

The Need for A Franchising Law in the UAE

Type	E-journal
Date	16 Oct 2023
Jurisdiction	United Arab Emirates
Legal reference	Saudi Arabia Royal Decree No. M22/1441, Federal Law No. 3/2022, Federal Law No. 18/1993, Federal Law No. 5/1985, Federal Law No. 18/1981, Federal Decree-Law No. 36/2021, Federal Decree-Law No. 38/2021, Federal Law No. 11/2021, Saudi Arabia Royal Decree No. 9152/1441, Saudi Arabia Cabinet Decision No. 122/1441
Relevant company	SOL International Ltd

Document link: https://www.lexismiddleeast.com/eJournal/2023-10-17_1

Summary

In recent years, franchising, a business model that integrates entrepreneurship with strong brand recognition, has experienced a significant rise in the United Arab Emirates (UAE). The UAE is home to many worldwide brands and household names in disciplines such as hospitality, food and beverage, fashion, and luxury and continues to offer world-class facilities.

Analysis

At present no single codifying franchising law in the UAE exists to deal with the obligations and duties of a franchisor or franchisee. Intellectual property rights are enshrined in other statutes which provide assistance. As the UAE continues to grow as a major international economic centre and attracts worldwide brands, the need for a franchising law becomes increasingly stronger.

This article provides an analysis of the KSA franchising law^[1 p.4] and its potential implications for the UAE. The intersection of franchising law with the entertainment and fashion sectors is explored, where intellectual property laws and brand protection play a pivotal role.

Analysis

The UAE, specifically Dubai, depends largely on the tourism sector for its revenue and income and hosts many world-class retail centres, hotels, and tourist attractions, among which franchised or licenced international businesses operate the majority.^[2 p.4] Currently, the UAE has several federal laws relevant to franchising. These include:

- **Federal Law No. 3/2022 Regulating Commercial Agencies (New Law)**
- **Federal Law No. 18/1993 Concerning the Commercial Transaction Law (UAE Commercial Code) and**
- **Federal Law No. 5/1985 On the Civil Transactions Law of the United Arab Emirates State (UAE Civil Code).**

The New Law, which came into effect on 15 June 2023, defines 'agency' as any contract where an agent represents a principal to provide a commodity or service in return for a profit.^[3 p.4]

This definition is in line with the definition provided under **Federal Law No. 18/1981 on Organizing Commercial Agencies (Old Law)**.

The Old Law set out that once franchisees were registered as agents under the UAE Ministry of Economy, they could be considered commercial agencies with the benefit and burden of all potential legal implications.^[4 p.4]

Under both the Old and New law, for a franchise agreement to be registered as a "commercial agency agreement," the franchisee must either be a UAE national, or a business entity incorporated within the UAE, and the agreement should be documented in Arabic. In addition, the New Law, which aims to bridge the gap between principals and agents, enables international companies not owned by UAE nationals to apply to act as agents. It is mandatory for such companies to receive the approval of the UAE Cabinet.

The New Law brought significant reforms, such as increasing the scope and grounds of lawful termination. Under **Article 9** of the New Law, a principal can legally terminate a commercial agency agreement without having a 'material reason' to do so, as was required by the Old Law. The New Law also enables parties to settle disputes through arbitration, which was not an option under the Old Law.^[5 p.4]

The Old Law was often criticised for favouring local agents, and in turn, meant that franchising agreements remained unregistered.^[6 p.4] The New Law permits a foreign principal to sell its products in the UAE without an agent, as long as no agent has already been appointed in the UAE and the principal had never previously registered an agreement in the country.

Given that 'international company' has not been defined within the statute, the provision under the New Law still limits the number of registrations that can take place.^[7 p.4] A standalone franchising statute could enable a more straightforward process for global brands to register as agents.

If foreign investors are provided with a standalone franchising law, they may well be inclined to further consider opportunities within the region owing to the protections a standalone law could provide which in turn would lead to further diversity within the UAE's business landscape as global and further reputable international brands would be drawn into the region.

The UAE has developed into a desirable location for worldwide brands looking to build an identity in the Middle East owing to economic stability, growth, and a thriving tourism sector. In the absence of a specific statute, franchisees and franchisors may be exposed to uncertain legal difficulties. Franchise agreements are regulated by general commercial rules, allowing for interpretation and arguably adding to difficulties for parties to reach common ground.

Hospitality and service franchises, from five-star hotels to quick-service eateries, are thriving as international companies view the UAE as a gateway or corridor into the Middle Eastern market.

The entertainment and fashion industry have both seen a significant rise and increase in franchises. Theme parks, movie theatres, and live shows have grown substantially in popularity.

A standalone franchising law would address brand protection and intellectual property issues that are pertinent to the fashion industry. The UAE currently has several federal laws dealing with IP issues. These include:

- **Federal Decree-Law No. 36/2021 on Trademarks (Trademark Law)**
- **Federal Decree-Law No. 38/2021 On Copyrights and Neighbouring Rights (Copyright Law) and**

- **Federal Law No. 11/2021 on the Regulation and Protection of Industrial Property Rights (Industrial Property Law).**

Kingdom of Saudi Arabia (KSA) Franchise Law

KSA encompasses almost 60% of the franchise market in the Middle East and is currently undergoing notable economic growth with the development of various entertainment venues and fashion houses.^[8 p.4] Half of the fourteen giga-projects launched in KSA aim to significantly impact and develop their entertainment sector.^[9 p.4]

KSA has the largest retail market in the GCC, making it an alluring franchising destination in the MENA region.^[10 p.4] Considering the speed at which KSA is growing, it is of no surprise that in 2020, by **Saudi Arabia Royal Decree No. 9152 /1441 dated 11/02/1441H**, a franchise law was introduced (**KSA Franchise Law**).

The KSA franchise law governs the execution of franchise agreements and ensures that franchisees have access to complete information before signing contracts. The KSA Franchise Law places a strong emphasis on obligatory disclosure and registration requirements and includes a disclosure appendix to assist the relevant parties while drafting a franchise agreement.^[11 p.4]

The KSA Franchise Law ensures transparency and information symmetry in franchise transactions. This is evident through **Article 9**, which mandates that the franchisee disclose all information concerning the business to the franchisor and seek consent from the franchisor before changing the company's products, services, or mode of operation.^[12 p.4]

Pursuant to **Article 3**, this law applies to all franchise agreements, regardless of where the offer or sale takes place, or the parties involved are situated. However, this is contingent on whether the business or services provided by the franchise are available within KSA.^[13 p.4] The KSA Franchise Law places a new requirement through **Article 5** on the franchisor to have prior experience in relation to the franchise business. This requirement ensures a higher level of expertise, support, and quality control.

The KSA Franchise Law also specifies the processes for termination and non-renewal, protecting the interests of both parties.^[14 p.4] As provided for at **Articles 17 and 19**, the franchisee can now end the franchise agreement if the franchisor fails to register the agreement or make necessary disclosures. Even if the franchisee does not wish to terminate the agreement, the franchisee is authorised to claim indemnities from the franchisor. These provisions compel franchisors to comply with all necessary procedures to ensure their own protection.

The KSA Franchise Law entails fair and ethical provisions which not only ensure integrity within the franchising landscape but also resolve unethical power imbalances between franchisees and franchisors. The UAE has adopted similar provisions while drafting the New Law concerning commercial agencies. However, a UAE standalone franchising law will provide guidance and remove ambiguity from franchise agreements and reflect the UAE's commitment to fostering innovation and entrepreneurship.

Conclusion

The UAE is a critical juncture where the thriving franchising sector and the expanding tourism, fashion and entertainment industries may well justify creating a thorough and standalone franchising law. This arguably becomes increasingly important as the UAE continues to rise as a central hub for international business and to attract the best worldwide names.

Although the New Law contains provisions that widen the scope for non-UAE nationals to act as agents, a standalone franchising law will open more doors for opportunities, as contracts will be structured and provide certainty.

SOL undertakes work in the fashion, sports, and entertainment industries as well as company law and is happy to deal with any queries in respect of the same.

Written by Sarah Malik and Rumaisa Khan.

Notes

1. ^ [p.2] Saudi Arabia Royal Decree No. M22/1441 dated 09/02/1441 H (corresponding to 25 April 2020) (the “Franchise Law”)
2. ^ [p.2] <https://www.twobirds.com/en/insights/2021/uae/franchising-in-the-united-arab-emirates>.
3. ^ [p.2] Art 1, Federal Law No. 3/2022 Regulating Commercial Agencies.
4. ^ [p.2] <https://www.gorodissky.com/publications/articles/uae-franchise-regulations-in-brief/>.
5. ^ [p.2] Art 26, Federal Law No. 3/2022 Regulating Commercial Agencies; Art 6, Federal Law No. 18/1981 on Organizing Commercial Agencies.
6. ^ [p.2] <https://www.tamimi.com/law-update-articles/franchising-in-the-uae/>.
7. ^ [p.2] <https://www.shlegal.com/insights/the-new-commercial-agencies-law-in-the-uae---a-move-towards-flexibility-in-the-commercial-agencies-practice-in-the-uae>.
8. ^ [p.3] <https://franchising.eu/article/232/saudi-arabia-s-rewarding-franchise-future/>.
9. ^ [p.3] <https://blooloop.com/theme-park/in-depth/giga-projects-saudi-arabia/>.
10. ^ [p.3] <https://www.dentons.com/en/insights/articles/2022/april/27/new-saudi-arabian-franchise-law>.
11. ^ [p.3] <https://www.bakerbotts.com/thought-leadership/publications/2020/september/saudi-arabias-new-franchise-law--a-summary-of-what-you-need-to-know>
12. ^ [p.3] <https://www.mondaq.com/franchising/1128564/uae-franchise-laws-and-regulations-2022>.
13. ^ [p.3] https://www.franchising.com/articles/new_saudi_arabia_franchise_law_to_take_effect_in_april_2020.html.
14. ^ [p.3] <https://www.tamimi.com/law-update-articles/franchise-arrangements-under-ksa-law/>.