

Franchise Arrangements under KSA Law

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A new Saudi Franchise Law (issued by Royal Decree No. 9152 dated 11/02/1441H) (the “**Franchise Law**”) was introduced in KSA, which came into force in April 2020. The Executive Regulations to the Franchise Law (issued by Ministerial Resolution No. 00591 dated 18/09/1441H) followed in August, 2020 (the “**Executive Regulations**”). Prior to the introduction of the Franchise Law, franchise arrangements in KSA were generally classified as “commercial agencies” and were governed by the provisions of the Commercial Agency Law and the Executive Regulations of the Commercial Agency Law.

Not all provisions of the Franchise Law apply to franchise agreements which pre-date the entry into force of the Franchise Law, as stipulated in preamble (2) of the Royal Decree approving the Franchise Law (e.g. the Franchise Law’s regulatory registration and disclosure obligations, mandatory terms in the franchise agreement that are required under the Franchise Law).

Franchise Requirements

Article 1 of the Franchise Law defines a Franchise as “*an arrangement under which a Franchisor grants the Franchisee the right to conduct a business – the subject matter of the Franchise – for its own account in association with a trademark or tradename, owned by or licensed to the Franchisor and includes the provision to the Franchisee of technical expertise and know-how and determining the manner in which the business is to be operated; in return for cash or non-cash consideration, other than amounts paid by the Franchisee to the Franchisor in consideration of the goods or services so provided*”.

A Franchise may not be offered unless the business to be franchised has been operated in accordance with the Franchise Operation Model for at least one (1) year and by at least two (2) persons (which may include the franchisor or any member of its Group) or in two (2) separate units.

Registration of the Franchise Agreement and the Disclosure Document

The franchisor is required to provide the franchisee with a Disclosure Document at least fourteen (14) days before entering into the franchise agreement or paying any consideration to the franchisor relating to the Franchise, whichever occurs first. The Disclosure Document should be in Arabic, or if drafted in a different language, it must be translated in Arabic by a certified translator in KSA – and comply with the conditions set out in the Executive Regulations.

Furthermore, the franchisor is required to register the executed franchise agreement and the relevant Disclosure Document at the Ministry of Commerce, within ninety (90) days from the date of execution of the franchise agreement. The franchise agreement should be in Arabic, or if drafted in a different language, it must be translated in Arabic by a certified translator in KSA. The Ministry of Commerce has – very recently – changed the franchise agreement registration process, with it being now under Monshaat (a portal sponsored by the Ministry of Commerce).

In the event of a material breach by the franchisor of its obligations relating to the Disclosure Document and registration requirements, the franchisee may, by written notice to the franchisor, terminate the franchise agreement without being liable for any compensation to the franchisor, within one (1) year of becoming aware of the breach or three (3) years from the date on which the breach took place, whichever

is earlier.

Furthermore, in the event of a material breach by the franchisor of its obligations relating to the Disclosure Document or registration requirements, the Franchisee may claim compensation from the franchisor for any losses suffered as a result of such breach – and may terminate the franchise agreement. Failure of the franchisor to comply with its obligations relating to the Disclosure Document or registration requirements may also lead to monetary fines not exceeding five hundred thousand (500,000) SAR.

Terms of the Franchise Agreement

In addition to the contractual terms that may be agreed between the parties, the franchise agreement should include the following, without limitation, provisions:

- The name and description of the Franchise business, the term of the franchise agreement, manner for amending its terms and geographical scope thereof.
- Any obligations in relation to the training of the franchisee's employees by the franchisor.
- Any obligations of the franchisor in relation to the provision of technical, marketing and any other expertise that the Franchise business requires.
- Any obligations of the franchisor relating to the supply of goods or services to the franchisee, and the obligations of the franchisee in relation to the sourcing of such goods or services from the franchisor, directly or through a third party based on the instructions of the franchisor.
- The rights of the franchisee relating to the use of any trademarks or other intellectual property rights in connection with the Franchise business and the obligations of both parties in the event of any breach of the intellectual property rights and the compensation resulting thereof.
- The rights and obligations of both the franchisor and the franchisee with respect to terminating the franchise agreement.
- The franchisee's right to renew or not renew the franchise agreement, if any.

There are certain provisions in the Franchise Law that apply by way of law – unless relevant opt out language is included in the franchise agreement. Such provisions relate to franchisor/franchisee obligations, assignment of the franchise agreement, change of control of the franchisee, renewal of the franchise agreement.

Conclusion

Prior to the introduction of the Franchise Law, parties to a franchise agreement had – relatively – more flexibility in contracting, so long as the franchise agreement did not conflict with applicable KSA laws and regulations (as well as Shari'ah principles). The new Franchise Law, which now governs franchise arrangements implemented in KSA, appears to regulate substantially the rights and obligations of the parties, as well as the terms of the franchise agreement.

Al Tamimi & Company's corporate commercial team regularly advises on franchise arrangements in Saudi Arabia. For further information please contact [Stavros Marcou \(s.marcou@tamimi.com\)](mailto:s.marcou@tamimi.com)