retailers, distributors, and any interested party involved in providing or representing the supply of goods within the kingdom.

Together with the universal Sharia principles, this law has been used as the sole regulator of any franchise operations within the state of Saudi (Giovanni and Acosta, 2019). According to this law, the commercialization of franchising laws was not considered a critical part of the state's economy. As such, the law was enacted in a manner that was flexible, probably due to Sharia friendly-principles, which were the contract operating regulations amidst the minimal statutory franchising law of 1962. The following are among the strengths of the New Saudi Arabia Franchise Law (hereinafter “The New Law”).

One of the main advantages of The New Law is the freedom given to the parties in the franchise agreement when it comes to settling disputes. The New Saudi Arabia's Law (October 2019) does not fix the legal channels with respect to the settlement of the disputes; instead, it provides several methods that the parties to the concession agreement feel at ease with (Abdulaziz, 2019).

According to Art. 25, disputes arising from the concession agreement may be agreed upon by various means, including mediation, conciliation, and arbitration. These methods are friendly and protect the parties from legal battles that are both tedious and costly. Considering the ongoing improvement efforts in the Saudi Arabia's judicial system, which is at a similar level with judicial systems of the underdeveloped nations, the pursuit of justice is increasingly cumbersome (Jay, 2019). The alternative methods are, therefore, likely to be efficacious in facilitating dispute settlement.

The New Law is a good attempt at creating a level playing field for the parties involved in the franchising agreement. For example, in Art. 24 (4), a party is allowed to appeal judicious decisions without prejudice in case they have been accused of violating any provisions of the Franchise law. The implication is that the accused do not have to take the punishment blindly if they feel that they have been wrongly accused.

Article 4.1 of The New Law also states that privileges granted or issued by Royal Decrees shall not be considered to be concession agreements. The implication is that any agreement or arrangement formalized through a royal decree does not qualify as a concession agreement based on the Saudi Arabia's Franchise Law (October 2019) (Jay, 2019). In this respect, it must be noted that Saudi Arabia is one of the countries that has an established franchise system with no history of being undermined by high-ranking officials close to the monarchy.

According to the Franchising Law of 1962, distributors are tasked with the responsibility of purchasing the goods under their name, after which they resell the products at a price set by the distributor for a commission. It is important to note that the distributor's role is to assist the principal in establishing market demands for the products at hand. Contrary to the distributors and agents' model, the franchise relationship mainly involves the use of different principal's brands, trademarks, copyrights, and other property rights to affect any commercial processes as required by the states' statutory (Matilda and Nyberg, 2019).

However, with The New Law, the relationships between the agent, distributor, and the franchising organization are treated similarly. Therefore, it is conceivable that the primary function of The New Law was to distinguish the franchising relationship from the normal distribution and agency models. This implies that the franchisor can independently grant the franchisee the right to conduct all business operations, which include, but are not limited to, the operation of bank accounts, provision of the

technical knowhow, and the determination of the business operation approach and so on (Art. 11).

That notwithstanding, the New Law also allows for cooperation between the franchisee and the franchisor when it comes to the exchange of information (Josef, Cliquet, Hendrikse, and Sreckovic, 2019). For instance, based on The New Law, it is mandatory for the franchisee to show high standards of accountability and transparency through the provision of statements of the account [Art. 9 (2)]. Additionally, with The New Law, the franchisor has the right to inspect the business premises unless agreed otherwise within the contract [Art. 9 (3)].

The New Law also directs that the franchisor must submit a disclosure form to the Saudi Ministry of Commerce and Investment (MOCI) and the franchisee with the details of the past and present financial performance of the business. Concerning knowledge transfer and training, The New Law spells out that the franchise agreement must, in all-purpose and intent, ensure that the franchisor offers the necessary technical training and marketing expertise to the corresponding franchisee [Art. 8 (3) and (4)].

Furthermore, The New Law shall, through its Implementing Regulations, define the manner in which the franchise's marketing and advertising activities shall be handled (Art. 12). Both Articles 8 and 12 greatly benefit the Saudi people by ensuring knowledge transfer from foreign investors (Kriti, 2019). With regards to advertisements and business marketing costs, The New Law indicates that the franchisee within Saudi Arabia must comply with marketing instructions and display methods to maintain the identity of the franchisee [Art. 11 (2e)].

Additionally, the franchisor should not object from approving the franchisee's assignments, as explained in the franchise contract (Abdullah and Ahmad, 2019). However, the objection may only be accepted when the assignee has insufficient funds and resources needed to fulfill the task at hand, as agreed in the contract. This may also apply when the assigned party fails to meet the minimum reasonable requirements that apply to the corresponding franchisee. In situations where the assignee fails to adhere to the assignment agreements, the franchisee fails to make payments to the franchisor as agreed or fails to stop any breach of the contract made, the objection may be granted.

The provisions of Art. 14 allow the franchisee to give duties to third parties, which the franchisor cannot disagree with subject to Art. 13. This applies when the franchisor fails to reply to a written application submitted to him regarding the same.

Therefore, it can be concluded that despite the fact that the franchisee may not have been completely restricted to allot assignments to a third party or even to the franchisor's discretion (Nabil, 2019); The New Law provides room to the process of setting clear parameters. This can explain the appropriateness of the candidate to a particular assignment according to the standards outlined in the agreements.

Article 18 maintains that the franchisor cannot terminate the agreement before the expiry of the agreed term. The New Law, therefore, protects franchisees from unscrupulous franchisors. The termination can only be accepted under certain situations according to the law. These include voluntary abandoning of the business by the franchisee for more than 90 days or if the franchisor is liquidated.

Finally, most of the terms and articles in The New Law are well clarified (Art. 1). This is greatly helpful as the parties involved in the franchise agreements can clearly understand the agreement before they commit to it. The articles are also clearly defined in each chapter, making it easy for the parties to understand what is required of them. Thus, The New Law has brought in robust changes in regulations compared to the former Saudi Arabia's franchise law (Lynette, 2019).

Irrespective of the fact that the government-sponsored regulators allowed business parties to willingly agree on the franchising conditions by freely agreeing on the contract, The New Law presents a responsive franchising approach accompanied by default regulations, statutory standard as well as mandatory protections, which were not present in the initial law.

The New Law is also increasingly robust in terms of elaborating the mandatory clauses that are to be included in all franchise agreements henceforth (Art. 11). The implication is that under The New Law, there are better chances for franchisors and franchisees to enhance the standardization of their agreements with the exception of particulars that are related to the business entities exclusively such as the names and descriptions of the franchise, details and so on. In any case, one of The New Law's aims is to develop a legal framework for regulating the franchisor-franchisee relationship (Art. 2). This makes it easy for franchisees to envision what to expect in the franchise agreements while franchisors are clear about what to include to ensure compliance. Accordingly, government agencies and legal practitioners working for either the franchisor or the franchisee will be in better positions to verify and validate franchise agreements, including the obligations of both parties and the extent to which they have been met (Lorenz, 2019).

Drawbacks of The New Law

When compared to Saudi Arabia's Franchise Law of 1962, The New Law is better and promises a brighter future for franchising business in the Kingdom (Lynette, 2019). However, The New Law has a few shortcomings which seem to create an unfair disadvantage to some parties in the concession agreement. The most affected of the two parties in the concession agreement is the franchisor. The New Law seems to lean more on the franchisee's side, leaving the franchisor with considerable burden (Lynette, 2019). The first step of changing The New Law and putting it in place is most important, though, since there is room for amendment, some of the drawbacks are expounded below.

The law overburdens the franchisor

Previously, most agencies remained unregistered because of the difficulties encountered in the registration process, which is usually unworthy of the costs and the efforts applied. The New Law includes fines and penalties for those who do not comply with the registration (Nickolas and Thomas, 2019). These fines not only apply to local franchisors, but also foreign franchisors. The more considerable disadvantage, however, is that failure to register can act as grounds for a termination of a franchise as well as statutory reimbursement to the franchisee. The New Law has changed the responsibilities that once belonged to the franchisee and shifted them to the franchisor.

The stated aspect has created an extra burden to the franchisor and proven the law is leaning too much towards the franchisee. There are several articles, which provide evidence to this point. For example, Art. 11 of The New Law requires the franchisor to have a written agreement. The agreement should be translated into Arabic by a certified translator if it was in another language. Although meaning might be lost, the translation is necessary given that Arabic is the primary language in KSA. Additionally, Art. 19 requires the franchisor to compensate the franchisee in case he breaches the obligations relating to registration or disclosure (Nabil, 2019). The article states clearly that the claim of compensation by the franchisee does not lead to the termination of the contract.

The franchisor is required to offer training and technical expertise to the franchisee's employees (Art. 11). Although this exercise is costly to the franchisor and raises the cost of conducting business, it allows the concession provider to transfer technical knowhow and support, which would be ultimately

beneficial to Saudi Arabia. Therefore, franchisors might view the cost of technical expertise training as a way of giving back to the community. Besides, Art. 11(2B) does not expressly restrict the franchisors from charging the franchisees for such technical training (Amitai, 2019).

The ministry's determination of Disclosure Document details

The New Law provides a way for the franchisor to have some control over the franchise relationship without necessarily being oppressed through the drafting of the Disclosure Document. The Disclosure Document allows the franchisor to state the required performance targets and levels expected from the franchisee for the franchise agreement to continue (Bobek, Vito, Maier-Kros, Macek and Horvat, 2019). This is the only document that gives the franchisor some kind of control in the partnership. However, The New Law takes this privilege from the franchisor by determining the details that should be included in the document (Art. 26).

Therefore, the Disclosure Document does little to protect the franchisor from issues such as payment of compensation to franchisees in case of termination. In fact, the Disclosure Document under The New Law gives franchisees who fail to meet targets a defense against the termination of contracts (Art. 17) and claim compensation as stated in Art. 19 of The New Law. Also, the franchisee may terminate the agreement in case the franchisor submits the Disclosure Document late or fails to submit it at all. Additionally, the franchisor should pay for any sustained damages from an error in the Disclosure Document to the franchisee (Art. 20).

Disadvantages for foreign franchisors

The New Law is meant to encourage foreign franchisors in Saudi Arabia, more than ever before. However, foreigners are subjected to strict conditions compared to the locals due to several hindrances of the law (Young-Eun, Allui and AlSelaimi, 2019). Previously, the Saudi Arabia commercial agent was responsible for registering agencies. However, under The New Law, this duty has been left to the franchisor.

The registration burden is due to the fact that the franchisors have assumed the traditional responsibility of the Saudi Arabia's commercial agents. The registration burden occurs in various aspects. First, the franchisor must register any trademarks to be used in the franchise business in Saudi Arabia (Young-Eun et al., 2019). Secondly,

the franchisor must ensure the Disclosure Document and the Franchise agreement are registered with and accepted by the MOCI before execution. The franchisor should then support them with further documentation including franchisors' constitutional documents, evidence of trademarks registration, and other document specified in any following implementing regulations (Art. 8). Even after following all these procedures, a foreign franchise's successful registration does not mean the provided documents have been approved.

In case of any changes or information that can hurt the value of the business or the franchisee's decision to enter the agreement, the franchisor will be required to further issue a statement of the changes and a new Disclosure Document. These conditions can be quite tedious to foreign franchisors and franchisees and, therefore, discourage their plans to invest in Saudi Arabia. Other than these registration procedures, foreign franchisors are only given opportunities for technical business investments where such knowledge cannot be found among the Saudi nationals at present (Rubea and Rani, 2019).

This means it is very difficult to get access to a viable business investment opportunity if there is a Saudi national who can do the same job. The stated aspect has a potential to discourage willing foreigners from investing in the country. In case an agency or a company gets into a franchise agreement, it is required to train the Saudi nationals so that they can acquire skills from the foreigners. The implication is that the company providing concessions needs to be very stable to successfully conduct business in the country.

Additionally, The New Law curtails the freedom of foreign franchisors from choosing the governing law. This is because The New Law contains an express declaration that its application is veto on all Franchise Agreements implemented within the Kingdom (Art. 3). The implication of this is that aggrieved parties have a leeway to invoke a local court's jurisdiction since the Franchise Agreement in question clearly nexuses with the Kingdom due to its implementation in the Kingdom of Saudi Arabia.

This is notwithstanding the reality that both parties may have entered into the Franchise Agreement with the choice of a foreign law to govern it. Consider, for example, a multinational franchisor from the USA who enters into a Franchise Agreement with a Saudi franchisee while in the USA to open a business in Riyadh and they sign the Agreement in the USA under the US law. Since the implementation of the franchise agreement will happen in Saudi Arabia, either party may still seek legal recourse in Saudi Arabia since the Law applies

to any franchise whose implementation is in Saudi Arabia. As such, franchisors and franchisees cannot be bound by just the foreign law that they had chosen to govern their agreement.

The New Law also defines the duration of admissible franchise operation models as being beyond one year [Art. 5(1)]. The New Law proceeds to expressly state that master franchisees with rights to grant sub-franchises on behalf of the franchisor who neither grants franchise nor enters into franchise transactions in the Kingdom must have handled the franchise operation model for one year or longer [Art. 5(2)]. This ensures that only established franchise operation models run by proven franchisors and master franchisees are able to operate in Saudi Arabia. The stated clause protects both the Saudi franchisees and the Saudi economy from unscrupulous and untested franchise model operations, thereby increasing the chances of successful franchising within the Kingdom of Saudi Arabia.

Complex registration processes

The concession agreement is a long and tedious process, which can be discouraging to the parties involved (Kamal and Choi, 2019). First, the document has to be written and signed by both parties after which it is translated in case it was not originally written in Arabic language [Art. 11 (1)]. The process of completing the agreement takes time due to the mandatory subsections contained in it. These subsections include stating the business of concession, description, duration, and geographical scope [Art. 11 (2a)].

Any remuneration made to the franchisee and his staff, the obligation of the franchisor to train the franchisee's staff and franchisors' commitment to training staff should also be indicated. Other sections include the mechanism of dispute settlement [Art. 11 (2h)] and the effects of any change in the ownership of the business [Art. 11 (2j)]. This process is fairly long and can be very tasking, especially to foreign franchisors who, in addition to their obligation to complete the process, have to ensure that the franchise agreement is translated given that Arabic is the primary language in the Kingdom of Saudi Arabia and is mostly used in the court of litigation.

The New Law makes registration of each franchise agreement and disclosure document with the MOCI mandatory. Such registration requires adherence to the laid down procedures and information/documents that the Implementing Regulations of The New Law specify (Art. 6). This further increases the length of time that a foreign

franchise would take to complete pre-implementation compliance with the Government of the KSA through its agencies. Luckily, existing franchisors within the Kingdom are exempt from these provisions of The New Law. Altogether, renewals post the implementation date will require adherence to the stated provisions of The New Law.

Limits to the rights of the franchisor by imposing the law on them

The New Law significantly limits the rights of the franchisor in many ways. First, it denies the franchisor the right to determining and stipulating the contents of a Disclosure Document independently (Art. 26). Instead, MOCI determines the details found in the document, yet the franchisor pays damages to the franchisee in case it is not followed to the letter. Secondly, The New Law constrains the franchisor from withdrawing an agreement once they give consent to (Mohammad, Alfakhri and Alfakhri, 2019). This violates the freedom of the franchisor since they are not allowed to leave should they be uncomfortable with the agreement unless under conditions stipulated by the law (Art. 18). The franchisee, however, enjoys this right and can opt out of an agreement with comparatively greater ease and fewer repercussions.

Thirdly, the franchisors are required to train the franchisee's employees as part of the expertise knowledge transfer (Art. 8). This is not an option for the franchisor. It is incorporated in The New Law since it is beneficial to the Saudi locals who are expected to benefit from the new knowledge (Mohammad et al., 2019). Therefore, to some extent, the above evidence clearly illustrates the shortcomings of the new Franchising law with respect to the franchisor in such concession agreements. It is, therefore, evident that a few changes need to be made to make the law efficient and favorable to all the parties involved in the franchise agreement.

Fourth, The New Law makes it difficult for franchisors to execute blanket opt-outs in respect of the franchise agreement. It explicitly prohibits the termination of franchise agreements prior to their expiration with the exemption of specific instances such as persistent or material breach (Art. 18). Although franchisors may terminate franchise agreements before expiry due to "any other matter deemed a legitimate cause for termination pursuant to the franchise agreement" [Art. 18(10)], the legal costs involved in proving the legitimacy of such matters under a law that is increasingly skewed to protect the franchisee could be daunting. In fact,

franchisees can terminate franchise agreements without liability to franchisors owing to material breach of the registration and disclosure obligations on the part of the franchisor (Art. 17). Franchisees can also request termination in Art. 17 and Art. 19 where the franchisor has committed fundamental breaches in respect of the registration and disclosure documents with Art. 19 giving him the right to claim compensation for damages incurred. Article 20 obligates the grantor of the concession (franchisor) to repurchase assets used in the concession business at a fair price. However, franchisors are obligated to compensate franchisees “for any losses suffered in relation to setting up, acquiring or operating the franchise business in the Kingdom and any other damages suffered by the franchisee” [Art. 20]. In Article 19, failure by franchisors to comply with the registration and disclosure requirements provides franchisees with the right to claim compensation for all losses suffered albeit without entitlement to terminate the agreement.

Fifth, statutory termination as stipulated in The New Law (Art. 16) largely outlines conditions that address the franchisee and seldom the franchisor. Grounds for statutory requirements for both natural person franchisees [Art. 16(1)] and legal person franchisees [Art. 16(2)] relating to insolvency and liquidation proceedings, death, health conditions, and disqualification of the franchisee are all conditions that pertain to the side of franchisee. Effectively, then, the franchisor’s side is not factored in the statutory termination guidelines unless such have been previously defined in the franchise agreement. Yet, franchisee merger or conversion into a different legal person is not grounds for statutory termination [Art. 16(2)]. Further, The New Law provides for two time-barring conditions of compensation claims resulting from breaches by either the franchisee or the franchisor under two conditions, whichever is fulfilled earlier. The first is to occur a year from the date when the non-breaching party learns about the breach. The second condition covers three years after the date of the breach occurrence [Art. 21(2)]. While this seemingly protects both the franchisee and the franchisor, chances of the latter breaching their own agreement are lower than those of the former. Therefore, the franchisor is overburdened with the responsibility to pursue claims for breach of franchise agreement within such a relatively short span considering that the Saudi Arabia judicial system would naturally give primacy to protecting its own citizens (the franchisee) and their interests.

Weaknesses of the negotiating position of the franchisee

Despite the fact that The New Law is a much-improved version compared to the previous Saudi Arabia’s Franchise Law of 1962, the current legislation seems to have failed in strengthening the negotiating position of the franchisees in the concession agreement. The weak negotiating position of the franchisee in the concession agreement is evidenced by the interpretation of Article 8(1), which expressly states that the concession provider (franchisor) has the sole authority in determining the rights granted to the franchisee with respect to the concession arrangement.

The implication based on the analysis of the stated clause is that the franchisee has no input in the formulation of the specific rights and duties pertaining to the concession agreement. The concern is that due to the franchisee’s weak position, the franchisor might impose unfair or arbitrary conditions on the concessionaire with respect to the concession agreement.

The franchisee’s weak position in respect to the concession agreement is also evident based on the meaning of Article 11(2B), which focuses on the design of remunerations. According to Article 11(2B), the franchisor has the sole right and leeway to determine the amount of remuneration/compensation to be paid to the franchisee in the concession agreement. Besides, the stated article also offers the franchisor considerable leeway to determine whether to charge the franchisee for any services in respect to the provision of technical assistance and training of the franchisee’s staffs. The concern in this case is that given that the franchisee has no right to determine a fair remuneration, the franchisor might exploit the concessionaire’s weak bargaining position to provide an unfair compensation. Therefore, when formulating The New Law, the Saudi legislators appear to have failed to address the stated aspects, which could weaken the negotiating position of the franchisee in the concession agreement.

Suggestions to make the New Franchise Law better share the burden between the franchisor and franchisee

The New Law shifts almost all the burden to the franchisors and shields the franchisee. From the first role of which is the registration of the franchise, the burden is purely left to the franchisor. This process involves a lot of documentation, which is tedious as well as costly and time-consuming (Art. 11). Even

the roles which had been given to local bodies to register foreign franchisors have been taken away, and the entire obligation/duty left to foreign franchisors to register their companies.

Secondly is the issue of the termination of contracts in which the payment of damages applies only to the franchisors (Art. 19). They have no otherwise but to renew contracts unless under specified circumstances (Art. 15), failure to which the grantors of concession are liable to pay damages to franchisees. The law makes it almost impossible for the franchisor to be free of the burden of paying damages. To make the law more effective, the burden of registration, costs, damages, and other factors should be shared equally between the franchisors and the franchisees. This will ensure shared responsibilities and, therefore, create a perception of fairness among franchisors. The Disclosure Document should also be edited to include the franchisor's requirements from the franchisee that will guarantee the continuity of the contract instead of the current situation in which the terms can also be determined by the ministry. This will discourage the franchisees from taking advantage of the Disclosure Document to exploit the franchisors who terminate contracts due to poor performance.

Providing a favorable environment to foreign franchisors

In its current state, the Franchise Law is likely to discourage foreign franchisors who intend to invest in the Kingdom of Saudi Arabia. From the tedious registration process, The New Law offers limited opportunities only in technical fields where the locals do not have the relevant technical expertise. These legal barriers could discourage investors and make them opt for other countries where the conditions are more favorable. To make the law much favorable to foreigners, several changes should be made. First, there is a need to review and incorporate articles that allow local agencies to assist foreigners in the tedious registration process.

Certified translators should also be part of the registration agencies to reduce the registration burden often experienced by grantors of concessions. Secondly, articles that allow foreign franchisors to be involved in any business that they desire other than the technical fields should be incorporated in the law to enhance competition. Though Saudi citizens could have the same knowledge, they will face competition, which will improve the delivery of services and the provision of quality goods and services. Finally, the law should

be amended to allow international companies to act as franchisees in the country. Even though the opportunity is reserved for Saudi nationals, a few of them should be reserved to foreigners with a view to enhance competition and attract foreign investors.

Proper clarification of the franchise agreements

The Saudi judicial system similar to that of the developing and underdeveloped nations is still not yet fully established. The judicial system involves independent judges who make independent decisions and courts that have no access to a jury or trial. Moreover, the court proceedings cannot be followed by the public, so they do not know how the cases are determined. This means that in case there is a court case between franchisors and franchisees, the Law predisposes itself to the protection of the franchisee more than it does the franchisor as most obligations fall on the franchisor. The two parties, therefore, have to be very careful in drafting the contracts to avoid terms that could lead to endless court battles. To prevent this, the Implementing Regulations of the Law need to be explicit about the operationalization of relevant articles to create a mutual relationship between the franchisor and the franchisee.

Review of mandatory renewals

The New Law imposes mandatory renewals on the franchise agreements (Art. 15). These renewals require the concession provider to compensate the franchisee if they terminate a contract except under specified conditions in Art. 15(1-6). The implication is that the stated aspect strips franchisors the right to termination of contracts except under specified circumstances. The review of the mandatory renewals should mainly focus on clarifying the specific conditions that would justify the non-renewal of the franchise agreement. The law should be amended to allow the redesign of the franchise agreement based on the performance of both parties.

Strengthen the negotiating position of the franchisees

The New Law should also be reviewed to strengthen the negotiating position of the franchisees in the concession agreement. Firstly, Article 8(1) should be reviewed to ensure that both the franchisees and the franchisor actively participate in the determination of rights, terms, and conditions related to the concession agreement. The implementation of this strategy is expected to reduce the likelihood of unfair or arbitrary imposition of

terms and conditions. Secondly, Article 11(2B) should also be reviewed to ensure that the franchisee is able to negotiate a fair remuneration in the franchise agreement with the franchisor. Currently, the setting of remuneration, including possible payment for expertise training, is at the discretion of the franchisor. Therefore, to enhance the negotiating position of the franchisees in the concession agreement, the Saudi legislators should review Article 8(1) and Article 11(2B).

Conclusion

In conclusion, the New Saudi Arabia's Franchise Law is much better compared to the Franchise Law of 1962. Some of its significance includes the promotion of local franchisors and offering of training to locals by foreign investors. However, it has several shortcomings such as overburdening the franchisors, failure to address the weak negotiating position of the franchisees as well as discouraging foreign investors. Several adjustments can be made on the law to promote its effectiveness. These include the review of mandatory renewals, provision of a favorable environment for foreign investors as well as the need to share the burden between the franchisors and franchisees.

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