



Franchise 2025

11th Edition

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Introductory Chapter

1 Introduction to *ICLG – Franchise 2025*

Iain Bowler, Freeths LLP

Industry Chapters

4 Support a Strong Global Franchise Community

Matthew Haller, International Franchise Association (IFA)

6 The British Franchise Association: Setting the Standards for Franchising

Pip Wilkins, British Franchise Association (BFA)

Q&A Chapters

10

Canada

Joseph Adler & Stephanie Chong,
Keyser Mason Ball, LLP
Idan Erez, Sotos LLP

21

Chile

Fernando García, José Pardo, Javiera Avilés &
Ricardo Padilla, Carey

32

China

Paul Jones & Jiahui (Jennifer) Zhang, Jones & Co.

41

England & Wales

Iain Bowler, Freeths LLP

54

France

Cecile Peskine & Clémence Casanova, Linkea-Avocats

63

Germany

Marco Hero, Schiedermaier Rechtsanwälte PartGmbH

73

India

Dr. Shivani Shrivastava & C. R. Jacob, LexOrbis

85

Italy

Luigi Fontanesi, Camilla Di Fonzo &
Cecilia Caterina di Prisco,
Greenberg Traurig Santa Maria

95

Korea

Sean Hayes & Jiwon Min, IPG Legal

102

Macau

Paulo Cordeiro de Sousa, FCLaw

109

Nigeria

Tiwalola Osazuwa & Adeoluwa Ademola, ÆLEX

117

Saudi Arabia

Suhaib Hammad & Ebaa Tounesi,
Hammad & Al-Mehdar Law Firm

125

Singapore

Waltson Tan, 28 Falcon Law Corporation

136

South Africa

Alex Protulis, Christodoulou & Mavrikis Inc.

146

Sweden

Anders Fernlund, ASTRA Law

153

Switzerland

Simon Ruchti & Lorenzo Marazzotta,
M&R Rechtsanwälte AG

162

Thailand

Alan Adcock & Kasama Sriwatanakul,
Tilleke & Gibbins

170

United Arab Emirates

Felicity Hammond, BSA Law

181

USA

Richard L. Rosen, John A. Karol, Leonard S. Salis &
Dennison Marzocco, Rosen Karol Salis, PLLC

Saudi Arabia



Suhaib Hammad



Ebaa Tounesi

Hammad & Al-Mehdar Law Firm

1 Relevant Legislation and Rules Governing Franchise Transactions

1.1 What is the legal definition of a franchise?

The Franchise Law, promulgated by Royal Decree No. M/22 dated 9/2/1441H (corresponding to 08/10/2019G), which came into effect on 28/08/1441H (corresponding to 22/04/2020G) (the “**Franchise Law**”), defines the term “franchise” as: the rights granted by the franchisor to the franchisee to carry out the franchise business under the franchisee’s own account, while undertaking the use of the IP and related trademarks of the franchisor, whether with or without monetary compensation, exclusive of the compensation paid by the franchisor to the franchisee.

Commercially, in the Saudi market, a franchise is considered a type of licence obtained by a party to allow them to have access to a business’ processes, trademarks and proprietary knowledge to provide a service or sell a product under the party’s name (franchisor).

1.2 What laws regulate the offer and sale of franchises?

Franchises in Saudi Arabia are regulated by the Ministry of Commerce (“**MOCC**”) and are subject to the Franchise Law. The implementing regulations of the Franchise Law were issued on 18/09/1441H (corresponding to 11/05/2020G) (the “**Implementing Regulations**”). In addition, the Gulf Cooperation Council (“**GCC**”) Trademark Law, which was approved by Royal Decree No. 51 on 16/07/1435H (corresponding to 05/05/2014G), applies to the protection, registration and licensing of trademarks, which may be offered as part of the offer and sale of franchises.

1.3 If a franchisor is proposing to appoint only one franchisee/licensee in your jurisdiction, will this person be treated as a “franchisee” for purposes of any franchise disclosure or registration laws?

Yes, a single franchisee is considered a franchisee and is required to register as such with the Franchise Centre at the Small and Medium Enterprises General Authority (“**Monsha’at**”) and must commit to the franchisee requirements set out by the Franchise Law. Furthermore, a single franchisee can be appointed as a master franchisee in Saudi Arabia and then, in the capacity of a master franchisee, may sub-franchise to multiple sub-franchisees in Saudi Arabia.

1.4 Are there any registration requirements relating to the franchise system?

Yes, a franchisor is required to register the following:

- the franchise agreement (or the sub-franchise agreement, in the case of a master franchisee);
- the franchise disclosure documents; and
- the trademark and any licensed intellectual property before the Saudi Authority on Intellectual Property (“**SAIP**”).

It should be noted that the franchisor shall register or apply to register any trademark used for introducing the business model in Saudi Arabia before applying to register the franchise agreement and the disclosure document with Monsha’at, which is the competent authority responsible for overseeing the registration of franchise agreements.

1.5 Are there mandatory pre-sale disclosure obligations?

Yes, the franchisor is under an obligation to register and submit a disclosure document to Monsha’at before execution of the franchise agreement.

The required documents that shall be attached along with the form to the Monsha’at are as follows:

- a statement of disclosure;
- a copy of the draft franchise agreement;
- a copy of the certification or application for registration of the trademark; and
- other documents that may be requested by Monsha’at at its discretion.

1.6 Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?

Yes, it is applicable to sales to sub-franchisees, and in this case the master franchisee is required to make the disclosure to Monsha’at in accordance with the Franchise Law as if he were the franchisor for all intents and purposes.

1.7 Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?

Yes, it is prescribed by the Franchise Law under a separate provision. The Franchise Law makes it an obligation on

the franchisor to inform Monsha'at of any major updates to the previously submitted disclosure document, which was submitted during the disclosure to Monsha'at prior to execution of the franchise agreement. It is worth noting that the disclosure form issued by MOC has been further updated pursuant to Ministerial Resolution No. 339 on 14/08/1444H (06/03/2023G); removing the franchisor's requirement to disclose its financial position and to furnish audited financial statements of the last two years.

1.8 What are the consequences of not complying with mandatory pre-sale disclosure obligations?

If the franchisor did not comply with the mandatory disclosure as described in the Franchise Law, the Franchisor may be subject to the following consequences:

- pursuant to Article 19 of the Franchise Law, the franchisee may claim damages for the franchisor's non-compliance but without terminating the franchise agreement; and
- pursuant to Article 24 of the Franchise Law, the franchisor might be subject to a fine not exceeding 500,000 Saudi Riyals.

1.9 Are there any other requirements that must be met before a franchise may be offered or sold?

Yes, the franchise concept must already have been executed in markets for at least one year by two businesses (one of which may be the franchisor), or at two locations in order to grant the franchise concept.

1.10 Is membership of any national franchise association mandatory or commercially advisable?

No, it is not mandatory under the Franchise Law. However, it is always commercially advisable to join the business associations and committees overseeing the franchise industry in Saudi Arabia to be informed of updates, and, recently, to be able to provide input on the new draft Franchise Law.

1.11 Does membership of a national franchise association impose any additional obligations on franchisors?

No such obligations exist on membership of a national franchise association.

1.12 Is there a requirement for franchise documents or disclosure documents to be translated into the local language?

Yes, all documents submitted to governmental authorities in Saudi Arabia for the purpose of registering and disclosing the franchise must be translated into Arabic by a local certified translator.

2 Business Organisations Through Which a Franchised Business Can be Carried On

2.1 Are there any foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a business in your jurisdiction?

Yes, any business owned fully or partially by a foreign investor will be subject to the foreign investment regulations issued by the Ministry of Investment of Saudi Arabia ("MISA"). Generally speaking, the strict restrictions imposed on non-nationals in respect of ownership and control are in relation to trading and wholesale activities, whereas general service activities carry less burdensome restrictions.

While the Franchise Law does not specify a full Saudi ownership requirement to the franchisor, it does, however, require the franchisor to be performing in Saudi Arabia for not less than one year and to be providing the services directly by it to be able to sub-franchise. Foreign companies must fulfil the licence requirement by MISA and requirements set out under the Franchise Law, otherwise they cannot legally carry out any business in Saudi Arabia.

2.2 What forms of business entity are typically used by franchisors?

The most common form of business entity in Saudi Arabia is a limited liability company ("LLC"). The market is slowly moving towards establishing private joint-stock companies, which are similar to corporations in other jurisdictions. As it stands, most local Saudi franchisors or master franchisees are established as LLCs. There may be a new trend emerging in Saudi for franchisors or master franchisees to establish simplified joint stock companies, which offer flexibility in management, and no minimum capital requirement, which was recently recognised under the new Companies Law issued by Royal Decree No. M/132 on 01/12/1443H (30/06/2022G).

2.3 Are there any registration requirements or other formalities applicable to a new business entity as a pre-condition to being able to trade in your jurisdiction?

In relation to general trading, a foreign-owned entity carrying out trading activities will be subject to the Saudi Foreign Investment Law (promulgated by Royal Decree No. M/1 dated 05/01/1421H (10/04/2000G), as amended) and its implementing regulations. There may be additional registration requirements for franchises depending on its sector. For example, franchises relating to pharmaceuticals shall require further registrations with the Saudi Food and Drug Authority and the Ministry of Health.

3 Competition Law

3.1 Provide an overview of the competition laws that apply to the offer and sale of franchises.

The applicable Competition Law in Saudi Arabia was issued by Royal Decree No. M/25 dated 04/05/1425H, as amended by Royal Decree No. M/24 dated 11/04/1435H. Thereafter, Saudi Arabia issued, on 29/03/2019G and pursuant to Royal Decree

No. M/75 dated 29/06/1440H (07/03/2019G), its reinvigorated Competition Law, which came into effect 20/07/1440H (27/03/2019G).

The Saudi Competition Law is designed to protect fair competition in the market and prevent dominant entities from controlling the market and imposing unfair practices on consumers. The General Authority for Competition (“GAC”) in Saudi Arabia is currently concerned with regulating the practices of manufacturers and distributors of products in their dealings with sale outlets and consumers. We have yet to see a crackdown specifically on franchisors or franchisees by GAC, however, the Competition Law is indeed applicable to all commercial dealings in Saudi Arabia, where franchisors and franchisees are subject to the Competition Law and its provisions, and their activities must be carried out in compliance with the Competition Law.

3.2 Is there a maximum permitted term for a franchise agreement?

No, there are no limitations; however, terms are usually for a period of five years.

3.3 Is there a maximum permitted term for any related product supply agreement?

No, there are no limitations for any related product supply agreement.

3.4 Are there restrictions on the ability of the franchisor to impose minimum resale prices?

Generally, there are no restrictions imposed on the ability of a franchisor or master franchisee to impose minimum resale prices. It is commonly understood that franchisees must provide a similar price range, in keeping with the franchise standards; unless, of course, that franchisor is considered a dominant entity as defined by the Competition Law, in which case such practice may be considered as price-fixing by a dominant entity and thus may subject the franchisor or master franchisee to fines. That being said, we have not observed an active pursuit by GAC against franchisors, whereby the market practice is that franchisors usually set the pricing for the products or services as they deem fit, so long as such arrangements are commercially sound and reasonable.

3.5 Encroachment – are there any minimum obligations that a franchisor must observe when offering franchises in adjoining territories?

No, the Franchise Law does not refer to any minimum obligations.

3.6 Are in-term and post-term non-compete and non-solicitation of customers covenants enforceable?

The courts accept non-compete and non-solicitation provisions as long as they are implemented in accordance with the applicable regulations and customary practice. In practice, the courts generally would not enforce unreasonable or burdensome covenants and the courts may, at their discretion, adjust the parameters of the covenant as they see fit.

For example, periods may be reduced if they are in excess of five years. Courts in Saudi Arabia will take a case-by-case approach when enforcing an injunction granted by a foreign court but, subject to reciprocity agreements with other jurisdictions, the local courts may enforce such injunctions as they are without adjustment.

4 Protecting the Brand and Other Intellectual Property

4.1 How are trade marks protected?

Trademarks are protected under the GCC Trademark Law, which was approved by Royal Decree No. 51 dated 16/07/1435H (corresponding to 05/05/2014G) and came into effect in September 2016 in Saudi Arabia, along with the Trademark Law issued by Royal Decree No. M.21 dated 01/01/1423H (15/03/2002G). Trademark registration lasts for a period of up to 10 years and can be renewed by submitting a renewal application and satisfying the renewal requirements. Failure to protect a mark in Saudi Arabia will deny the holder of the mark any rights under the applicable regulations.

4.2 Are know-how, trade secrets and other business-critical confidential information (e.g. the Operations Manual) protected by local law?

Under the Protection of Confidential Trade Secrets Regulations issued by MOC’s Ministerial Resolution No. 3318 dated 25/03/1426H (04/05/2005G) and authorised by Council of Ministers Resolution No. 50 dated 25/02/1426H (05/04/2005G), know-how and trade secrets are protected from being unlawfully used by third parties. Most recently, Saudi Arabia enacted the Personal Data Protection Law issued by Royal Decree No. M/19 dated 09/02/1443H (16/09/2021G) and its amendments issued by Royal Decree No. M/147 dated 05/09/1444H (27/03/2023G) (“PDPL”), which regulates data protection of individuals and comes into effect on 14/09/2023G. Further to the PDPL, under Sharia principles, anyone’s right to privacy is protected and consent must be obtained for any disclosure of personal/confidential information, unless public interest requires its disclosure. Most recently, SAIP presented the draft Intellectual Property Law in 1444H (2023G) for public consultation, which introduces the concept of trade secrets and how to best protect them.

4.3 Is copyright (in the Operations Manual or in proprietary software developed by the franchisor and licensed to the franchisee under the franchise agreement) protected by local law?

Copyrights are protected by the Copyright Regulation promulgated by Royal Decree No. M/41 dated 02/07/1424H (corresponding to 30/08/2003G), which came into effect on 22/01/1425H (corresponding to 14/03/2004G), and its Rules of Implementation published on 16/04/1425H (corresponding to 04/06/2004G). Additionally, there is no procedure in place for copyright registration, as the Copyright Law considers any published content protected once it is published in any medium. As such, any published copyright material by the franchisor is protected by the Copyright Law.

5 Liability

5.1 What remedies can be enforced against a franchisor for failing to comply with mandatory disclosure obligations? Is a franchisee entitled to rescind the franchise agreement and/or claim damages?

The franchisee can request damages from the franchisor for any actual harm caused by the franchisor's failure to commit to disclosure requirements in accordance with the Franchise Law.

5.2 In the case of sub-franchising, how is liability for disclosure non-compliance or for pre-contractual misrepresentation allocated between franchisor and master franchisee? If the franchisor takes an indemnity from the master franchisee in the Master Franchise Agreement, are there any limitations on such an indemnity being enforceable against the master franchisee?

The franchisor will need to comply with the disclosure requirements, and there are no limitations on the indemnity under the applicable laws in Saudi Arabia, except under Sharia doctrines, which limit damages only to actual and proven suffered damages and losses. Parties seeking better protection and indemnity are advised to set out clear and comprehensive indemnity provisions in the franchise agreements while also considering subjecting the franchise agreement to a different governing law and jurisdiction that would permit full indemnification without any such limitations.

5.3 Can a franchisor successfully avoid liability for pre-contractual misrepresentation by including a disclaimer in the franchise agreement?

Any disclaimer provisions that are not in line with the provisions of the Franchise Law are not acceptable.

5.4 Does local law permit class actions to be brought by a number of aggrieved franchisees and, if so, are class action waiver clauses enforceable?

The Franchise Law does not make reference to class action suits. Class action suits are not uncommon in Saudi Arabia, as we have seen such suits in commercial fields (although not related to franchise).

6 Governing Law

6.1 Is there a requirement for franchise documents to be governed by local law? If not, is there any generally accepted norm relating to choice of governing law, if it is not local law?

No, the franchise agreement may be subject to any other governing law stipulated therein. However, the parties must nevertheless adhere to the provisions of the Franchise Law, such as the disclosure and registration requirements. The parties must also consider the enforceability of certain provisions despite subjecting the agreement to different laws, as certain provisions may not be enforceable in Saudi Arabia,

whereby adding any interest on payments is unlikely to be enforced by the Saudi courts due to violating Sharia principles. The key requirement is that the franchise agreement adheres to the Franchise Law in stating its terms and conditions and is not in violation of local laws and Sharia principles.

6.2 Do the local courts provide a remedy, or will they enforce orders granted by other countries' courts, for interlocutory relief (injunction) against a franchisee to prevent damage to the brand or misuse of business-critical confidential information?

Although it may be difficult, it is possible to seek urgent injunctive relief from commercial courts in order to prevent a rogue franchisee from damaging the franchise brand, noting that the local courts will assess the claim on a case-by-case basis. It should be further noted that damage to the franchisor's brand or reputation is generally difficult to quantify and therefore may be difficult to award by the local courts, as compensation for damage or harm must generally be actual quantified harm in order for the local courts to award such damages.

6.3 Is arbitration recognised as a viable means of dispute resolution and is your country a signatory to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Do businesses that accept arbitration as a form of dispute resolution procedure generally favour any particular set of arbitral rules?

Yes, arbitration is a viable means of dispute resolution in Saudi Arabia, as Saudi Arabia acceded to the New York Convention on 19/04/1994. It should be noted that Saudi Arabia submitted a reservation to the New York Convention, that it will not recognise an arbitral award issued from another jurisdiction of a signatory party, unless that jurisdiction recognises awards issued by Saudi Arabia (the reciprocity principle). The most common arbitral rules in Saudi Arabia for foreign businesses are the Dubai International Arbitration Centre ("DIAC") Arbitration Rules.

7 Real Estate

7.1 Generally speaking, is there a typical length of term for a commercial property lease?

No, it depends on agreement of the parties, as short-term commercial leases are commonly entered into for a one-year renewable period.

7.2 Is the concept of an option/conditional lease assignment over the lease (under which a franchisor has the right to step into the franchisee/tenant's shoes under the lease, or direct that a third party (often a replacement franchisee) may do so upon the failure of the original tenant or the termination of the franchise agreement) understood and enforceable?

The option/conditional lease assignment over the lease is not common but can be done by properly inserting the required assignment provisions in the lease agreement.

7.3 Are there any restrictions on non-national entities holding any interest in real estate, or being able to sub-lease property?

Yes, there are certain limitations and non-nationals must obtain a licence from MISA before owning any property. The Foreign Ownership of Real Estate Regulation (enacted by Royal Decree No. M/15 dated 17/04/1421H (19/07/2000G)) regulates foreign, non-GCC nationals' ownership of real estate in Saudi Arabia.

7.4 Give a general overview of the commercial real estate market. To what extent has the real estate market been affected by the Coronavirus pandemic? Specifically, can a tenant expect to secure an initial rent free period when entering into a new lease (and if so, for how long, generally), or are landlords demanding "key money" (a premium for a lease in a flagship location)?

The commercial real estate market is one of the main markets that has been generally affected by the Coronavirus pandemic. Due to the great impact of the pandemic on the Saudi market in general and, more specifically, the commercial real estate market, the Saudi government established special courts to resolve any disputes arising out of or in connection with the pandemic's impact.

An initial rent-free period is sometimes granted by the landlords in certain situations to allow the tenant to prepare the premises for the business. Such periods usually range from one to six months.

8 Online Trading

8.1 If an online order for products or request for services is received from a potential customer located outside the franchisee's exclusive territory, can the franchise agreement impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated?

The Franchise Law does not cover antitrust issues. In the absence of any such regulations or restrictions, the parties may agree on such language in the franchise agreement, and it is at the commercial courts' discretion to enforce such provisions in case of a dispute.

8.2 Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?

No, ownership of domain names and trademarks can be transferred from one party to another. This can be either by acquisition of the entity holding ownership of the domain name or trademark, or by assignment/transfer of such domain name/trademark to another party.

9 Termination

9.1 Are there any mandatory local laws that might override the termination rights one might typically expect to see in a franchise agreement?

Termination conditions of the franchise agreement are set

forth under Articles 16–18 of the Franchise Law, whereby Article 17 of the Franchise Law further provides that substantial breach of the registration or disclosure obligations may permit the franchisee to terminate the franchise agreement within one year of knowing about the breach or three years from the occurrence thereof.

9.2 Are there local rules that impose a minimum notice period that must be given to bring a business relationship that has existed for a number of years to an end, which will apply irrespective of the length of the notice period set out in the franchise agreement?

No such local law exists.

10 Joint Employer Risk and Vicarious Liability

10.1 Is there a risk that a franchisor may be regarded as a joint employer with the franchisee in respect of the franchisee's employees? If so, can anything be done to mitigate this risk?

No, franchisees' employees will be under the franchisee's sponsorship in accordance with the applicable labour law regulations and, therefore, the franchisor will not be regarded as a joint employer.

10.2 Is there a risk that a franchisor may be held to be vicariously liable for the acts or omissions of a franchisee's employees in the performance of the franchisee's franchised business? If so, can anything be done to mitigate this risk?

No, the franchisee will be liable for acts of employees under his employment and sponsorship.

11 Currency Controls and Taxation

11.1 Are there any restrictions (for example exchange control restrictions) on the payment of royalties to an overseas franchisor?

There are no restrictions.

11.2 Are there any mandatory withholding tax requirements applicable to the payment of royalties under a trade mark licence or in respect of the transfer of technology? Can any withholding tax be avoided by structuring payments due from the franchisee to the franchisor as a management services fee rather than a royalty for the use of a trade mark or technology?

Yes, withholding tax is applicable at a rate of 15% for the payment of royalties. It is possible to structure the payments, but parties need to make sure they do not cause suspicion or violate the applicable Anti-Concealment Law in Saudi Arabia. Should a franchisor choose to structure the royalties in a different manner, they could offer the franchisee royalty-free and charge management fees and training fees instead, which are subject to a 5% withholding tax. However, the Zakat, Tax and Customs Authority, in cases where this is raised to their attention, may nevertheless determine that such management

and training fees are in fact royalty fees and therefore impose the full 15% withholding tax rate. We have come across similar determinations by the local tax authority in which they have found that certain licensing fees and management fees are to be regarded as royalty fees instead.

11.3 Are there any requirements for financial transactions, including the payment of franchise fees or royalties, to be conducted in local currency?

Generally, transactions conducted in Saudi Arabia are settled in Saudi Riyals. Local banks accept inbound and outbound payments in other major currencies. Transactions can therefore be conducted in any other currency to which the parties may agree.

12 Commercial Agency

12.1 Is there a risk that a franchisee might be treated as the franchisor's commercial agent? If so, is there anything that can be done to help mitigate this risk?

No, under the Franchise Law the franchisee will not be treated as the franchisor's commercial agent. The parties can also add clear terms in the franchise agreement that set out that the franchisee is not an agent or representative of the franchisor. This contractual protection is generally sufficient so long as the provisions of the agreement are consistent with the Franchise Law.

13 Good Faith and Fair Dealings

13.1 Is there any overriding requirement for a franchisor to deal with a franchisee in good faith and to act fairly in its dealings with franchisees according to some objective test of fairness and reasonableness?

Yes, such obligation is imposed on the franchisor and franchisee under Article 10 of the Franchise Law, where it imposes an obligation on both parties to commit to their contractual obligations under the franchise agreement in good faith. In addition, the good faith obligation is further imposed on the parties to a contract by the general principles of Sharia.

13.2 Is there any limitation on a good faith obligation being unenforceable if it only applies from franchisee to franchisor, rather than being mutual?

There is no such limitation, as good faith obligations are imposed on both parties alike.

14 Ongoing Relationship Issues

14.1 Are there any specific laws regulating the relationship between franchisor and franchisee once the franchise agreement has been entered into?

Yes, generally all applicable regulations will indeed be applicable one way or another. The money laundering regulations, the Competition Law, the laws and regulations issued by SAIP, the Environment Law, and regulations issued by MOC will be the most relevant here to the franchise agreement.

15 Franchise Renewal

15.1 What disclosure obligations apply in relation to a renewal of an existing franchise at the end of the franchise agreement term?

The same disclosure obligation imposed by the Franchise Law applies.

15.2 Is there any overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term irrespective of the wishes of the franchisor not to renew or extend?

Article 15 of the Franchise Law addresses renewal of the franchise agreement. This includes a written notice of at least 180 days by the franchisee to the franchisor for their desire to renew the franchise agreement for a similar period and under the same terms.

15.3 Is a franchisee that is refused a renewal or extension of its franchise agreement entitled to any compensation or damages as a result of the non-renewal or refusal to extend?

The franchisee is entitled to damages only in the case that non-renewal is in violation of the provision of the franchise agreement.

16 Franchise Migration

16.1 Is a franchisor entitled to impose restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business?

Yes, the franchisor is entitled to impose such restrictions in the franchise agreement.

16.2 If a franchisee is in breach and the franchise agreement is terminated by the franchisor, will a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and management of the franchised business) be recognised by local law, and are there any registration requirements or other formalities that must be complied with to ensure that such a right will be enforceable?

The Franchise Law does not make any reference to a "step-in" right. Such right may be agreed to under the franchise agreement and can be enforced. In the case of a local franchisor, there should not be any legal restrictions that prevent the franchisor from stepping in; however, in the case of a foreign franchisor, foreign ownership restrictions and requirements shall be imposed, where the foreign franchisor must obtain the necessary foreign investment licence from MISA and incorporate a local entity in Saudi Arabia in order to be operational in Saudi Arabia.

16.3 If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all necessary formalities required to complete a franchise migration under pre-emption or “step-in” rights, will such a power of attorney be recognised by the courts in the jurisdiction and be treated as valid? Are there any registration or other formalities that must be complied with to ensure that such a power of attorney will be valid and effective?

If the power of attorney is issued outside Saudi Arabia, it must be duly issued by a Notary and further attested at the Saudi Embassy in the place of execution before further being attested at the Ministry of Foreign Affairs and Ministry of Justice in Saudi Arabia. If mere language of a power of attorney exists in the franchise agreement, it is advisable to issue (or include an obligation to issue as a condition precedent) a separate power of attorney that is fully legalised and notarised to be fully recognised and enforceable in Saudi Arabia.

17 Electronic Signatures and Document Retention

17.1 Are there any specific requirements for applying an electronic signature to a franchise agreement (rather than physically signing a “wet ink” version of the agreement), and are electronic signatures recognised as a valid way of creating a binding and enforceable agreement?

Electronic signatures are generally acceptable in Saudi Arabia whether for franchise agreements or otherwise. Saudi Arabia has issued its Electronic Transactions Law (promulgated by Royal Decree No. M/18 dated 08/03/1428H (26/03/2007G)). The Law is aimed at controlling, regulating and providing a legal framework for electronic transactions and signatures.

Requirements for applying e-signatures are provided for under Article 14(3) of the Electronic Transactions Law and are as follows:

- a. The electronic signature is the signature of the person identified in the relevant digital certificate.
- b. The electronic signature was provided by the person identified in the relevant digital certificate for the purpose specified therein.
- c. The electronic transaction has not been altered since the electronic signature was affixed thereto.

17.2 If a signed/executed franchise agreement is stored electronically (either having been signed using e-signatures or a “wet ink” version having been scanned and saved as an electronic file), can the paper version of the agreement be destroyed?

While copies of electronically signed agreements are enforceable, it is always advisable that original agreements are maintained and not destroyed. This is because governmental entities or the courts may, at their discretion, request the original documents during the course of an application/dispute. It is still the practice in Saudi Arabia that digital scanned copies of wet-signed agreements are not considered originals for the purpose of taking legal action and enforcing their terms. However, a duly e-signed document in compliance with the legal requirements for e-signatures, as described above, is considered an original and there is no need to have a “wet ink” version of the same duly e-signed agreement.

18 Current Developments

18.1 What is the biggest challenge franchising is facing in your jurisdiction and how are franchisors responding to that challenge?

As of the time of writing, it appears as though the biggest challenge that franchising is facing in Saudi Arabia is that it is a prerequisite for a franchisor to have sufficient experience in operating the business before being legally permitted to grant the franchise rights. In the event a franchisor sets up a business that they wish to immediately franchise to others, they would need to enter general licensing agreements whereby they could grant the rights they would have under a franchise agreement. However, it would be a licensing agreement granting the use of the tradename and marks, etc. of the franchise, but it would not fall under the scope of application of the Franchise Law. In that sense, it would leave a franchisee to operate under general commercial terms rather than being subject to a statute that regulates and protects franchise arrangements.



Suhaib Hammad leads the Corporate & Commercial practice of Hammad & Al-Mehdar Law Firm, focusing on Foreign Direct Investment, M&A and Franchising, with a special interest in Media and Life Sciences. While on secondment with the corporate and commercial team at a renowned UK firm in their Dubai and London offices, he has built a vast array of international legal experience working on leading cross-border transactions.

Suhaib focuses on corporate and commercial matters working with companies in the media, tech, defence and pharmaceutical industries. His experience includes also advising major companies in these industries on Saudi regulations in relation to formation and operation.

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Ebaa Tounesi has completed his Bachelor's degree in Law (LL.B.) with First-Class Distinction and obtained his Master's degree (LL.M.) in Corporate and Commercial Law at the University of Southampton with Merit.

Ebaa is a qualified attorney admitted to practise by the Ministry of Justice in Saudi Arabia in January 2021, and he is part of the Corporate and Intellectual Property team at Hammad & Al-Mehdar Law Firm since July 2019.

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