



The governing laws of the Franchise Contract "Commercial License Contract" in accordance to the Jordanian law

A review paper

Dr. Mueen Fandi nhar Alshunnaq
Jadara University, Irbid, Jordan

E-mail: abu_alahmadshunnaq@yahoo.com

Abstract

In Jordan, Franchise business discloses a critical investment market that contributes and support the Gross domestic Product (GDP) of the country, and develops the growth of trade and economy [1]. However, many challenges faced by the investors might hamper the investors in Jordan from starting a franchise business. For example, the lack of legal framework for franchise business regulation is one of the most challenging issues toward franchise in Jordan. Therefore, the main aim of this paper is to explore the governing laws of the franchise contract in accordance to the Jordanian law. The findings of this study argued that the current governing laws of franchise contract in Jordan fail to provide a comprehensive control system of franchise legal aspects. In addition, the development of a specific legal framework is highly needed to govern the franchise business in Jordan.



www.mecsaj.com

Introduction

Through the name and experience of franchisor, the franchise contract offers many interests to the franchisee such as technical, marketing, and administrative support [2]. Further, the franchisee would have the ability to gain loans from several funding agents and this let him more certain to achieve his project [11].

Nowadays, the franchise has many sophisticated areas but the experienced and well-informed business persons have recognized the power of business relation between franchisee and franchisor. However, other contracting franchises are not qualified with the world business requirements including skills and practice [18]. The franchise experts must meet the qualifications for prospective franchise at least in the developing countries [18].

The most issues concerning the interests in franchise are connected with lawyers, bankers, and franchise experts. The issues related to lawyers include the lack of support from governments and banks, inadequate protection of franchise rights, repeated regulation changes, insecure conducted business, and slow justice system of debt. Regarding bankers, the slow of legal system, low TEA index, and mentality brought issues to franchise. The franchise experts may lack of sufficient experience and the lack of sufficient knowledge about franchise [17].

The reform of regulation is necessary because of inability of legislative intervention to achieve the goals of franchising [13] [14]. It includes the revision of regulation programs and the features of collaboration, participation, and democracy [12]. Many challenges faced by the investors in Jordan from starting a franchise business such as the lack of legal framework for franchise business regulation is one of the most challenging issues toward franchise in Jordan. Therefore, the main aim of this paper is to explore the governing laws of the franchise contract in accordance to the Jordanian law.



www.mecs.com

Jordan is located between Europe, Asia, and Africa and its strategic position made it a crossing country in the geographic view of Middle East of North Africa (MENA) region. Due to its centred location, Jordan remains a preferred destination of tourist in MENA region with its historical sites (i.e. Wadi Rum, Dead Sea, etc.) and moderate climate.

The sole port city, Aqaba, provides many promising benefits for tourism-related projects such as hotels. The expansions of this port presented many opportunities in infrastructure projects. Jordan composes geopolitical focus on the investments in reconstruction Syria, Iraq and other regional projects.

Jordan has many strong cooperative relationships with neighbours and international business community. The imports in Jordan include industrial machinery, food and agriculture, mineral fuels, transportation equipment, textiles, chemicals, manufactured goods, and clothing and footwear. The exporters to Jordan include Saudi Arabia 20%, European Union 20%, China 11%, United States 6%, Egypt, South Korea, Japan, and Turkey. Jordan composes geopolitical focus on the investments in reconstruction Syria, Iraq and other regional projects.

Jordanians keen to get latest updates about the US Franchises, while local investors are interested franchising. However, the Jordanian market can't grasp huge number of individual franchise. On the other hand, the retail and service franchises in US have extremely increased in recent years.

Definition of the Franchise Contract

Franchise term comes from French word "Franchise" derived from Frank which means a free to do something. Franchising is originated to describe the exception from prevention, privilege or authorization [2]. From legal perspective, franchise can be defined as a binding contract between two parties, where the franchiser provides the franchisee the right of implementing a business with conversion of fees and payment. In simple view,



www.mecs.com

franchise includes a development of business model that grants the right of conducting business to another party which is franchisee [3].

The franchise allows the franchisee to get the franchisor bands and operating methods under licenses and agreement on the terms and conditions of the franchise contract. Other definitions of franchising have emphasized on the permitted relation between the franchisee and franchisor [16]. Moreover, franchising concepts offers favourable mixture of economic scale and trademarks. It is also associated with the place and intellectual property of services, goods and techniques of market [17].

Brief history

In the lase decades, the popularity of franchising has grown significantly with the powerful tools of globalization. In addition, culture mix and consumption habits enabled people to move and know common brands for services, goods and quality [20]. In Jordan, Franchise business discloses a critical investment market that contributes and support the Gross domestic Product (GDP) of the country, and develops the growth of trade and economy [1].

In 1970, the GDP per capita has increased by 351% in Jordan, which decreased to 30% in 1980, and increased again to 36% in 1990. Since 1999 when King Abdullah ascension to the throne, certain steps have been taken to motivate foreign investment and to develop competitive economy on market base, outward oriented feature, and global nature. It became the first Arab country signed Free Trade Agreement (FTA) with United States in 2001. By this agreement, the tariff barrier on most goods traded between two countries have been removed and the exporters of US have received advantage with selling high-quality products in more attractive prices.

Consequently, it has continued like this from 1999 to 2008, but it has slowed up to only 2% in 2011 after Arab Spring. In 2014, Jordan played toward a set of legislative reforms



www.mecs.com

such as investment law, public private partnership law, and income tax law. Investment law provides fair treats and incentives with local and foreign investors in different sectors including tourism, hospitals, energy, agriculture, water, transportation, and industry. Moreover, many governmental firms such as tourism sector [4], pharmaceuticals, and information communication technology have been reformed in the past decade.

However, the economic growth in 2015 has reduced due to the security issues and Arab spring in region including closing borders with Syria and Iraq, and the arrival of refugees. Hence, the Jordanian government has made many decisions to reform measures, foresing assistance, and loans as well as reduce near term financing gap with savings. Nevertheless, the general view of Jordan economy remains advantageous and favourable in many sectors. In 2015, the GDP was ranked at 89th in the world and it increased until 2016.

In 2016, Jordan economy grew 2.1% even with the continuous domestic and reginal challenges. As part of International Monetary Fund Extended Fund Facility program, the government followed a set of economic reform measures in August 2016. However, it has slowed due to the costs of refugees and debts till 2018. These days, more than 150 local and international franchise businesses are operating in Jordan [1].

Related work

Many studies have examines the state and development of franchise and the associated issues and challenges in many countries like Ukraine [5], Croatia [6] [7], UK [8], South Africa [16] [18], EU [9], Malaysia [15]. On the other hand, A few papers have investigated the laws of franchise due to the modern nature of this phenomenon.

The thesis [9] aimed to show the underdevelopment of franchise in Europe due to the subjected regulatory environment. Two factors of franchising in EU include failure of regulatory ecosystems to govern franchising and lack of homogeneity between different



www.mecsaj.com

ecosystems. The failure by member states involves failing in adequate reinforcing economic drivers to attract franchisee and franchisors with reduced level of inherent consequential risk. Moreover, the barriers to trade between member states affected by the lack of homogeneity between legal ecosystems. Three commercial imperatives include promotion for market confidence in franchise, ensure of pre contract, and impose of mandatory taxonomy of rights and obligations.

The study [11] has determine the obligations for the franchisee and franchisor. It revealed that under franchise contract, the franchisor got many obligations that can be classified into moral obligations and materialistic obligations. The moral obligations include technical support, trademarks, and know-how. Under materialistic obligations, the documents, supplies, equipment, and machines have to be delivered by franchisor. The study also have addressed the obligations of the franchise including non-disclosure of secrets and financial obligations. Moreover, the main cases and effects of franchise contract termination have been treated in this study. The study argued that the Jordanian legislator should take into account the results and recommendations from this study to achieve best results of activating franchise contract in Jordan.

The thesis [12] has investigated the regulations franchise agreement and how it achieves the goals of franchise code of conduct namely the increased levels of participants certainty the imbalance of the relation power. It has expanded the concepts of regulation based on new learning in regulation. Further, it examined how the layers of regulation in franchise sector in multi-layered governance system contribute to achieve the mentioned goals. The findings presented a suggestion for setting up the relation between the franchisor an franchisee where uncertainty and imbalance of power existed based on self-regulation and market layers. The interaction of standard and relational qualities reinforce the market interaction between two parties and the associated conditions in the contract. The thesis concluded that the self-regulatory tools are used for direct intervention in franchise code of conduct as a public layer of control.



www.mecs.com

The increase of global franchise opportunities in Islamic finance is slow compared to the increasing and expansion of global Islamic finance industry. For this reason, the paper [15] presented an investigation of the legal framework for franchise in Islamic finance industry of Malaysia. In 2013, the franchise industry has contributed 2.8% to the GDP in Malaysia. A qualitative legal approach was adopted by the study to analyse the related applicable legislations in Shari'ah Islamic finance. The findings of the study showed that the lack of specific framework for Shari'ah Islamic finance has reduced the opportunities to expand the franchise industry. In conclusion, it is expected to create a global hub of Islamic finance in Malaysia to transit to the global level.

The study [18] has analysed the franchise aspects especially violations and penalties in South Africa compared to some examined countries. It revealed that only Australia empowers the enforce of penalty against violating franchisor. South Africa allows for rigid penalties and accountability making its laws the most rigorous amongst other countries [16]. Moreover, the franchising appears more active in France, China, and US with less imposed penalties. US and France recognized the importance of providing certain disclosure for franchise before signing the contract. The agreement is enforceable against the franchisee after it is signed.

Methodology

In this paper, we carried out a social research based on a systematic study that investigates the political, social or other conditions to uncover the influencing factors towards a specific phenomenon. It aims to understand why something occurs, the causes of problems and extract the inferences and conclusions. This research attempts to determine the significance of franchise through an exploratory study on global franchise to draw the value of franchising laws. We collected the required materials about this topic.



www.mecs.com

Franchise agreement

The franchise allows the franchisee to get the franchisor brands and operating methods under licenses and agreement on the terms and conditions of the franchise contract. The written form of franchise agreement is mandatory according to the laws even though the law of franchise does not require to write franchise contract. The franchise agreement involves also getting protection against other parties from the use of trademark without license. Every franchise contract should also provide confidential information relevant to the franchise and innovation activities made by franchiser and franchisee.

Generally, the countries can be divided into four groups: 33 countries have laws and direct regulations for franchising; countries have direct or indirect laws and don't have direct regulations for franchise; countries don't have national franchise legislation and their provinces have specific laws like Canada; and countries regulate franchising by both state and federal governments in different degrees like US [3].

Franchise typically encourages economic activity through improvement of provision of services and distribution of products, as well as its ability to establishing assistance to enter new competitors to the market [19]. By franchising, the independent traders can set up their businesses quickly and with greater opportunity of success. Consequently, it provides better chance for franchisers to compete. From consumers' perspective, there is a possibility of fair sharing of benefits and combined advantages of franchisers. Moreover, franchise ensures of constant quality of services and products [9].

Franchising business model can minimize the uncertainty in riskiness of growth phases. Additionally, franchising has been considered an imperative strategy for business growth through improving job creation and encouraging more foreign investors to enter market. Hence, it has an essential impact on the world economy. In 2015, the franchising revenues registered about 1.6 billion dollars, which represents 2.3% of world GDP and opens 2.2 million job opportunities [20].



Types of franchises

There are four types of franchising in accordance with object of the transaction. These types are distribution franchising, franchising services, management franchise, and business format franchise. The most common type of franchising is distribution of franchising that involves retail sale by franchisee to the consumer of a certain group of products to carry out a distinct name of franchisor such as furniture. In franchising of services, the raise up of this type has made it to offer services (carrying distinct name, trade name or trademark) with aid of franchisee and instructions franchisor to the consumers. Business format franchise enables the franchisor to grant the rights to business process, trademarks, and trade names, to sell the products. Management franchise is focused on managing franchise by the franchisee to allow individuals with movable skills to lead ownership of business for success [22].

The importance of franchise law

The significance of franchise comes from the consequences of the technological development, economic growth, free trade, and the recent communication tools. Franchise contract has emerged two sides of improvements and dual obligations to the franchiser and franchisee [10]. In the scope of franchise contract, there are variant effects of franchise the is dependent to its subject and value. In developing countries, the advantages of franchise contract adjust the domestic economy by developing the trade to get more customers in target market and distributing goods and services in well-ordered manner [11].

Franchise is a tools that contributes to develop the emerging market and the integration with global development. A few papers have investigated the laws of franchise due to the modern nature of this phenomenon. The exploration of franchise law may aid to make sure of the continuous growth of franchise and to determine the reasons for specific laws [20].



www.mecsjs.com

Franchise contract carries out many advantages and disadvantages for different parties of contract. In specific, the main advantages of franchising contains advantages for franchisee and franchisor [21]. Similarly, the disadvantages are also regarding franchisee and franchiser. The advantages of franchise contract for franchisee include the following [22]:

- Keeping the managerial and legal independence of business.
- Utilizing technical experience of franchisor.
- Lower capital needed than when individually starting business.
- Getting technical support from franchisor.
- Better prices to purchase merchandise through massive market of franchisor.
- Improving the credit to stand in business and getting finance.

Subsequently, the main advantages for the franchisor are stated as follows [21] [22]:

- Increasing number of distribution of outlets of services and products.
- Having better return on capital.
- Expansion of the network of services internationally without engaging in procedures that involve expenses.
- Increasing the name and reputation of business rapidly.
- Improving competitive advantage in the market.

Although of these advantages of franchise for franchisee and franchisor, there are some disadvantages. The disadvantages of franchising for franchisee are listed as follows [22]:

- Dependency on the franchisor.
- Limited initiative due to following of the franchisor instructions.
- Dependency on commercial success that affect the image of franchisee in the market.



www.mecs.com

- The obligations and limitations imposed by the clauses in the franchise contract.

The disadvantages for the franchisor are [21]:

- The selection of franchise is not resistant to the failure risk.
- Difficulty of exercising controls of control application of instructions.
- Profit shared with franchisor is less than when opening a branch.

Obligations of Franchise

The written form of franchise agreement is mandatory according to the laws even though the law of franchise does not require to write franchise contract. This contract defines the rights and obligations of the contracting members. The main obligations of franchisor include the following [22]:

- Provision of usage and exploitation of franchise package.
- Integration of franchisee with franchising system through necessary technical support.
- Finishing up the agreed products in contract to the franchisee.
- Provision of agreed products in contract to the franchisee.
- Constant technical, organizational and financial supply of franchise with advice.
- Confirm the product advertise agrees in franchise contract.

The main obligations of the franchisee comprise the followings [22]:

- Pay the franchisee to the franchisor the entry fee associated with accessing franchise system.
- Pay the franchisee to the franchisor the percentage from profits based on sales number and on periodic basis.
- Promote sales using the means of franchiser supplies and personal work.



www.mecs.com

- Share expenses of advertise and training programs organizations.
- Confirm to the uniformity, preparation, composition meaning, and product characteristics principles of franchise system.
- Getting exclusive products from the franchisor directly or indirectly.
- Respect the trust by franchisor in following instructions and keep secret of trade instead of unfair competition.

Termination of franchise contract

Franchise contract can be agreed on either fixed or unfixed duration depending on the agreement. The fixed term of franchise contract is terminated by the expiration of the agreed date. However, each contracting party can terminate the contract earlier through summary termination due to important cause not only when breaching contract, but also in case of decline financial status. In unfixed period of franchise contract, the termination occurs upon ordinary termination or summary termination and it should not be untimely or before the amortization of recipients' invests or pay to the other [23].

Franchise laws governing in Jordan

From business perspective, franchise business is not similar to starting a new business or purchasing existed separate business. The difference is explained as follows: the setting up or buying an existed business determines where, how, and how long the business will run, while franchise business represents the franchiser who is responsible for managing these things. As a result, franchising is a combination of both independently owned business and vertically integrated company owned operation [1].

However, many challenges faced by the investors might hamper the investors in Jordan from starting a franchise business. For example, the lack of legal framework for franchise business regulation is one of the most challenging issues toward franchise in Jordan.



www.mecs.com

Due to the profitable feature of franchise agreement in the investment markets of Jordan, the current laws to govern franchise agreement are not sufficient. Therefore, a specific legal framework should be developed to support franchise agreement [1]. In fact, no real governing law of the legal aspects of franchising in Jordan. Conversely, various performances could influence the elements of franchise agreement in Jordan like Trademark Act and Unfair Competition and Trade Secret Act [1].

Moreover, there is no specified legislation under Jordanian legal system to control the franchise agreement or license agreement contracted between the franchisee and the franchiser. This leads to slow down and prevent the advancement in local and foreign investments due to the inability to set up franchise laws in Jordan [1].

Some examples of recent franchises in Jordan are Ruby Tuesday, TGI Fridays, ACE Hardware, and Applebee's. In fast food industry, examples of franchises include KFC, McDonald's, Pizza Hut, Burger King, and Ponderosa Steakhouse. In other categories, Franchises include child care such as FasTracKids. In recent years, many new malls and outlets have opened in Amman and others are in construction that are estimated to provide many opportunities for more franchises.

The lack of specified legislations of franchise agreement in Jordan could seriously hamper the advancement of local and foreign investment to set up franchise businesses and hinder the progress of the country and the opportunities to work for people. To resolve these challenges, the Jordanian homebased franchises should be encouraged to make sense that the local and international franchises are governed and controlled by the same fair rules and regulations. These rules and laws have to make sure that the business format franchises is governed and the protection of franchiser and franchisee interests is achieved.



www.mecs.com

Finally, this study argued that the current governing laws of franchise contract in Jordan fail to provide a comprehensive control system of franchise legal aspects. In addition, the development of a specific legal framework is highly needed to govern the franchise business in Jordan, and the benefits and costs of laws must be balanced.

Conclusion

In this paper, the discussion provided about the laws governing franchise agreement in Jordan. The main basics of franchise contract include grant license to franchisee to allow him use franchiser trademark. Further, the franchise agreement involves also getting protection against other parties from the use of trademark without license. Every franchise contract should also provide confidential information relevant to the franchise and innovation activities made by franchiser and franchisee.

In conclusion, the lack of specified legislations of franchise agreement in Jordan could be resolved through developing a legislative framework to improve the local and foreign investment to set up franchise businesses. Furthermore, the developed framework could enable more progress of the country and the opportunities to work for people. Finally, the franchise law should apply the fair rules and regulations on the local and international franchises, as well as balancing the benefits and costs of laws.



References

- [1] M. S. N. Y. a. R. A. R. Khasawneh, "Current Laws Governing Franchise Agreement in Jordan," *Asian Social Science*, vol. 12, no. 4, p. 45, 2016.
- [2] A. D. D. a. J. P. Rosado-Serrano, "International franchising: A literature review and research agenda," *Journal of Business Research*, vol. 85, pp. 238-257, 2018.
- [3] A. a. D. M. Ship, "The Legal Relevance of Bargaining Power in US and Canadian Franchise Litigation: A Comparative Perspective North and South of the Border," *Franchise LJ*, vol. 34, p. 571, 2014.
- [4] K. e. a. Sayabaev, "Finance, Franchise and Their Impact on Tourism," *The Journal of Internet Banking and Commerce*, vol. 21, no. 3, 2016.
- [5] R. e. a. Peretiatko, "Franchising in Ukraine," *European Journal of Marketing*, vol. 43, no. 1, pp. 21-30, 2009.
- [6] I. M. A. a. A. E. Alon, "Opportunities and threats regarding the development of the franchising business model in Croatia," *Seventh International Conference on "Enterprise in Transition"*, 2007.
- [7] M. J. P. a. A. Š. Alpeza, "The role of creativity and innovation in implementation of franchising business model in Croatia," *32nd International Conference on Entrepreneurship and Innovation Podim–Potentials of Creative Industries*, 2012.
- [8] O. A. W. a. D. K. Dada, "Entrepreneurial tendencies in franchising: evidence from the UK," *Journal of Small Business and Enterprise Development*, vol. 22, no. 1, pp. 82-98, 2015.
- [9] P. M. Abell, "The regulation of franchising in the European Union," *Diss*, 2011.
- [10] B. a. J. B. Peacock, "Local Franchise Fees Generate Hundreds of Millions for Cities: Consumers Are Footing the Bill," 2011.
- [11] A. Alqudah, "The Impact and Termination of Franchising Contract," *Middle East University*, 2015.
- [12] E. Spencer, "The regulation of the franchise relationship in Australia: a contractual analysis," 2008.



- [13] G. a. A. S. Gunasekara, “Franchising: A case for regulation,” *University of Auckland Business Review*, vol. 9, no. 1, 2008.
- [14] T. M. Kerkovic, “The main directions in comparative franchising regulation- Unidroit initiative and its influence,” *European Research Studies*, vol. 13, no. 1, p. 103, 2010.
- [15] U. A. Oseni, “The Law and Regulation of Franchising in Malaysia’s Islamic Finance Industry: Problems, Prospects and Policies,” 2016.
- [16] S. P. Sigué, “The promises of franchising in Africa: the need for a critical examination,” pp. 168-171, 2012.
- [17] M. A. E. a. S. O. P. Alpeza, “Development of Franchising in Croatia Obstacles and Policy Recommendations,” *Review of Innovation and Competitiveness: A Journal of Economic and Social Research* , vol. 1, no. 1, pp. 5-24, 2015.
- [18] R. W. Emerson, “Franchisees as Consumers: The South African Example,” *Fordham Int'l LJ*, vol. 37, p. 455, 2013.
- [19] H. e. a. Kußmaul, “Franchising—a key to success in times of financial and economic crises?!” *International Journal of Entrepreneurial Venturing*, vol. 4, no. 3, pp. 309-326, 2012.
- [20] I. E. a. S. S. K. Bekhouche, “An Overview of Franchising Law: Why is it Important?,” *International Journal of Law and Public Administration* , vol. 1, no. 1, pp. 41-47, 2018.
- [21] M. a. E. V. Kavaliauskė, “Franchise business development model: Theoretical considerations,” *Business: Theory and Practice* , vol. 12, p. 323, 2011.
- [22] E. C. Ritaine, “The Common Frame of Reference (CFR) and the Principles of European Law on Commercial Agency, Franchise and Distribution Contracts,” *ERA Forum Springer-Verlag*, vol. 8, no. 4, 2007.
- [23] J. a. G. B. Velentzas, “The Business Franchise Contract as a Distribution Marketing System: Free Competition and Consumer's Protection,” *Procedia Economics and Finance*, vol. 5, pp. 763-770, 2013.