FRANCHISING IN THE MIDDLE EAST AND NORTH AFRICA ("MENA")

LEGAL PERSPECTIVE

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BUSINESS PERSPECTIVE

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October 14-16, 2009
Westin Harbour Castle
Toronto, Ontario
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# American Bar Association
## 32nd Annual Forum on Franchising
### Franchising in the Middle East and North Africa (“MENA”):

## LEGAL PERSPECTIVE
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FRANCHISING IN THE MIDDLE EAST AND NORTH AFRICA ("MENA"): LEGAL PERSPECTIVE

This paper addresses the key global legal issues that should be seriously considered in any international transaction and especially, in MENA. It also highlights selected issues common to the target countries reviewed that have presented the most significant challenges to international practitioners. While not covered by this paper, the geopolitical issues and fluid business environment confronting market development in MENA are the subject of daily public national and international discourse and should be evaluated for legal implications.

I. GLOBAL LEGAL ISSUES.

A. OFAC and Due Diligence.

There are unique due diligence challenges in franchising in the international arena in general and in the Middle East and North Africa ("MENA") region in particular. For example, some business partners engage in business in more than one country. Therefore, public records may need to be reviewed in more than one jurisdiction. In conducting due diligence on business partners in foreign countries, franchisors must comply with restrictions set forth by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, which periodically administers and enforces economic sanctions against certain foreign countries, regimes, terrorists or other entities it considers to be threats to the national security, economy or foreign policy of the United States. The sanctions are intended to further U.S. foreign policy and national security objectives.

OFAC also maintains a list of Specially Designated Nationals ("SDNs"). Individuals and companies on this list are either determined to be acting on behalf of a sanctioned country or


2 Joyce Mazero & Iden Grant Martyn, Due Diligence for Franchisors: Practical Considerations to Avoid Criminal and Civil Liability, Presentation to the International Franchise Association, Feb. 8, 2002.

3 Id.

4 Id.


6 Id.

are individuals or groups that are non-country specific, such as terrorists or drug traffickers. OFAC either maintains or can create a country-specific list of SDNs. OFAC applies to all U.S. citizens and permanent resident aliens, located both inside and outside the U.S., and all U.S. incorporated entities and foreign branches of U.S. entities. Therefore, all U.S. franchisors, franchisees and suppliers, whether they are domestic or international, must ensure compliance with OFAC restrictions and must not engage any SDN as an agent, franchisee or employee.

The current list of OFAC sanctioned countries includes three MENA countries: Syria, Iraq and Iran. As discussed below, although the U.S. does impose economic sanctions on Syria, the sanctions do not appear to prohibit U.S. franchisors from entering into the Syrian market. While a franchisor may not directly engage in business with a sanctioned country, it is important to note that franchisors may indirectly be conducting trade with those countries through a business partner in another MENA country. For example, the United Arab Emirates (“U.A.E.”) (and the Emirate of Dubai in particular) is a major center for trade with Iran, which is one of the OFAC sanctioned countries. In a transaction with a franchisee which involves the sale of products that might be subject to re-exportation to Iran, the franchisor may want the franchisee and its principals to represent, warrant and covenant that franchisee will not knowingly engage in or facilitate the re-export of such products to Iran, or otherwise take action that may cause the franchisor to be in violation of U.S. law. While Syria, Iraq and Iran are currently the only countries in the region on the OFAC list, a franchisor operating in any country in the region should check the OFAC list periodically as the sanctions reflect recent developments in U.S. foreign policy.

A franchisor expanding in the MENA region should ensure that potential vendors and franchisees are not on the list of SDNs. As with the list of OFAC sanctioned countries, the SDNs list changes periodically and should be consulted before any transaction or entering into any relationship with a foreign person. The list of SDNs is available for free at http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf. To assist franchise systems in monitoring this list, a franchisor or franchisee can request to receive email notifications from OFAC when the SDNs list is updated. Further, there are several commercially available compliance software programs that will scan the list of SDNs to ensure that any potential business partners are not listed. Two of these programs are Visual Compliance and Export Compliance. However, subscriptions to these services are probably not worthwhile unless a franchisor is conducting a large number of searches or does not have the personnel to perform the searches on the free OFAC site.

8 Id.
9 Id.
10 Id.
11 For the complete list of sanctioned countries, see http://www.ustreas.gov/offices/enforcement/ofac/programs/ (last visited Aug. 13, 2009).
B. FCPA

U.S. franchisors and suppliers doing business in foreign markets must comply and attempt to ensure franchisees’ compliance with the Foreign Corrupt Practices Act of 1977 (“FCPA”). The FCPA prohibits bribery of foreign officials and imposes certain accounting and recording requirements on publicly traded companies.\(^\text{14}\)

Recent high profile cases have drawn increased attention to the FCPA. Perhaps the best known of these is the Siemens case where the German engineering corporation Siemens Aktiengesellschaft (“Siemens”) and three of its subsidiaries settled with the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) on December 15, 2008 for a record $800 million in fines, disgorgement of profits, and pre-judgment interest.\(^\text{15}\) This is the largest FCPA penalty ever imposed by the DOJ and the SEC against a company.\(^\text{16}\) According to the SEC, Siemens paid more than $1.4 billion in bribes to government officials across Asia, Africa, Europe, the Middle East and the Americas. With the combined enforcement actions of the SEC, DOJ, and German authorities, Siemens will pay over $1.6 billion in penalties.\(^\text{17}\)

The anti-bribery provision of the FCPA prohibits a business entity or any individual, officer, director, employee or agent of such entity from making any offers, payments, promises to pay, giving or offering to give any money, gift or anything of value to a foreign official with the purpose of influencing an act or decision of the foreign official.\(^\text{18}\) In order to be liable under the FCPA, the payment must be made for the purpose of influencing a foreign official in his official capacity.\(^\text{19}\) However, to create liability, the payment need not be successful in achieving its intended purpose.

It is important to note that the reach of the FCPA is broad. The U.S. government has jurisdiction to prosecute foreign countries or nationals who cause, directly or indirectly, “an act in furtherance of a corrupt payment to take place within the territory of the United States.”\(^\text{20}\) Thus, U.S. companies may be held liable for the acts of foreign subsidiaries.\(^\text{21}\) A U.S. company could also be liable under the FCPA for acts committed by third parties if the company authorized the


\(^{16}\) Miller Chevalier, supra note 15, at 1.

\(^{17}\) U.S. Department of Justice, supra note 15.

\(^{18}\) Id.

\(^{19}\) Id.

\(^{20}\) Id.

\(^{21}\) Id.
payment or knew that it was substantially certain to occur.\textsuperscript{22} The term “foreign official” is likewise broad and extends beyond government agencies and elected officials.\textsuperscript{23} Under the FCPA’s definition of “foreign official,”\textsuperscript{24} employees of foreign government-owned enterprises, for example, are considered foreign officials.\textsuperscript{25} FCPA also does not require actual knowledge that a payment or promise to pay a foreign official was made. For a violation to occur, it is sufficient that the individual or corporation is aware that “such circumstances exist[ ], or that such result is substantially certain to occur.”\textsuperscript{26} Thus, willful ignorance is not a defense.

The anti-bribery provision of the FCPA is particularly important for franchisors transacting business in MENA countries because bribery and corruption are more common in the region as compared to other markets.\textsuperscript{27} It is important to note that, even if the franchisor’s own employees are not engaged in acts of bribery, a franchisor could still be liable under the Act if their agents bribe foreign officials.\textsuperscript{28} The question of whether a U.S. franchisor could be in violation of the FCPA for acts committed by its franchisees in foreign countries has not yet been litigated.\textsuperscript{29} However, as an added precaution, franchisors should have their franchisees sign clauses representing and warranting that they understand their obligations under the FCPA, will be in compliance with the FCPA and will not provide any payments in an attempt to bribe foreign officials.

There is an exception to the Act for “grease payments” or payments made for “facilitating or expediting” routine governmental actions.\textsuperscript{30} Examples of routine government actions include obtaining permits or licenses and processing government papers such as visas.\textsuperscript{31} However, the vagueness of the FCPA creates a substantial gray area, making it difficult to determine what constitutes a lawful “facilitating or expediting” payment.\textsuperscript{32} For example, in United States v. Vitusa Corp.,\textsuperscript{33} the Vitusa Corporation and its President authorized payments of approximately

\begin{thebibliography}{9}
\bibitem{22} Id.
\bibitem{24} See 15 U.S.C.A. § 78dd-3(f)(1)(A) (2009). The FCPA defines “foreign official” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of such public international organization.” \textit{Id.}
\bibitem{25} See FCPA News Alert, supra note 23, at 3.
\bibitem{28} Yaffe \& Ewald, supra note 27.
\bibitem{29} Yaffe \& Ewald, supra note 27.
\bibitem{32} See FCPA News Alert, supra note 23, at 2.
\end{thebibliography}
$50,000 to a foreign official to secure the payment of an undisputed debt.\textsuperscript{34} Although the $50,000 was intended to expedite a payment, the DOJ regarded the money as an unlawful payment to a foreign official in order to obtain or retain business, the business being the full amount of the debt.\textsuperscript{35} Further, as shown in the settled enforcement action of Con-Way, Inc., a California based freight transportation company, payments of small sums of money do not always result in their categorization as “facilitating” payments.\textsuperscript{36} Due to the difficulty in distinguishing grease payments from other types of bribes, franchisors may want to adopt a more restrictive policy than the FCPA regarding facilitating payments in order to minimize their risk. This may also be a more practical approach for international companies which could encounter conflicting laws regarding bribes in different jurisdictions.\textsuperscript{37}

There are two affirmative defenses to the FCPA. The first is for bona fide business expenses such as incurring travel or lodging expenses on behalf of foreign officials for the promotion or demonstration of products and services, or in connection with the performance of a contract.\textsuperscript{38} Franchisors should be aware, however, that the bona fide business expense affirmative defense does not give companies carte blanche to pay the travel and lodging expenses of foreign officials.\textsuperscript{39} For example, in 1999 an FCPA enforcement action was brought against Metcalf & Eddy, Inc., for paying the first class air travel to the U.S., food, lodging and other expenses for an Egyptian official and his family.\textsuperscript{40} The DOJ took the position that the purpose of the visit was to induce the official to improperly use his influence to award a contract to Metcalf & Eddy.\textsuperscript{41} Likewise, in 2007 Lucent Technologies paid $2.5 million in fines and penalties related to payments of trips for Chinese telecommunications officials which were primarily for sightseeing, entertainment, and leisure.\textsuperscript{42} Franchisors who plan to pay for travel and lodging expenses of an individual who could be considered a foreign official should keep in mind that the touchstone of this affirmative defense is “reasonableness,” which does not include first class travel or lavish accommodations.\textsuperscript{43}


\textsuperscript{34} See Jay G. Martin, Overview of the Facilitating Payment Exception Under the Foreign Corrupt Practices Act of 1977 and the OECD and United Nations Anti-Bribery Conventions, Prepared for the State Bar of Texas, 16th Annual International Law Section Institute (no date) at 1-2 (hereinafter “Martin”).

\textsuperscript{35} Id.

\textsuperscript{36} See FCPA News Alert, supra note 23, at 3. Con-way’s subsidiary made hundreds of small payments totaling $244,000 in improper payments in a three-year period to Philippine customs officials and $173,000 in improper payments to officials at fourteen state-owned airlines. The purpose of the payments was to induce officials to violate customs regulations and to give the subsidiary shipping preferences on the airlines. The payments were not supported by receipts and Con-way did not book the payments.

\textsuperscript{37} See Martin, supra note 34, at 3.


\textsuperscript{39} See Tarun, supra note 20, at B-1.

\textsuperscript{40} Id.

\textsuperscript{41} Id.

\textsuperscript{42} See FCPA News Alert, supra note 23, at 2.

\textsuperscript{43} Id.
The second affirmative defense is if the payment, gift, offer, or promise of anything of value was lawful in the country where it was made.\textsuperscript{44} However, this defense only applies if a country has a “written law” permitting bribery.\textsuperscript{45} The defense is not available if there is merely an environment of corruption and bribery in the particular country.\textsuperscript{46} Therefore, this defense has little usefulness as there are currently no countries in the MENA region or elsewhere where bribery is part of the written law.\textsuperscript{47}

The FCPA is a criminal statute governed by the United States Sentencing Guidelines. Individuals in violation of the anti-bribery provision could face penalties of up to $100,000 in fines and up to five years imprisonment.\textsuperscript{48} They could also be subject to a civil penalty of up to $10,000.\textsuperscript{49} Individuals fined under the anti-bribery provisions of the FCPA may not have those fines paid by their employers or principals.\textsuperscript{50} Domestic concerns (which include natural persons and entities) who violate the anti-bribery provisions of the FCPA may be fined up to $2,000,000 per violation, be subject to civil penalties of up to $100,000 per violation, and natural persons may be imprisoned up to 5 years.\textsuperscript{51} However, as in the case of Siemens, these fines may in reality be up to twice the benefit derived from the illegal payments or the loss to the victims.\textsuperscript{52} In addition, for antibribery violations, the DOJ\textsuperscript{53} may bring civil actions for fines and to enjoin any violation or anticipated violation by a firm.

There have been several recent trends in FCPA enforcement over the past several years. The first trend has been an increase in enforcement activity.\textsuperscript{54} Although a high level of FCPA enforcement is expected under the Obama administration and Attorney General Eric Holder, there has actually been an increase in FCPA enforcement activity for the past several years.\textsuperscript{55} The number of FCPA criminal prosecutions doubled from 2003 to 2008, and the number of DOJ investigations during the same time period almost tripled.\textsuperscript{56} FCPA enforcement actions reached a record high in 2007 with thirty-eight actions, followed by thirty-four FCPA actions in 2008.\textsuperscript{57} A

\begin{itemize}
\item\textsuperscript{44} 15 U.S.C.A. § 78dd-3(c)(1) (2009).
\item\textsuperscript{45} See FCPA News Alert, supra note 23, at 2.
\item\textsuperscript{46} Id.
\item\textsuperscript{47} See id.; see also Tarun, supra note 20, at B-5.
\item\textsuperscript{50} 15 U.S.C. §§ 78dd-3(e)(3), 78dd-2(g)(3) (2009).
\item\textsuperscript{52} 18 U.S.C.. § 3571(d) (2009).
\item\textsuperscript{53} The SEC brings such actions against public companies and other issuers.
\item\textsuperscript{54} See FCPA News Alert, supra note 23, at 2; see also Shearman & Sterling, LL, Recent Trends and Patterns in FCPA Enforcement.
\item\textsuperscript{55} Miller Chevalier, FCPA Winter Review, International Alert, Feb. 13, 2009, at 1-2.
\item\textsuperscript{56} See FCPA News Alert, at 3.
\end{itemize}
second trend is the increase in penalties imposed with a record high in monetary penalties, a
greater variety of sanctions and disgorgement of profits.\textsuperscript{58} As a penalty for violations of the
FCPA, the SEC has been increasingly using disgorgement of “tainted profits.”\textsuperscript{59} For example, in
April 2007, Baker Hughes Incorporated (“Baker Hughes”) reached a settlement of $44.1 million,
of which $23 million was disgorgement of profits plus interest.\textsuperscript{60} The rationale for disgorgement
is to make improper payment unprofitable, thus reducing the incentive for companies to bribe
foreign officials.\textsuperscript{61} A third trend is the increased enforcement against foreign entities.\textsuperscript{62} If a
foreign company trades on a U.S. stock exchange, it could be subject to FCPA enforcement
efforts.\textsuperscript{63} For example, the DOJ brought a criminal prosecution against Christian Sapsizian, a
French citizen and employee of a French company, for bribing Costa Rican officials.\textsuperscript{64} Although
he was a foreigner working for a foreign company, he was within the reach of the FCPA
because his employer’s American depository receipts traded on the New York Stock
Exchange.\textsuperscript{65}

C. Transparency Index and Corruption.

Transparency International publishes the annual Corruption Perceptions Index (“CPI”).\textsuperscript{66} The
CPI was first released in 1995 and ranks countries by their perceived levels of corruption based
on expert assessment and surveys completed by business people who are both residents and
non-residents of the target countries.\textsuperscript{67} CPI has consistently ranked MENA countries below the
world median in its rankings.\textsuperscript{68} However, there is some variation of the CPI ranking among
the countries. For example, Jordan performs better than other countries in the region, while Syria
remains at the bottom of the ranking.\textsuperscript{69} In MENA countries, corruption is both prevalent and
widespread.\textsuperscript{70} This can be attributed to the political infrastructures of the region, which are

\textsuperscript{57} Id.


\textsuperscript{59} Id. at 4.

\textsuperscript{60} Id. at 3.

\textsuperscript{61} Id. at 5.

\textsuperscript{62} See FCPA News Alert, supra note 23, at 3.

\textsuperscript{63} Id.

\textsuperscript{64} See id.

\textsuperscript{65} See id.

\textsuperscript{66} Id. Also see Appendix 1 hereto, 2008 Corruption Perceptions Index Chart.

\textsuperscript{67} Id.

\textsuperscript{68} Id.

\textsuperscript{69} Id. For a complete list of the countries in the 2008 CPI and the individual country rankings, see

\textsuperscript{70} Transparency International, Middle East and North Africa (MENA)
(last visited Aug. 13, 2009).
largely composed of military dictatorships, totalitarian regimes, or monarchies.\textsuperscript{71} Other factors include the public sector infrastructure and the limited opportunities for public participation.\textsuperscript{72} Countries in the Middle East and North Africa also score lower in terms of corruption than other countries with similar levels of income.\textsuperscript{73}

A powerful instrument to combat corruption in the MENA region is the United Nations Convention against Corruption (“UNCAC”).\textsuperscript{74} All the countries in the MENA region have signed the UNCAC. The UNCAC is particularly valuable in MENA countries because it is the only anti-corruption instrument of general applicability in the region.\textsuperscript{75} The UNCAC is also an important political tool because compliance with the convention is often necessary for accession to organizations such as the World Trade Organization.\textsuperscript{76} While this convention can be an important tool in anti-corruption efforts, implementation of the convention has been a challenge in many of the MENA countries.\textsuperscript{77}

D. Compliance Programs.

As discussed above, corruption and bribery are widespread in the MENA region. Therefore, franchisors should plan for corruption and incorporate it into their risk analysis. Franchisors expanding into markets in MENA countries can adopt a risk-based compliance approach. Under such an approach, systems would allocate more resources and a higher level of attention to transactions that occur in MENA countries, where bribery and corruption are more common, than other markets.\textsuperscript{78} Franchisors should develop an anti-corruption policy, which should involve reporting and control mechanisms and a training program for its employees, agents and franchises.\textsuperscript{79}

In addition to planning for corruption, it is imperative that franchisors and franchisees enact a compliance program to limit risk of FCPA enforcement actions. According to the 2008 U.S. Federal Sentencing Guidelines Manual, the amount of the fine a company could face for violations of the FCPA is impacted by the development and consistent enforcement of an effective compliance program.\textsuperscript{80} An effective compliance program needs to be promoted and consistently enforced throughout the company by: “(1) appropriate incentives to perform in accordance with the compliance and ethics program; and (2) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect

\textsuperscript{71} Id.

\textsuperscript{72} Id.

\textsuperscript{73} Id.

\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} Id.

\textsuperscript{77} Id.

\textsuperscript{78} Yaffe & Ewald, supra, note 27.

\textsuperscript{79} For more information on developing and Anti-Corruption Program, see http://www.business-anti-corruption.com/integrity-system/.

criminal conduct." In implementing an FCPA compliance program, franchisors should appoint an officer, director, or other individual in upper management to oversee the FCPA compliance program. This “tone at the top,” regarding FCPA compliance sets the tone for the entire company. A franchisor should also create written policies and procedures for its employees, franchisees, and agents to ensure that they have received information about the FCPA and understand its provisions. Franchisors should also include provisions on the FCPA in its franchise agreements and development agreements. Finally, ongoing training and consistent enforcement are key to an effective compliance program.

E. Women in Business.

One global issue that has received recent attention in the MENA region is the role of women in business. Franchisors should be aware that while it is not always easy for businesswomen to operate in the MENA region, women are increasingly more influential in business. At the Doha Forum on May 5, 2009, speakers discussed the empowerment of women as a tool to better the global economy and highlighted cases from Egypt, China and India, where women had made gains in the field of business. According to Hala al-Barkouky, managing partner of the Allied Business Consultants and the representative from Egypt at the Doha Forum, only a few women occupy high level management positions in Egypt, most of which are in the banking sector. The representation of women in the political arena is even lower with only 10 of the 444 seats in the Egyptian parliament held by women. In some countries, such as Qatar, while there are no written laws or regulations restricting women’s vocations or professional activities, as a matter of custom, both men and women are expected to conform to Islamic traditional values which do incorporate traditional gender roles. Western business people have been working with women leaders in the MENA region and are partnering to assist women in the Arab world to develop business opportunities. For example, the Arab International Women’s Forum held in Paris, France in March of 2009 highlighted “the success and progress of Arab women in different parts of the world.” Franchisors seeking to partner with local agents, vendors, and suppliers in the MENA region should note that there have been instances of women setting up their own firms in MENA countries. Whether women entrepreneurs could be a source of competition for the traditional operators in those countries seeking to partner with international franchisors remains to be seen.

84 Id.
85 Id.
F. Protective Agency Laws.

Several MENA countries, such as Egypt,\(^{88}\) the U.A.E.,\(^{89}\) Saudi Arabia\(^{90}\) and Kuwait,\(^{91}\) have agency laws (generally, “Agency Laws”) which may apply to franchise relationships.\(^{92}\) These laws are designed to protect local franchisees and other sales agents by restricting the franchisor’s ability to enforce or terminate a franchise agreement.\(^{93}\) For example, the laws often state that the commercial agent is entitled to an exclusive territory. This could hinder a franchisor’s expansion of the system because a terminated franchisee in a registered agency relationship could contest the granting of a new franchise to another franchisee on the grounds that it infringes upon the exclusive territory.

It is important to note that these Agency Laws are distinguishable from U.S. state franchise relationship laws in at least two aspects: (1) most of them entitle franchisees to damages upon termination or expiration of their franchise agreement, and (2) they grant additional rights to the franchisee not contained within the franchise agreement. Moreover, if Agency Laws are deemed applicable to an agreement, local courts will assume jurisdiction over the matter regardless of the presence of contrary jurisdiction and/or venue provisions in the parties’ agreement. In some countries, there are special agency law courts that are made up of agents who hear the cases. The uncertainty of these judicial systems provides a less than ideal forum for franchisors. For these reasons, U.S. franchisors should attempt to avoid the application of Agency Laws which make the enforcement and termination of franchise agreements difficult.

Agency Laws make termination of a franchise agreement particularly difficult for the franchisor. In a registered agency relationship, the franchisee will be entitled to damages unless the franchisor can show that the termination was for “good cause.” The restrictions on termination vary from country to country, but typically the laws of MENA countries require one or more of the following: (1) notice prior to termination, (2) an opportunity to cure, (3) compensation for a terminated franchisee, or (iv) restrictions on the circumstances under which an agreement may be terminated.\(^{94}\) For example, the U.A.E. Federal Law No. 18 of 1981, as amended, known as the Commercial Agencies Law (“CAL”) prohibits the franchisor from terminating a registered agency unless there is a “serious reason for such termination” (see discussion below and in Section II, Target Country Legal Analyses). In theory, a termination with “cause” would be permissible, but the U.A.E. CAL does not define the term “cause” and U.A.E. courts have

\(^{88}\) Commercial Agency Law No. 120 of 1982, as amended.

\(^{89}\) Federal Law No. 18 of 1981 Regulating Commercial Agencies.


\(^{91}\) Law on Commerce of Kuwait; Commercial Law No. 36 of 1964, as amended by Commercial Law No. 68 of 1980.


\(^{93}\) Id.

\(^{94}\) Id.
tended to interpret “cause” so narrowly that agents are almost always awarded some form of compensation.95

In countries that have Agency Laws governing termination of agreements, the amount of compensation owed to an agent upon termination of an agreement varies. For example, while Saudi Arabian courts do not generally award lost profits, courts in the U.A.E. take into consideration a variety of factors when determining the amount of compensation. Such factors include the duration of the agency relationship, the performance of the agent, the amount of money expended by the agent in promoting the franchisor’s products and the annual gross sales and net profit collected by the agent during the agency relationship.

In addition to governing termination of the agreement, the laws of several countries in the MENA region, including Saudi Arabia, Kuwait and the U.A.E., also apply to renewals and transfers. These laws may allow an existing registered agent (a franchisee) to assert claims if the franchisor unilaterally chooses to replace it with another franchisee without first reaching an accommodation or settlement with the old franchisee – a settlement that normally entails the payment of some compensation. However, such damages are not available for non-renewal of unregistered franchise agreements. Regarding transfers, franchisors should be aware that Islamic law governs questions of inheritance among Muslims in several Middle East countries (see the discussions under “Religious Laws and Transfer Provisions,” Section I.I below and “Religious Laws and Customs” under each target country summary).

In most countries, the franchisor and the franchisee must formally register as agents in the local country in order for an Agency Law to apply. However, in some countries, even unregistered agreements could fall under Agency Law. For example, in Saudi Arabia, the Ministry has broad discretion to register any agreement it deems to be registerable under the country’s Commercial Agencies Regulation. The typical registration process requires that the parties make certain filings or take other actions in order to become a registered agency relationship, such as notarization, consular authorization, translation, and subsequent registration. There have been some instances in which a local franchisee unilaterally undertakes these procedural formalities and obtains agency registration without the knowledge or consent of the foreign franchisor. Therefore, franchisors should take protective measures, whenever possible, to make it more difficult for a franchisee to register. For example, in most MENA countries with Agency Laws, agreements must be translated into Arabic as a prerequisite to registration. A franchisor operating in a MENA country with similar requirements should therefore refrain from translating the agreement. In practice, a franchisee may unilaterally have the agreement translated into Arabic, but the agreement should contain a provision prohibiting translation and allowing the franchisor to control the text of any translation if one is made. Likewise, a franchisor should refrain from notarizing or authenticating the agreement which, unlike translation, require the consent of both parties to the agreement.

As a general practice, most agreements will provide for U.S. law to govern and litigation or arbitration to occur in the U.S. Enforcement of a foreign law award or judgment in MENA countries would require that the judgment or award be formally translated and whatever is translated will be what the court would review. To avoid any question of enforceability in a MENA country, a good practice is to translate guaranties and have signatures notarized and

95 Id.
authenticated. As a condition to enforcing the agreements directly in a MENA country (rather than in the U.S.), the franchisor must translate the agreements.

Franchisors should craft their agreements to restrict franchisees from registering under Agency Laws. The franchise agreements can include features that would make it more difficult to register such as express language (1) stating that the license is non-exclusive, (2) representing that the local commercial agency law does not apply, (3) representing and warranting that the franchisee will not act to register the relationship as a commercial agency relationship, and (4) providing for governing law and forum of the home country of the franchisor.

Aside from the procedural formalities associated with registering an agency relationship, some countries impose other requirements on registered agents. For example, in the U.A.E., Saudi Arabia and Syria, only nationals of those countries or entities that are wholly owned by nationals are eligible to become agents. Franchisors may choose to structure their relationship such that the franchisee is at least partially owned by foreign nationals and therefore ineligible for commercial registration. However, the availability of this method for resisting registration would depend on the specifics of the particular deal.

Perhaps the most effective method for resisting registration in MENA countries is including a provision in the franchise agreement which states that if the franchisee exercises its right to file under an Agency Law, the franchisor will be allowed to draw down on a standby letter of credit or bank guaranty provided by the franchisee. This acts to discourage a franchisee from seeking protection under an Agency Law and will provide the franchisor with immediate monetary coverage if the franchisee does decide to register. A letter of credit would protect franchisors from exposure to compensation claims in a MENA court and could provide a disincentive for the franchisee from bringing disputes before their local courts. A franchisor can also discourage Agency Law registration by including a provision in the agreement which states that filing under applicable agency laws will trigger a default of the franchise agreement as well as any other agreements between the parties.

G. Antiboycott Compliance.

Most Arab countries, with the exception of Egypt and Jordan, have laws which require a boycott of Israel and of companies that do business in Israel. The U.A.E., Saudi Arabia and other Middle Eastern countries in recent years have significantly eased the implementation of their Israel-boycott legislation. Syria enforces the boycott of Israel irregularly, especially in light of recent changes in its trademark law procedures permitting registration without antiboycotting compliance. A U.S. franchisor considering expansion into Syria must therefore be sensitive to the complex area of U.S. antiboycott compliance (also see the discussion under Section II.H.6.d for Syria). Franchise documents should contain provisions prohibiting the franchisee from taking actions that could cause the U.S. franchisor to be in violation of the U.S. antiboycott regulations96 (typically "furnishing of information" offenses arising from obtaining clearance certificates from an Israel Boycott Office in connection with trademark licenses, import permits, trade licenses or otherwise).

MENA countries are generally characterized by weak judiciaries which are not independent from the executive branches of government. The judges in the region are often government employees working under the executive through the minister of justice. This gives the executive branch the power to interfere in the judicial process. Egypt and Lebanon, for example, have highly developed judiciaries but are often under pressure from the executive branches of their governments. Further, the judiciary in MENA countries is often characterized by a lack of binding precedent, lack of procedural transparency, sparsely developed doctrines, unavailability of remedies such as injunctive relief and lack of publicly available administrative or judicial decisions.

Due to the lack of certainty and reliability in MENA judiciaries, franchisors should seek alternative means to enforce their agreements. As discussed above in the context of Agency Laws, an effective means of both discouraging breaches of the franchise agreement and protecting the interests of the franchisor is an irrevocable standby letter of credit. A letter of credit is normally issued by a bank with a sufficient net worth in U.S. dollars in the franchisee’s home country (the “issuing bank”) and confirmed by an international bank designated by the franchisor (the “confirming bank”). The franchisor is named as the beneficiary of the irrevocable standby letter of credit, which the banks cannot change. In the event of a breach of the agreement, the franchisor will notify the confirming bank of the breach and will be permitted to draw against the letter of credit for the amount of damages owed to the franchisor.

Franchisors operating in the MENA region should consider non-MENA choice of law clauses in their agreements with business partners in MENA countries. This is due to the relative uncertainty and lack of development in judicial systems of MENA countries as compared to those of the U.S. or the European Union. Further, a choice of law provision which selects the law of the franchisor may avoid the applicability of local agency laws. Generally, choice of law provisions are enforceable in MENA countries, except where Agency Laws are considered public policy of the country.

In addition to choice of law provisions, a franchisor should include clauses that provide for mediation and then arbitration in the case of a dispute. International arbitration is governed by the United Nations Convention on the Enforcement of Arbitral Awards (the “New York Convention”). Over 120 countries have adopted the New York convention, including the

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98 Id.

99 Id.

100 Id.


102 See Id.

MENA countries of Egypt, Israel, Jordan, Saudi Arabia, Syria, Lebanon and the U.A.E. The adoption of the New York Convention means that arbitration awards can be more easily recognized and enforced in MENA countries with minimal interference from local judiciaries (but see the discussions under Section II, Target Countries Legal Analysis).


Islamic law governs questions of inheritance among Muslims, and the Shari’a courts have jurisdiction over such questions, except in Israel and Turkey. Although contractual provisions requiring the sale of interests, or transfer of a franchise agreement upon the death of the franchisee are common throughout the Gulf, such provisions may be difficult to enforce because in practice, (1) the interests of the heirs may be undivided, (2) a Shari’a court would not likely appoint an executor unless requested to do so by one of the heirs, (3) neither the court nor the executor would likely proceed with a sale of jointly held estate assets if one or more of the joint owners objected to such sale, (4) the shareholders of an entity will likely have pre-emptive rights, and (5) the heirs themselves would likely take the position that they were not parties to the agreement, and thus could not be bound by restrictions therein.

Therefore, to enforce transfer provisions in franchise agreements, local counsel in most MENA countries recommend that if a transfer through death or otherwise of ownership interests in the franchisee occur, the agreement will terminate or may be terminated at the franchisor’s option. The franchisor should then be free to execute a new agreement with a different entity owned by the surviving controlling principals or others. A letter of credit upon which the franchisor may draw in the event of a termination will also cause a franchisee or its principals to work with the franchisor in the event of a transfer of an ownership interest.

II. TARGET COUNTRY LEGAL ANALYSIS.

A. Introduction.

Although there are certainly similarities among the laws, rules and regulations in the target countries, there are also a number of material differences in the target countries, namely Egypt, Israel, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Turkey and the U.A.E. The following summaries describe key legal issues in the areas of governmental approval, commercial agency law, governing law (including dispute resolution), taxes, termination and religion. Section I.F, Protective Agency Laws, offers a general overview of the Agency Laws which will be applicable to most countries described in this Section II. Please bear in mind that there are a number of other key issues to consider in each of these countries, but due to space limitations, the summaries do not cover protection of intellectual property, execution requirements, import and customs requirements, accounting matters, foreign ownership, joint ventures and other laws, or rules and regulations that may affect franchise transactions. Nor do the summaries cover in any depth renewals, transfers, indemnifications, competition law or enforceability of liquidated damages provisions. Finally, this paper has attempted to focus on issues and concepts that are of particular interest or are unique to a country.
B. Egypt.

1. Governmental Approval and Agency Law.

Local practitioners are split on whether the Commercial Agency Law\textsuperscript{104} applies to the franchisor-franchisee relationship. The Commercial Agency Law regulates the licensing and operation of commercial agents. Application of this law would result in mandatory local law and venue with respect to notice and opportunity to cure prior to termination, notice before non-renewal and compensation for breaches. It is difficult to predict how a particular judge may interpret the compensation requirement since there is no compensation formula in the law. Thus, providing for waivers of agency law rights in the franchise agreement is advisable.

Some practitioners in Egypt believe that franchise agreements would be subject to the provisions of the Commercial Code\textsuperscript{105} governing transfer of technology agreements (the “Technology Transfer Provisions”). If applicable, the agreements would be subject to mandatory Egyptian choice-of-law and choice-of-forum provisions, and it might be more difficult for a franchisor to terminate the agreements in accordance with their terms. The Technology Transfer Provisions should not apply to franchise agreements because Section 73 of the Commercial Code exempts franchise agreements authorizing the use of trademarks or trade names, unless such use includes a transfer of “technical data,” that most franchise agreements would not likely contemplate. Disclaimers that the Technology Transfer Provisions do not apply have not been tested in Egyptian courts and are of uncertain and doubtful enforceability. Nevertheless, an express disclaimer of the Technology Transfer Provisions would still be useful to mitigate the risk that a foreign court or arbitral tribunal might itself determine that the mandatory choice-of-forum provisions in the Technology Transfer Provisions would deprive it of jurisdiction over a given dispute.

2. Governing Law and Dispute Resolution.

a. Governing Law.

Neither Egyptian statutes nor case law expressly address franchise agreements. Assuming that the Technology Transfer Provisions do not apply, the parties to a franchise agreement may select any law to be applied to their agreement provided that it has a direct link to the agreement (normally the law of nationality of any party). The parties may select a foreign forum to settle disputes under a franchise agreement.

b. Foreign Judgments.

Egyptian courts will normally recognize and enforce foreign judgments that satisfy certain procedural formalities. Those include: (1) Egyptian courts do not have jurisdiction over the dispute, and the foreign court which rendered the judgment enjoys jurisdiction pursuant to its rules on international jurisdiction; (2) the parties have been notified of the proceedings and validly represented before the competent court; (3) the judgment or award is final and binding pursuant to the rules prevailing under the law of the foreign court; and (4) the foreign judgment is not in conflict with a prior award or judgment rendered by Egyptian courts and is not in

\textsuperscript{104} Law No. 120 of 1982.

\textsuperscript{105} Law No.17 of 1999.
contravention of prevailing public policy. No bilateral treaty exists between Egypt and the United States or any multilateral convention to which both Egypt and the U.S. are parties that provides for the enforcement of foreign civil or commercial judgments.

c. **Arbitration.**

Egypt is a party to the New York Convention. Egyptian courts will ordinarily enforce a foreign arbitral award. The conditions of enforcement are: (1) no prior Egyptian award exists on the same issue; (2) the award is not against Egyptian public policy; and (3) valid notification was made of the arbitral award.

d. **Injunctive Relief.**

Courts are usually reluctant to order preliminary injunctions. The case will be referred to ordinary court and tried on the merits, which could delay obtaining an injunction for at least 18 months.

e. **Other.**

Egyptian courts will generally enforce obligations to pay interest up to the maximum permissible rate of interest, 7% simple interest and will enforce liquidated damages provisions, upon proof that cash damages are actual, provable and quantifiable.

3. **Taxes.**

The tax rate on royalties and interest may not exceed 15% of gross revenues, according to a double taxation treaty between the U.S. and Egypt. The law requires withholding on payments to consultants and other independent service providers and on interest and royalty payments at a rate of not more than 15%. Tax gross-up clauses are quite common in Egypt, although untested in court. Although tax indemnity/tax reimbursement clauses have also not been tested in Egyptian courts, such clauses should be lawful and enforceable. Documents executed in Egypt require stamp taxes. Currently no formal restrictions in Egypt limit the purchase, repatriation or remittance of U.S. dollars.

4. **Termination.**

Under general principles of Egyptian law, a franchisee may claim damages for breach of contract for unlawful termination. The exercise of a contractual right to terminate is generally considered to constitute a lawful reason, subject to a good faith requirement. A franchisor may be required to compensate the franchisee for non-renewal of the agreement, if the franchisee has successfully promoted the franchisor’s products/services and a subsequent franchisee has benefited from such promotion. Notwithstanding an obligation to pay damages in U.S. dollars, an Egyptian court enforcing a judgment would likely order payment in Egyptian pounds rather than U.S. dollars.

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106 Dr. Mohamed S. E. Abdel Wahab, UPDATE: An Overview of the Egyptian Legal System and Legal Research, [Section 9, Enforcements of Judgments and Appeal], available at http://www.nylawglobal.org/Globalex/Egypt1.htm#_9._Enforcement_of .

107 Wahab, supra note 106, Section 10, Enforcement of Arbitral Awards.
5. Religious laws and Customs.

The consumption of pork products is permissible in Egypt, as is the sale and consumption of alcoholic beverages, notwithstanding their prohibition by Islamic law. If the sale of alcoholic beverages is an important part of a franchisor’s concept, then the franchise agreement should probably (1) expressly require a franchisee to obtain an alcoholic beverages license, (2) make the grant of such license a condition precedent and (3) make the failure to maintain such license an event of default. During the Islamic holy month of Ramadan, Muslims are expected to fast from sunrise to sunset. Local government ordinances and/or community custom may require restaurants to be closed during fasting hours. Regulations sometimes prohibit the serving of alcoholic beverages to Egyptians during Ramadan and other Islamic holidays.

C. Israel.

1. Governmental Approval and Agency Law.

No specific laws or regulations define or specifically regulate franchise relationships. The Agency Law – 1965 described below does not specifically apply to franchising.

The Agency Law – 1965 (“Agency Law”) governs various legal aspects of the relationship among principal, agent and third party. Israeli courts have addressed the question of whether a franchise constitutes an agency relationship in C.A. 2313/03 Guy Ovadia v. Anglo Saxon and Others (July 31 2007). Israeli courts have yet to determine the applicability of the Agency Law to other related issues under franchise agreements. In deciding such cases, the court will assess each franchise agreement in accordance with its terms and the conduct of the parties, including whether the franchisee acted independently or as the agent of the franchisor, and, if the franchisee acted as the agent, whether the franchisee deviated from its authorized activities.

2. Governing Law and Dispute Resolution.

a. Governing Law.

Franchise agreements are governed by general civil code provisions regulating contractual relationships, such as statutes governing agency relationships (subject to the caveats noted above), a statute incorporating the International Sale of Goods Law into Israeli law, assignments, protection of privacy and confidential commercial information, and

108 A franchisee’s agent failed to disclose to a seller that the buyer of property for less than the asking price was her son-in-law, in violation of Israeli law. The court found the franchisor not liable under agency principles because the franchisee had full independence (both organizational and financial), and the franchisor was not informed about the details of any of the deals. The court further stated that even had the nature of the franchise agreement been such that an agency relationship could have been established, a section of the franchise agreement specifically stated that the franchisee would be solely liable for any damages caused by it or by its agents.


commercial torts. Generally, the parties to a contract may expressly select the law to govern their contract, provided the intention expressed is bona fide and legal, and not against public policy. In the absence of a term in the agreement specifying the substantive law that will apply, the choice of law rules as to contracts applicable in Israel will prevail. Where the choice of law provision provides that foreign (non-Israeli) law shall apply, Israeli procedural law will still apply.

b. **Foreign Judgments.**

The Foreign Judgments Enforcement Law (1958) ("1958 Law") governs the enforceability of foreign judgments in Israel. A court will enforce a foreign judgment when (1) it finds the court entering the judgment was competent in its state; (2) the judgment is not appealable and is executory in the state where granted; (3) the judgment is not against Israeli public policy; (4) the state of the foreign judgment grants reciprocity to Israeli judgments; and (5) without special reasons or an agreement between Israel and the state of the foreign judgment court, the application for enforcement is filed less than five years after the day on which the judgment was given. The 1958 Law permits a person to pay a judgment debt in Israeli currency or as required by the foreign judgment.

c. **Arbitration.**

The parties may provide that disputes will be resolved by arbitration in Israel or in a foreign location. Israeli courts will usually respect such a provision. Israel ratified the New York Convention on January 5, 1959. It is also possible to have an arbitral award recognized by the courts in the state in which the award was given, and if it is so recognized the decision will be deemed to be a decision of the court which can then be enforced in Israel pursuant to the 1958 Law provided that the legal requirements of the law are met.

d. **Injunctive Relief.**

Israeli courts will grant injunctive relief to protect intellectual property, and other reasons, such as libel or environmental matters. A court will usually grant a preliminary injunction when the court decides that if such a relief is not granted, the court will not be able to enforce a decision after hearing the whole case because the facts on the ground will change irreversibly.

3. **Taxes.**

Payments made to a foreign franchisor will be subject to withholding of Israeli tax at the source to the extent that they are categorized as "royalties." The tax withholding rate under Israel's double taxation treaty is 15%. To the extent the payments are for services rendered by the foreign franchisor outside of Israel (e.g., for research and development activities, back-office functions, worldwide marketing campaigns), generally there should be no Israeli withholding obligation. Gross-up provisions that shift the burden to the franchisee are permissible. While

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115 Id.

116 Even without reciprocity, a court may enforce a foreign judgment upon application of the Israeli attorney general (Conditions of Enforcement, Sec. 4(b) of the Foreign Judgments Enforcement Law-1958).
VAT technically applies to the payments made to the foreign franchisor (via a reverse charge mechanism), the same amounts may be set off as input tax, so no actual liability to tax should occur. Israel currently has no stamp tax or similar duties. There are no restrictions concerning the purchase, repatriation or remittance of U.S. dollars, and no approvals are needed from the Bank of Israel or other government agency to transfer U.S. dollars outside of Israel.

4. Termination.

The parties may determine the termination mechanism in the franchise agreement. Unlawful termination may result in a claim for monetary compensation for breach of a franchise contract. Israeli courts tend to award damages if a franchise is illegally terminated or terminated for default of the agreement and will not force a continuation of the franchise relationship.

5. Religious Laws and Customs.

Certain special laws in Israel associated with customs and religious holidays may affect a franchise agreement, especially in the food service industry. These laws include laws addressing employment issues such as hours of work and rest days and holidays, the forbidden display of bread and other leavened goods in public places of Jewish majority during Passover, and prohibitions on raising pigs except in specified Arab communities.

D. Kuwait.

1. Governmental Approval and Agency Law.

A Kuwaiti court potentially could deem a franchise agreement to be an agency agreement or an exclusive distribution agreement and thus subject to the Kuwait Commercial Law No. 68 of 1980, Chapter V, Section 1 (“Law 68/1980”). Among other things, Law 68/1980 would entitle the agent or exclusive distributor to seek compensation upon (1) termination of an agreement without cause; or (2) the expiration without renewal of an agreement for a fixed term. In addition, a franchisee, if held to be an agent, would be required to de-register if there is a change in the franchisee or a termination of the registration.

A registered franchise agreement will certainly be considered to be an agency agreement by a Kuwaiti court, providing the agent with compensation upon unlawful or early termination. A franchise relationship that does not involve distribution of products or an agency should not be registerable in Kuwait. However, the Kuwait Ministry of Commerce and Industry has in the past accepted franchise agreements for registration under the Commercial Agency Law where such agreements have been presented in the form of a fully authenticated agency agreement. The authorities would look to the substance of the relationship. If the authorities conclude that the relationship is an agency/distributorship, they would deem it registerable even if the agreement is characterized as a franchise or otherwise.

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117 Hours of Work and Rest Periods Law, 1951, S.H. 76.
120 Kuwait Law No. 36 of 1964.
Because of the additional rights Law 68/1980 grants to agents, most franchisors will wish to resist registration. A franchisor may ensure the franchise agreements are not registerable by not notarizing or authenticating its execution of the franchise agreements or ancillary agreements that reflect the specific grant of trademark and other rights. The agreements should recite the franchisee's consent to refrain from initiating a claim under the Law 68/1980 and should contain representations and warranties documenting the parties' understanding that the franchise agreements are not intended to be agency agreements. Although such provisions are of uncertain enforceability, they may nevertheless be of persuasive value, provided the governing law of the franchise agreement is not Kuwait law.

2. **Governing Law and Dispute Resolution.**

   a. **Governing Law.**

      Currently no specific legislation deals with franchise agreements in Kuwait. The Kuwaiti Civil and Commercial Codes allow parties to contract freely among themselves. Choice of law provisions are generally upheld in the courts of Kuwait, except where such choice of law offends public policy (e.g., the right of an agent or exclusive distributor to seek compensation upon the termination or non-renewal of the agreement).

   b. **Foreign Judgments.**

      Kuwaiti courts have not readily enforced foreign judgments that were not obtained in a GCC or Arab country. There is no treaty between Kuwait and the U.S. that affords reciprocal treatment. Because of contradictory precedents in Kuwait by the Kuwait Court of Cassation, there can be no assurance that any foreign judgments involving a franchise dispute will be enforced by the Kuwaiti courts.

   c. **Arbitration.**

      Kuwait is a party to the New York Convention. A foreign arbitral award should be recognized and enforced in Kuwait without re-trial or examination of the merits of the case. The procedures before Kuwaiti Courts, including an enforcement action on an arbitral award, can take a relatively long time before the Kuwaiti courts issue a final and non-appealable judgment.

   d. **Injunctive Relief.**

      Injunctive relief is available to protect trademarks, but in many cases Kuwaiti courts will not normally grant preliminary injunctive relief before a full trial on the merits. Therefore, injunctive relief to enforce non-competition provisions or prevent a prohibited transfer could take a prohibitively long time.

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121 Section 200 of the Code, as amended.
3. **Taxes.**

   a. **Corporate Income Tax.**

   Foreign companies carrying on business in Kuwait file a tax declaration and pay tax at the rate of 15% on net profits in Kuwait.\(^{122}\) The franchisor's income in any form from the franchisee is subject to corporate income tax in Kuwait. The U.S. does not have a tax treaty with Kuwait. To ensure payment, the equivalent of a withholding tax, a retention, must be paid by the franchisor or the franchisee (see below).

   b. **Retention.**

   A tax retention\(^{123}\) obligation is tantamount to a withholding tax. Government agencies and private entities in Kuwait must notify the Department of Income Tax ("DIT") of all contracts entered into by foreign parties and retain 5% of the payments due to the foreign party until the foreign party is able to provide a tax clearance certificate. A Kuwaiti franchisee may pay the taxes on behalf of its franchisor, if the franchisor signs and submits the tax declaration. The DIT recently issued implementing regulations to a 2008 amendment of the tax law which indicate that Kuwait intends to adopt a system by which taxpayers must register with the DIT within 30 days of entering into an agreement that results in income tax liability to Kuwait.

   c. **Tax Gross-Up.**

   Tax gross-up provisions are permissible, although not common, as are reimbursement clauses.

4. **Termination.**

   Except for considerations relating to the applicability of the agency law, there are no restrictions on termination, and the contractual provisions should be followed. If the agreement is to be registered, then it should provide for de-registration upon termination. Since the Kuwaiti franchisee will be opposed to de-registration at the time of termination, the best practice would be to require that the franchisee grant the franchisor (or its designate) a power of attorney authorizing the attorney-in-fact to cancel the registration, as a requirement of a franchise agreement to be registered. Also, see the discussion under Section I.F., Protective Agency Laws, regarding termination.

5. **Religious Laws and Customs.**

   Kuwait is an Islamic state, and the Constitution of Kuwait provides that the state religion is Islam and Islamic Shari'a is a principle source of legislation. Nevertheless, the expectation is that commercial agreements and documents will be enforceable in Kuwait to the extent that they do not conflict with existing Kuwaiti legislation. For instance, the charging and collection of interest is allowed under Kuwaiti law.

   Prohibitions against pork products and alcohol are strictly enforced. Processed foods containing even trace amounts of alcohol may not be imported into Kuwait. During the holy

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\(^{122}\) Decree No. 3 of 1955, as amended by Decree No. 2 of 2008, as amended by Decree No. 2 of 2008.

\(^{123}\) Ministerial Order No. 44 of 1985.
month of Ramadan, it is not permissible to serve food or drink to customers for consumption on
the premises between about one hour before sunrise and sunset, and all restaurants (except in
hotels) are closed. Also, see the discussion in Section I.I, Shari’a Law and Transfer Provisions,
regarding termination as a method of controlling transfers upon death of a franchisee or a
principal of the franchisee, recommended because of Islamic law.

Governmental offices and agencies, as well as banks, are closed on both Friday and Saturday.
Many private businesses are also closed on Friday and Saturday; however, some only close on
Friday and are open for half a day on Thursday.

E. Lebanon

1. Governmental Approval and Agency Law

There are no government approvals, disclosure requirements or registration requirements for
franchise agreements in Lebanon, except to the extent that Lebanon’s law on commercial
representation applies. The courts in Lebanon would normally look to the substance of the
relationship, not the form, to determine whether a relationship is subject to this law.

Legislative Decree No. 34 of August 6, 1967, as amended (“LD 34/67”) defines a “commercial
representative.” A “commercial representative” is, among other things, a merchant who, for his
own account, sells what he buys on the basis of a contract that “bestows on him the capacity of
representative or sole and exclusive distributor.” A non-exclusive relationship that merely
involves the exploitation of a system in conjunction with a trademark license would normally be
deemed outside the scope of LD 34/67, whereas, as noted below, an exclusive relationship that
essentially involves the import of goods for resale in Lebanon would likely be subject to LD
34/67 regardless of how the relationship is characterized in the documentation. If a court in
Lebanon deems the relationship between franchisor and franchisee to fall within the scope of
LD 34/67, then the court will apply LD 34/67 to the relationship notwithstanding non-registration.
However, registration in the Commercial Register is a pre-requisite if the franchisee wishes to
assert a contractual right of exclusivity against third-party competitors in Lebanon. LD 34/67
confers mandatory jurisdiction on the Lebanese courts.

LD 34/67 grants certain statutory rights (see below) to commercial agents and distributors to
whom the statute applies, such as a right to claim compensation upon termination or non-
renewal of the agreement. A franchise relationship would not normally fall within the scope of
LD 34/67 unless the relationship (1) entails the purchase of goods on an exclusive basis with a
view to reselling them, or (2) prohibits transactions in competing products. To increase the
likelihood of avoiding coverage by LD 34/67, the franchise agreement should provide for a non-
exclusive relationship, and any non-competition clauses should be narrowly tailored so that they
prohibit representation of competing brands while permitting other commercial activities.

If the relationship is subject to LD 34/67, the franchisee would have the right to claim
compensation from the franchisor upon termination of the relationship without the franchisee’s
fault or other “lawful reason.” In addition, if LD 34/67 applies, the franchisee would be entitled to
claim compensation as determined by the courts for non-renewal of an agreement at the end of
its specified term if the franchisee has had “conspicuous success in the promotion of the
franchisor’s trademark or if non-renewal prevented the franchisee from “realizing profit on such success on account of [such non-renewal].”

Registration also grants an unlawfully terminated or non-renewed commercial representative with other remedies upon final judgment. The franchisor/principal could appoint a new franchisee/representative who may choose between paying the compensation to the terminated franchisee/representative ordered by the court or declining the representation. Moreover, a terminated representative may (1) apply for a notation of such judgment in the records maintained by the Lebanese Ministry of Economy and Trade, and (2) apply to the customs authorities in Lebanon for an order blocking imports of any goods produced by the franchisor into Lebanon. The provisions of LD 34/67 would apply notwithstanding any contrary agreement by the parties.

Determining what is a "lawful reason" for purposes of LD 34/67 is a question of fact, which the Lebanese courts would consider on a case-by-case basis. “Lawful reason” has been held to include representation of a competitive product, the agent’s bankruptcy, impossibility of performance for an extended time period due to force majeure, a decrease in profit resulting in a loss, and failure to meet required minimum sales quotas. Accordingly, one strong approach to reduce risk would be to include an obligation to achieve minimum sales quotas or royalty figures in the franchise agreement, which would permit the franchisor to invoke the franchisee’s breach of such obligations as a “lawful reason” for termination, even if LD 34/67 is deemed to apply. Termination rights are subject to Lebanon’s “abuse-of-right” doctrine that essentially provides a right may not be exercised in a manner inconsistent with good faith.

2. Governing Law and Dispute Resolution.

a. Governing Law.

The Lebanese courts would normally enforce a non-Lebanese governing law clause, subject to the normal public policy exception. LD 34/67 is a matter of public policy; therefore, the Lebanese courts would apply Lebanese law to a dispute notwithstanding any contrary choice of law if the relationship were deemed to be subject to LD 34/67. In determining whether a relationship is exclusive, and thus subject to LD 34/67, a Lebanese court would consider the overall facts and circumstances.

b. Foreign Judgments.

Notwithstanding the comments above, best practice is to include foreign choice-of-law and choice-of-forum provisions in the franchise agreements. A Lebanese judgment contrary to the governing law clause may permit the franchisor to resist enforcement of the judgment in a non-Lebanese court on the grounds that the judgment was rendered contrary to the provisions of the agreement. To enforce a foreign judgment the party must secure an enforcement order (exequatur) by submitting an enforcement application to the Court of Appeal of Beirut. The order will normally be granted on condition that the foreign judgment has been delivered by a court having jurisdiction. Because LD 34/67 is a matter of Lebanese public policy, if a court

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124 Section 4 of LD 34/67.

125 Section 4(4) of LD 34/67.
holds that LD 34/67 applies to the relationship, the Lebanese court would have mandatory exclusive jurisdiction and would not enforce a foreign judgment.

c. **Arbitration.**

Lebanon is a party to the New York Convention as well as certain Arab League conventions on judicial cooperation and the mutual recognition and enforcement of arbitral awards. However, if the relationship created by the franchise agreement were subject to LD 34/67 as a matter of public policy, then the Lebanese courts would have mandatory exclusive jurisdiction and would not enforce a foreign judgment or arbitral award relating thereto. See the general discussion regarding Agency Laws under Section I.F. Protective Agency Laws.

d. **Injunctive Relief.**

Lebanese law provides for remedies that appear to be functionally equivalent to injunctive relief. In matters where damage resulting from a breach cannot be remedied, a plaintiff may petition the Urgent Matters Division of the civil court for an ex parte ruling requiring the defendant to stop any action or omission that results in damages to the plaintiff. It is uncertain whether the Urgent Matters Division would issue an order enforcing a covenant not to compete.

3. **Taxes.**

a. **Taxes.**

A franchisee is required to withhold tax, at the rate of 7.5%, on all payments made to a franchisor, excluding reimbursements of travel expenses covering expenses actually incurred. Stamp taxes are payable on the value of the agreement and periodically on royalties with respect to agreements executed in Lebanon, or which are presented to courts or government departments in Lebanon for enforcement or other purposes.

b. **Other.**

A tax gross-up provision, which is common in Lebanon, should be enforceable in Lebanon. Purchase, repatriation and remittance of U.S. dollars is permitted, without approval from the Banque du Liban, the Lebanese central banking entity.

4. **Termination.**

A franchisee may claim damages for breach of contract if the agreement is terminated other than in accordance with its terms. The exercise of contractual termination rights would be subject to the overall limitation imposed by Lebanon’s abuse-of-right (good faith) doctrine. Also, see the discussion regarding termination of a commercial representative in Section II.E.1 above.

5. **Religious Laws and Customs.**

Different rules apply on inheritance depending on the religious affiliation of the decedent. In view of the complexity of determining the applicable law, and the potential exposure to Islamic law inheritance rules if the franchisee’s principals are Muslims, a risk reducing approach would

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126 All of the Target Countries are members of the Arab League except Israel and Turkey.
be to provide that the franchise agreements terminate automatically, or may be terminated at the franchisor’s option, upon the death of one of the franchisee’s principals. See also the discussion under Section I.I., Shari’a Law and Transfer Provisions.

F. Qatar.

1. Governmental Approval and Agency Law.

Qatar does not have a specific law or regulations on franchising, which are normally regulated by the parties’ agreement. Under Qatari law, such agreements may be classified as commercial agency agreements, exclusive commercial agency agreements, distribution agreements or sale agreements.

In Qatar, distributorship arrangements (i.e. franchise, distributorship, agency or other similar agreements) are governed and regulated by the Commercial Agents Law No. (8) of 2002 ("Commercial Agents Law") and by the Commercial Law No. (27) of 2006 (the "Commercial Law").

The Commercial Agents Law only regulates and applies to agency arrangements by which the agent is given an exclusive right to sell, distribute or promote goods, products or services of the principal in Qatar. If the franchise agreement is not registerable, the franchisee will not be able to enjoy the greater protection afforded to commercial agents/distributors/franchisees under the Commercial Agents Law. Qatari courts will apply general Qatari laws to such proceedings, including in particular the Commercial Law, which, like the Commercial Agents Law, also provides certain protections to the agent/distributor/franchisee including compensation for termination of the franchise agreement prior to the expiry of the term.

To prevent the registration of a franchise agreement under the Commercial Agents Law, a franchisor may (1) grant rights that are not exclusive, (2) ensure that the franchisee is not a Qatari national or entity, and (3) include a clear provision in the franchise agreement that the agreement is not to be registered. The Commercial Agencies Registrar may be reluctant to register an agreement with a provision prohibiting registration.

Non-exclusive franchise arrangements and arrangements that do not satisfy the Commercial Agents Law requirements are subject to the Commercial Law. The Commercial Law regulates commercial agents, commission agents, non-exclusive distributors and sales representatives. It sets down the basic minimum rules for such relationships and leaves the rest to the parties' agreement. No particular formalities or specific authorizations are needed to conclude such agreements.

In a fixed term agreement such as a franchise agreement, if the franchisor declines to renew the agreement, the franchisor will be liable to pay the agent/franchisee a fair compensation to be set by the court. The court will order the franchisor to pay compensation if it finds that the franchisee was neither negligent nor had committed a wrong in performing the agreement and the agent’s efforts had resulted in prominent success in marketing the principal’s goods or in increasing the number of his/its clients. In assessing the compensation amount, the court will consider the damages incurred by the franchisee/agent and the franchisor/principal gains from the agent’s efforts in promoting the principal’s goods/services and increasing the number of his clients. The statute of limitation for claims resulting from fixed duration agreements is ninety days from the date of termination.
2. **Governing Law and Dispute Resolution.**

a. **Governing Law.**

The parties may include any provision which they may agree upon in their agreement; provided that it is not contrary to the law.\(^\text{127}\) Under the Commercial Agents Law, Qatari courts will have jurisdiction over any dispute arising between an agent and a principal in connection with a commercial agency unless the parties agree otherwise. Thus, foreign choice of law provisions may be permissible.

b. **Foreign Judgments.**

Generally speaking, foreign judgments issued by competent courts will be enforceable in Qatar without re-trial or examination of the merits of the underlying case, provided that judgment is not contrary to public policy or ethics in Qatar. Default judgments of Qatari courts are enforced in Qatar and hence, Qatari courts will apply similar reasoning to the enforcement of foreign judgments, provided always that all other requirements are met.

c. **Arbitration.**

Qatari courts will recognize and enforce arbitral awards properly issued by competent arbitration tribunals without retrial or re-examination of the merits of the case, provided that the subject matter of the award is a matter that may be the subject of arbitration under Qatari law and is enforceable in the jurisdiction in which it was rendered. By agreeing to arbitration, the parties forfeit their right to resort to the Qatari court that has original jurisdiction to try the disputed matter. Qatar is a party to the New York Convention.

d. **Injunctive Relief.**

Injunctive relief is not available in Qatar before a full trial on the merits.

3. **Taxes.**

Under Qatari Income Tax Law,\(^\text{128}\) profits (as determined by GAAP or by the International Financial Reporting Standards) generated by any activity carried out in Qatar by foreign entities is taxable at 10% unless such income is exempt from income tax by virtue of decision issued by the Tax Exemption Committee or if such income is expressly excluded from income tax by the law or a tax treaty. Therefore, although travel reimbursements and other costs of providing service to Qatari franchisees should not be taxable, payments to a general advertising fund may not be deductible from income unless they are deemed to be for the purpose of generating Qatari income. The tax law is not applied to Qatari-held companies/nationals, nationals of the Gulf Cooperation Council ("GCC") countries or GCC companies which are wholly owned by GCC nationals. However, a new law\(^\text{129}\) now exempts the share of non–Qatari investors in some

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\(^{127}\) Section (9) of the Commercial Agents Law.

\(^{128}\) Decree Law No. 11 of year 1993.

\(^{129}\) Law No. 20/2008.
Qatari shareholding companies from income tax on their profits. There are no capital gains taxes or other withholding taxes under Qatari law.

4. **Termination.**

Except for considerations relating to the applicability of the Commercial Agents Law on termination, there are no further restrictions on termination. The contract provision on termination will bind the parties. In addition to a termination remedy, a franchisor may file a civil suit for damages, in which case the franchisor would be required to quantify actual damages.

5. **Religious Laws and Customs.**

Qatari customs officials enforce strict regulations concerning importation of such items as pork products and alcohol.\(^{130}\) Also see the discussion in Section I.I., Shari’a Law and Transfer Provisions, regarding termination as a method of controlling transfers.

In Qatar, Fridays and Saturdays are official holidays, during which days government offices, public corporations and banks are closed. Private businesses work Saturday through Thursday, with Friday being a holiday.

G. **Saudi Arabia.**

1. **Governmental Approval and Agency Law.**

In Saudi Arabia, franchise agreements are deemed commercial agency relationships. Commercial agency relationships are governed by both a royal decree and implementing rules\(^{131}\) (collectively, the “Commercial Agencies Regulation”). Only Saudi nationals and entities wholly owned by Saudi nationals may be commercial agents.

The Commercial Agencies Regulation requires the registration of all commercial agencies, and the underlying agency agreements, with the Saudi Arabian Ministry of Commerce & Industry (the “Ministry”). However, the Commercial Agencies Regulation does not impose penalties on the foreign principal for non-registration, but directs sanctions against the Saudi agent. As far as could be currently determined, no penalties have ever been imposed on a commercial agent, in a franchise or any other context, for failure to register. Registration is routinely ignored in the franchise field (see below), although the issue is generally hotly contested in franchise transactions.

Although not as one-sided as the Agency Laws in Bahrain, Kuwait or the U.A.E., the Commercial Agencies Regulation provides certain benefits to the commercial agent that may affect a franchisor’s ability to rely on the negotiated terms of its franchise agreements. First, although the franchisee/agent will have exclusive rights, it is possible to explicitly stipulate, even


\(^{131}\) Royal Decree No. 11, dated 20/2/1381AH, as amended by Royal Decree No. 5, dated 11/6/1389AH and Royal Decree No. 32, dated 10/8/1400AH and its implementing rules issued by Ministerial Resolution No. 1897 of 24-5-1401AH, which was formally applied to franchise relationships by Ministerial Resolution No. 1012 on Applicability of Commercial Agencies Regulations to Franchising Agreements.
in a registered agreement, that the franchise is non-exclusive and that the franchisor reserves
the right to appoint additional registered franchisees in the same territory. Second, the
Commercial Agencies Regulation could potentially be used to vitiate a foreign choice of law or
arbitration clause in favor of the mandatory application of Saudi law and forum for the resolution
of disputes. Third, a registered franchisee who has been terminated or is in a dispute with the
franchisor could hinder the franchisor’s expansion of the franchise system in Saudi Arabia by
contesting the new franchisee on grounds of infringement on its exclusive area. Finally, upon
the expiration or termination of the franchise agreement, the law provides for a framework of
damages in the event of a franchisor breach or the failure to renew the agreement in certain
circumstances.

Foreign franchisors who will register their franchise agreements are best served by preparing a
full and mutually agreed-upon translation in dual English/Arabic format, and have that document
executed and registered, in order to have control over the Arabic text that will ultimately serve
as the basis for any enforcement action in Saudi Arabia.

Because of the combination of (1) the absence of a history of registration in franchising, (2) the
corresponding lack of enforcement by the Ministry, (3) the detrimental effect of registration on
the franchisor, and (4) the cost of translation, best practice is for franchisors to prohibit
franchisees from registering under the Commercial Agencies Regulation. To counteract a
franchisee’s unilateral attempt to register under the Commercial Agencies Regulation,
franchisors should resist translating any agreement, except the guaranty, into Arabic. Legal
action later may necessitate translations. Further, the franchise agreement should contain
express representations, waivers and covenants regarding the right to any payment of
compensation arising out of termination or non-renewal of the agreement, and include
covenants not to attempt to register the franchise agreement and not to attempt to sue the
franchisor or its affiliates under the Commercial Agencies Regulation; notwithstanding that such
covenants are of uncertain enforceability. A cross default provision for any other agreements
between the parties is also advisable for breach of any of the representations, warranties or
covenants regarding the Commercial Agencies Regulation.

Most franchised businesses will need to provide to the governmental authorities some form of
proof of the franchise relationship, both to obtain permission to put up signage utilizing the
franchisor’s trademark and to obtain a declaration of taxes due from the Department of Zakat
and Income Tax (“DZIT”). The form and nature of this proof is also normally hotly contested
between franchisor and franchisee, but the franchisor must take care not to inadvertently
provide the franchisee a document that can be registered in lieu of an existing franchise
agreement.

The Saudi Arabian licensing authorities retain considerable discretion in granting or denying
licenses, and there can be no guarantees that a given entity will receive a license in a given
situation, and in some instances franchisees will claim that the authorities will not issue a
necessary license without an agency law or other registration. A franchisor should take note of
the discussion in Section I.B.

2. Governing Law and Dispute Resolution.

a. Governing Law.

Parties are currently free to select a foreign governing law and forum to settle disputes under a
franchise agreement, regardless of whether the franchise agreement is registered under the
Commercial Agencies Regulation, even though that requires application of Saudi Arabian law. The Ministry permits parties to choose a non-Saudi governing law and forum.  

Practitioners have conflicting thoughts about selection of governing law in Saudi Arabia. Some believe Saudi law should be resisted because of uncertainties inherent in the Saudi Arabian legal system (e.g., no binding precedent, sparsely developed doctrines, unavailability of certain remedies such as interest and injunctive relief, and lack of procedural transparency). Others hold that there is no way to avoid Saudi law and courts as a practical matter (e.g., difficulty in enforcing a non-Saudi judgment or arbitral award inside Saudi Arabia, difficulty in identifying assets outside of Saudi Arabia, and enforcement of key franchise covenants only by judicial or administrative action inside Saudi Arabia). However, note that Saudi Arabian law and venue offers some substantive benefits to franchisors, in that Saudi courts are typically unsympathetic to claims for lost future profits and other forms of speculative damages.

Nevertheless, in their agreements, franchisors should strongly consider providing for non-Saudi governing law and a non-Saudi forum for dispute resolution (with a preference for a forum situated in a GCC jurisdiction), particularly when attempting to resist registration under the Commercial Agencies Regulation. If a Saudi Arabian court accepts jurisdiction over a case, the court will apply only Saudi law and ignore a contrary choice of law by the parties.

If a Saudi Arabian court declines jurisdiction in reliance on an exclusive foreign forum clause, the franchisor may then seek and obtain a foreign judgment, which a Saudi court may refuse to recognize without further proceedings on the merits in Saudi Arabia. In that case, the franchisee would then have had two chances, and the franchisor has substantially increased its time and cost to enforce its agreements.

b. Foreign Judgments.

Generally speaking, obtaining recognition and enforcement of a foreign judgment will require proceedings in Saudi Arabia at which the defendant will have the opportunity to assert defenses and produce evidence. Such proceedings will be tantamount to a de novo hearing on the merits.

c. Arbitration.

While Saudi Arabia acceded to the New York Convention in the mid-1990s, as of this date, as far as can be determined, no Saudi Arabian court has granted recognition and enforcement to a foreign arbitral award; and recognition and enforcement is highly unlikely given the currently prevailing legal environment in Saudi Arabia. If franchise agreements are registered, then applicable Saudi Arabian commercial agency regulations contemplate that disputes would have to be brought before the Agency Dispute Committee. The Agency Dispute Committee is a conciliation body, not a court. If either party is unsatisfied with the Dispute Committee’s determinations in the dispute, it may bring legal action before the Board of Grievances (a court with jurisdiction over various types of commercial matters). If the franchise agreements are not registered, then the parties are also free to agree to arbitration. However, issues regarding the enforceability of foreign arbitration proceedings would arise. Generally speaking, obtaining recognition and enforcement of a foreign arbitration award is subject to the same difficulties that

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apply to foreign judgments – a *de novo* hearing on the merits. The foreign arbitral award can, however, be introduced as evidence in such Saudi Arabian proceedings.

d. **Injunctive Relief.**

Injunctive relief is not available in Saudi Arabia.

e. **Mitigation of Risks.**

To mitigate the risks of the problems of described in Section II.H.1 regarding termination and non-renewal and Section II.H.2.a.-d., strongly consider (1) inserting a liquidated damages provision, which although untested, may guide the courts in determining damages, and (2) securing performance by the franchisee with a letter of credit. See the discussion under Section I.F., Global Legal Issues, regarding use of letters of credit. To enhance the potential enforceability of a liquidated damage clause, the agreements should recite, expressly, that both parties have agreed in advance, after considerable negotiation, that breach of certain provisions would give rise to damages that are real but are difficult to quantify and that the parties have jointly agreed to set the quantum of damages at the specified amount.

3. **Taxes.**

a. **Withholding.**

There are double taxation treaties between France and Saudi Arabia\(^\text{133}\) and between the United Kingdom and Saudi Arabia\(^\text{134}\) (effective January 1, 2010) that reduce the applicable withholding rate, but not with the U.S.

Saudi Arabia applies a withholding tax on royalty payments at 15%, on “technical service fees” at 5% and on management fees at 20%. The DZIT published regulations in late 2004 that define the terms “royalty” and “technical service fee.” The term “royalty” is now defined to mean “amounts received against the use of intellectual rights . . .” The term “technical services” is now defined to mean “technical, technological and scientific services of whatsoever kind including studies, research in different fields and survey works of scientific, geological or industrial nature, consulting or supervision services or other engineering services of any kind including the related layouts.” Government officials in Saudi Arabia enjoy considerable discretion; tax practitioners believe that it would likely be difficult to re-characterize a typical franchise royalty as a technical service fee to take advantage of the lower rates. The DZIT would require payment of any shortfall amount plus a penalty in the amount of 25% of the shortfall amount. Accordingly, the franchisee should be required to provide proof in the form of receipts and/or other documentation that the franchisee has remitted the proper amounts to the DZIT.


\(^\text{134}\) UK/Franchise Double Taxation Convention signed June 19, 2008.
b. **Gross Up Provisions.**

Tax gross-up provisions are generally enforceable in Saudi Arabia.

c. **Other.**

Except for local anti-money laundering regulations, there are currently no restrictions, reporting requirements or regulations in Saudi Arabia concerning the purchase, repatriation or remittance of U.S. dollars. No approval from the Saudi Arabian Monetary Authority, the Saudi Arabian central banking entity, or other government agency is required for the transfer of U.S. dollars outside Saudi Arabia.

4. **Termination.**

Under general principles of Saudi Arabian law, a registered commercial agent may claim damages for breach of contract if the agreement is terminated other than in accordance with its terms. Under the Commercial Agencies Regulation, the principal may be required to compensate the commercial agent for non-renewal of the agreement if the agent has successfully promoted the principal’s products and a subsequent agent has benefited from such promotion.

Factors considered by the Agency Dispute Committee for awarding damages include the duration of the agency relationship, the performance of the agent, and the amount of money expended by the agent in promoting the grantor’s products, and the annual gross sales and net profit collected by the agent during the agency relationship. The terms of the agency agreement and the grantor’s reasons for termination will play the predominant role in establishing whether any damages are owed to the agent. Saudi courts generally do not award “speculative” damages (e.g., lost future profits). A Saudi court may be more likely to enforce an obligation to pay a fixed sum (and thus decline to entertain claims by the franchisee for a higher amount) because the franchisor would claim that the parties had mutually agreed to this sum after discussion. Accordingly, inserting a provision for liquidated damages in a nominal amount (for example, the Saudi riyal equivalent of $4,000 or so) to be paid upon termination will support this position.

5. **Religious Laws and Customs.**

See the discussion in Section I.I Shari’a Law and Transfer Provisions relating to control of transfers of ownership interests upon death. Saudi Arabian courts view obligations to pay interest as contrary to Islamic law and thus contrary to public policy in Saudi Arabia; therefore any interest portion of an arbitral award or a foreign judgment would not be enforceable. Saudi Arabia prohibits the sale of alcohol or pork products. Saudi Arabia requires all businesses (including retail establishments) to close during prayer time five times per day. Restaurants are required to be closed during the daytime hours during the fasting month of Ramadan.

H. **Syria.**

1. **Governmental Approval and Agency Law.**

No Syrian law regulates franchising as such. Commercial agencies and distribution contracts in Syria are mainly regulated by Law 34-2008. Therefore, the general principles of contract law (and possibly agency or distribution, depending on the contents of the franchise contract) will
apply to the franchise agreement. If a franchisee imports products from the franchisor to Syria on an exclusive basis and sells them for its own account, the franchisee would be considered an agent subject to the Law 34-2008. An exclusive franchisee who is also an exclusive distributor and who does not register as an agent with the Registry of Distributors and Agents at the Ministry of Economy and Trade ("Ministry") loses rights of compensation for termination and certain rights under Law 34-2008 when the franchise/distribution relationship is terminated or not renewed. Law 34-2008 imposes fines on the agent/distributor, and the agent/distributor may be required to close its business until registration occurs.

The benefits to a registered agency or distributor include (1) compensation upon termination or non-renewal of the agreement, and (2) a right to consent to an early termination, without which a registrar of agencies of foreign companies at the Ministry will refuse to cancel the registration of an agency upon early termination without a court order. However, for franchise agreements with fixed terms, the registrar considers the registration of an agency as automatically revoked from the date the term expired. Only Syrian persons and Syrian companies fully owned by Syrians can be registered at the Registry of Agents and Distributors.

2. Governing Law and Dispute Resolution.

a. Governing Law.

Franchising is subject to the general rules of contracts. If the franchise contract fulfills the conditions of a distribution contract, it will be subject to the law on distributors; if it fulfills the conditions of a trademark license, it will be subject to Law 8-2007 governing trademarks, designs and patents. The parties may provide for foreign law to govern, but if the franchisee is registered as an agent or distributor at the relevant registry, a Syrian court may regard Syrian law on compensation for termination or non-renewal as public policy, and Syrian courts would enforce a foreign judgment or arbitral award only to the extent it does not violate Syrian public policy.

b. Foreign Judgments.

Syria and the U.S do not have a bilateral treaty. Foreign judgments are enforced only upon the approval of the court of first instance in the administrative division where the judgment is to be executed. Judgments rendered in a foreign country may be enforced according to the same conditions required in the law of that country for the enforcement of Syrian judgments, except with respect to public policy. To determine enforceability, a court must find that (1) the judgment was issued by a competent authority in accordance with the law of the country in which it was rendered, and has received res judicata effect in accordance with that law; (2) the parties were properly requested to appear and were properly represented; (3) the judgment is not in conflict with a previous judgment or decision rendered by Syrian courts; and (4) the judgment does not involve a violation of morals and is not against Syrian public policy. The decision of the court of first instance is subject to appeal before the Court of Appeal and then before the High Court.

c. Arbitration.

Generally, both domestic and international disputes are arbitrable, unless otherwise specified in statutory provisions. A foreign arbitral award must be submitted to the court of first instance in the administrative division where the award is to be enforced. Courts seem to treat enforcement of foreign arbitral awards differently. In some cases, Syrian courts have treated foreign arbitral awards equally with local awards, as required by the New York Convention. In other cases, the
court has re-examined the case and scrutinized the arbitral award, notwithstanding that Syria is a contracting party to the New York Convention. For example, a court has found that the International Chamber of Commerce rules of arbitration were contrary to public policy. Therefore, it is possible that a foreign arbitral award will take longer and be harder to enforce than a domestic award. In courts that re-examine the case, the party seeking enforcement must submit the award and the agreement to arbitrate, both translated into Arabic and legalized from the country in which they were issued and from the Syrian Embassy in that country. The decision of the court of first instance is subject to appeal and the decision of the court of appeal is subject to a further appeal to the court of cassation.

d. **Injunctive Relief.**

Through what are called “conservatory measures,” a court may order a litigant to do a certain act or refrain from doing a certain act until a final judgment is issued. Refusing to implement a court judgment is considered a crime that may lead to imprisonment. Trademark law authorizes a judge to prevent a litigant from using certain trademark(s) even if he owns a registration of this trademark pending a final judgment. Violators are subject to penalties.

3. **Taxes.**

The Tax Department administers Syria’s tax laws and is supervised by the Ministry of Finance. Depending on the details of the franchise, the franchisor might be subject to taxes on foreign non-residents varying between 1% and 7% of the contract values. If the income of the non-resident foreign franchisor is limited to the price of products exported from abroad to Syria, no tax will be due in Syria. If the franchisor receives a royalty for the use of trademark or know-how, that royalty would be subject to taxation within the rates mentioned. Syria has no tax treaties with the U.S. Gross up provisions are enforceable.

4. **Termination.**

If a franchisee is held to be an agent or distributor under the Law 34-2008, that law will govern termination (see Section II.I.1. above), as well as general civil and commercial laws. If the franchisor has registered its trademark license at the Trademark Registry, according to the law, the de-registration of the license can take place after submitting to the trademarks and designs registries evidence that the license contract ended or has been terminated. If the registry finds that the evidence is not sufficient, it may not agree to de-register the license. If the franchisor has not registered its trademark in Syria, the termination would be subject to the general civil law rules of contracts.

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136 Law 8 of 2007 - art. 122.

137 Legislative Decree No. 85 of 1949.

138 Civil Code, Section 681(1).

139 Law 8/2007, arts. 57 (for trademarks) and 104 (for designs).
5. Religious Laws and Customs.

Although Syria is predominantly a Muslim country, historically, pork and alcohol have not been prohibited by law. Religious law only applies in family matters and is codified. See the discussion in Section I.H, regarding termination upon death and transfers in ownership interest.


The U.S. sanctions on Syria relevant to franchisors are set forth in U.S. Executive Order 13338\textsuperscript{140} ("Executive Order"). The Executive Order restricts the export or re-export of certain products from the United States to Syria, but does not appear to impose a blanket prohibition on the export of services from the United States to Syria. The Executive Order does appear to prohibit providing services to certain Blocked Persons. Thus, a U.S. franchisor would appear to be permitted to enter into and perform a franchising transaction for sites in Syria if the transaction (1) does not entail the U.S. franchisor supplying restricted products to Syria and (2) does not involve any Blocked Person.

b. Restricted Products.

Unless the franchised system requires the franchisee to obtain computers, software or other technology listed on the Commerce Control List\textsuperscript{141} or from a person on the Blocked Persons list (see Section II.H.6.c, below), the Executive Order should not apply. In July 2009, the Syrian ambassador to the U.S. announced that the U.S had lifted the ban on computers and software, however, the U.S. has not confirmed the lifting of the ban as of the date of this paper. The key provision of the sanctions for purposes of most U.S. franchisors would be the restriction on exports or re-exports of "products of the United States," a broadly defined term. Food (but not alcohol) and medicine are permitted because they are excluded from the list. To avoid the administrative burden of monitoring and compliance, a franchisor may consider requiring the Syrian franchisee to locally source or secure from independent third parties all products other than food.

c. Prohibition on Transactions with Blocked Persons.

Section 3 of the Executive Order lists categories of persons whose assets are blocked pursuant to the Executive Order ("Blocked Persons"). Concerning franchising, the most pertinent portion of Section 3(b) prohibits, among other things, the provision of services to a Blocked Person and the receipt of any funds from any such Blocked Person. Consequently, although a U.S. franchisor may enter into a transaction for a franchise in Syria, it may not provide services to a Blocked Person or receive funds (presumably including royalty or other payments) from a Blocked Person. Because of broadly worded categories for Blocked Persons, a U.S. franchisor should undertake heightened scrutiny of prospective Syrian developers and franchisees (including for franchises outside Syria) and should supplement the normal due diligence with background checks to ensure that a prospective franchisee or principal of a franchisee does not


\textsuperscript{141} Military End-Use Examples for §744.17, 15 C.F.R. 744 (2009).
have past or present ties with the Syrian government, Syrian military or any of the organizations named in the Executive Order or Executive Order 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism, of September 23, 2001.

It is not clear whether the applicable sanctions would prohibit a U.S. franchisor from permitting its non-U.S. master developer or area developer to enter into or perform a franchise transaction with a Blocked Person or contracts such as lease agreements or supply agreements with Blocked Persons. A franchisor should include continuing representations, warranties and covenants in the franchise documents providing the franchisor a termination right in the event a Blocked Person were to acquire an interest in the franchisee or the franchised business. A franchisor may wish to negotiate for a right to terminate the franchise relationship for convenience, which the U.S. franchisor could exercise if negative publicity were generated by the franchisee’s dealings with Blocked Persons or otherwise.

d. Boycott of Israel Office.

Under previous law, after initial examination of a trademark application, the applicant was requested by the Syrian Boycott of Israel Office to provide a declaration regarding the Arab boycott of Israel, which would have been in violation of U.S. law (see Section I.G., Antiboycott Compliance). Directive No. 4964/1 (2008) exempted all new trademark, patent, industrial drawing and design applications from submitting the Israel Boycott Declaration. However, the exemption has been applied irregularly. Nevertheless, franchise documents should contain provisions prohibiting the franchisee from taking actions that could cause the U.S. franchisor to be in violation of the U.S. antiboycott regulations (typically "furnishing of information" offenses arising from obtaining clearance certificates from the Israel Boycott Office in connection with import permits, trade licenses or otherwise).

I. Turkey.

1. Governmental Approval and Agency Law.

No specific provisions of the Turkish Code of Obligations, Law No. 818 ("TCO") or other Turkish laws specifically govern franchise agreements. See Section II.H.3. below.

There is no specific commercial agency law in Turkey, but general provisions concerning agency relationships are contained in Sections 116 to 134 of the Turkish Commercial Code ("TCC"), which cover the relationship between the agent and the principal. Under Turkish law, the main difference between an agency and a franchise is that the franchisee acts in its own name and on its own behalf vis-à-vis transactions concluded with third parties; and, therefore, the legal and economic consequences will fall directly on the franchisee. See the discussion regarding termination of an agent or distributor under “Termination” below.

2. Governing Law and Dispute Resolution.

a. Governing Law.

Subject to the agency law discussion above, franchise agreements are subject to the general rules of the TCO that apply to contracts generally. Contracts that are not contrary to mandatory rules, good morals, public policy or individual rights are valid, but if the subject matter of a
contract is impossible or illegal, then such contract is deemed void. Turkish law will honor the selection of foreign law.

b. **Arbitration.**

Turkish law recognizes arbitration, including foreign arbitration, as a legal form of dispute resolution, however enforcement of an arbitral award is subject to (1) existence of reciprocity between Turkey and the state where the foreign judgment was rendered, and (2) compliance with Turkish public policy. Where arbitration is provided, a party is deemed to be in breach of the agreement if one of the parties fails to honor an arbitration clause and takes action in a court. Turkey is a party to the New York Convention. Turkey will only recognize and enforce foreign arbitral awards under the New York Convention which have been made in other contracting states; and secondly, which are of a commercial nature under Turkish law. Turkey is also a party to the European Convention on International Commercial Arbitration-1961.

If Turkish arbitrators and Turkish law are chosen and the courts determine that the arbitration was a Turkish arbitration proceeding, then the courts have the right to give the arbitrators' decision the same effect as if had been rendered by the Turkish courts. When foreign arbitrators and foreign law are selected and the parties are deemed to have participated in a foreign arbitration, then the parties would need to follow an executory process in order to make any award valid before the Turkish courts.

c. **Foreign Judgments.**

Recognition of a foreign judgment is subject to two criteria: (1) existence of reciprocity between Turkey and the state where the foreign judgment was rendered, and (2) compliance with Turkish public policy. No court has considered whether the agency relationship law is public policy nor whether waivers of notice and compensation upon termination are enforceable. As conditions to enforceability, the foreign judgment (1) must be final and binding, (2) must not have already been enforced, (3) must deal with subject matter not within the exclusive competence of Turkish courts, and (4) must be based upon a trial process that complies with the principles of fair trial.

d. **Injunctive Relief.**

In theory, injunctive relief is available for misuse or infringement of a trademark and for misuse or infringement of a business format. In practice, the courts would be more likely to grant injunctive relief for trademark infringement than for business format or other trade secret infringement.

3. **Taxes.**

No withholding tax is required because of a double taxation agreement between Turkey and the U.S. There are currently no restrictions in Turkey concerning the purchase, repatriation or remittance of U.S. dollars, except that Turkish banks and financial institutions must inform the Undersecretariat of the Treasury of the remittance of any amount in excess of U.S.$50,000.

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142 Agreement Between the Government of the Republic of Turkey and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement, March 28, 1996, Section 12.
4. **Termination.**

   a. **General Law.**

   Under the general law TCO provisions, a party can immediately terminate a franchise for just cause. A just cause is any reason that would be deemed to be unacceptable for the franchisor to continue with the franchise agreement. Severe neglect and failure by one of the parties of its responsibilities under the agreement are examples of just causes. Therefore, to avoid doubt, the franchise agreement should clearly define what constitutes “just cause.” In case of a dispute, the courts will evaluate the cause for termination on a case-by-case basis. A termination not made in good faith or with insufficient notice can result in compensation to the franchisee.

   b. **Notice.**

   Although the provisions of the TCC regarding agencies should not be directly applicable to franchising, any notice for termination of the franchise agreements should be made within a reasonable period of time in advance and based on a just cause provided in the agreement and/or based on “important causes,” because a Turkish court may read general contract law and agency law into the franchise agreement. As a cautionary note, a notice period of less than three months could potentially raise arguments (if not winning arguments) that the notice was insufficient in light of the periods provided under the relevant provisions of the TCC relating to agencies.

   c. **Compensation.**

   Courts would determine the indemnification amount according to the specific relationship in each case, pursuant to the general provisions and the decisions of the court of appeal for similar cases. The prevailing practice of the courts is to award a terminated agent or distributor a “goodwill indemnification” or “clientele compensation,” which is generally based upon the increase of the market share of the goods distributed, increase in customers and value added to the brand, regardless of the reasons for termination of the distributorship agreement. Other considerations include the maturity of the relationship, the length of the notice period, the amount of goods that the agent or distributor possesses before the termination and the amount of the agent’s or distributor’s investment. Therefore, to protect the franchisor against a court applying the TCC or the TCO general provisions relating to distributor terminations to the franchise relationship, in addition to a clear definition of what constitutes a just cause, the franchise agreement should contain express waivers of additional notice rights and compensation on termination, expiration or non-renewal.

5. **Religious laws and Customs.**

Although Turkey is 99% Muslim, Turkey is a secular country. General Islamic restrictions are not applicable in the Turkish legal system, which is modeled after the separation of church and state found in Continental Europe. There is no restriction regarding the sale of alcohol or pork products or any other products restricted by Islamic religion. No retail establishments or other businesses are required to be closed during prayer time, and restaurants are not required to be closed during Ramadan.
6. **European Union Membership.**

After the commencement of its application to become a member of the European Union in 1987, many Turkish laws have been in a continuing process of transformation in accordance with the EU legislation. One of the Turkish laws influenced by the EU directive on antitrust and competition was a block exemption for franchising, referred to here as the “Communiqué” \(^{143}\). Since its adoption, two amendments to the Communiqué \(^{144}\) provide that the block exemption for franchising applies only to franchisors whose market share is less than 40% within the relevant market providing goods or services subject to a vertical agreement. The exemption does not apply to (1) resale price maintenance (however, the franchisor may set maximum selling prices and suggest selling prices, provided that the maximum or suggested prices do not transform into a fixed or minimum selling price as a result of duress or incentive by another party’s suggested pricing), and (2) restrictive provisions on where or to whom products may be sold (however exclusive rights and restrictions on sales to unauthorized persons are permitted, as are sales between franchisees).

J. **U.A.E. (Dubai, Abu Dhabi and seven other Emirates)**

1. **Governmental Approval and Agency Law.**

Under U.A.E. law, franchise agreements are deemed commercial agency agreements and are therefore governed by U.A.E. Federal Law No. 18 of 1981 Regulating Commercial Agencies as amended (the “CAL”). The Commercial Code \(^{145}\) also contains provisions on commercial agencies. The CAL requires that all agreements creating commercial agencies be registered with the U.A.E. Federal Ministry of Economy (the “Ministry”); however, a recent ministerial order appears to preclude registration absent evidence of the foreign party’s consent. Only U.A.E. nationals, or entities wholly owned by U.A.E. nationals, are eligible to be commercial agents, although many entities that are at least partially owned by foreign nationals routinely act as distributors, franchisees and in other capacities that fall within the statutory definition of “commercial agency.” Such foreign-owned entities are not eligible for registration.

The CAL provides certain benefits to a registered commercial agent that may affect the parties’ ability to rely on the negotiated terms of their franchise agreements. Those statutory rights include (a) exclusivity within the specified territory (which may be the U.A.E or any one or more of the Emirates), (b) the right to claim compensation if termination of the agency leads to the infliction of harm and (c) the right to apply for an order blocking imports by a third party of goods that are subject to the registered agency. The CAL also confers mandatory jurisdiction over registered commercial agencies on U.A.E. courts. An unregistered agent should not be in a position to invoke the compensation provisions of the CAL, however the Commercial Code contemplates compensation for commercial agencies withdrawn “at an inappropriate time.” There have been conflicting decisions in the courts of the U.A.E. as to whether parties to a commercial agency agreement have access to the U.A.E. courts for claims arising from such agreement in the absence of registration.

\(^{143}\) Communiqué on Block Exemption Concerning Vertical Agreements, Communiqué No. 2002/2.

\(^{144}\) Communiqués Nos. 2003/3 and 2007/2.

Because of the combination of (1) the absence of a history of registration in franchising, (2) the corresponding lack of enforcement of the requirement to register, (3) the detrimental effect of registration on the franchisor, and (4) the cost of required translations, best practice would indicate that franchisors prohibit their franchisees from registering under the CAL. Further, the franchise agreement should contain express representations, waivers and covenants regarding the ancillary right to any payment of compensation arising out of termination or non-renewal of the agreement, any attempt to register the franchise agreement, and any attempt to sue the franchisor or its affiliates under the CAL. A cross default provision for any other agreements between the parties is also advisable for breach of any of the representations, warranties or covenants regarding the CAL.

Having said all this, a franchisor/principal will incur no penalties for non-registration, except for the potential risk that non-registration may possibly preclude access to the U.A.E. courts for litigating disputes (see below). As far as could be currently determined, no penalties have ever been imposed for failure to register. In fact, registration is routinely ignored except in certain specific commercial sectors.

Franchisors who plan to register their franchise agreements would be well served to prepare and execute a mutually agreed-upon translation of the full agreement in dual English/Arabic format, so that the version on record in the Commercial Agencies Register at the Ministry reflects the agreement of the parties. Although in practice it remains difficult to obtain de-registration of an expired agency without the franchisee/agent's consent or a court order, a fixed term is one of the important features that should be added to agreements if registration is contemplated. A relatively short fixed term may be particularly desirable in a development agreement that confers broad territorial rights.

If a decision is taken to proceed without registration, the franchisor should take certain steps to protect itself against unilateral attempts by the franchisee to register, by making the agreement itself less susceptible to registration. An agency should not be registerable if the underlying agreement contains an express recitation of the principal's lack of consent. A reliable method for resisting registration would be to ensure that the franchisee is at least partially owned by foreign nationals, and thus would be ineligible to serve as a commercial agent. Other approaches should be considered, such as (1) including express disclaimers of the CAL and other features in the agreement that would make the overall relationship more difficult to register as noted above, (2) refraining from execution formalities required in the registration process (e.g., notarization, authentication), and (3) seeking protection against the exposure arising out of registration under the CAL (see Section I.F regarding letters of credit). Other features making registration difficult would be to include express language (1) stating the license is non-exclusive, (2) representing and warranting that the franchisee will not attempt to register the relationship as a commercial agency, and (3) providing for foreign (non-U.A.E.) governing law and forum.

In response to a franchisee’s insistence on exclusivity, a franchisor might undertake not to appoint a competing franchisee so long as the franchisee remains in substantial compliance with specific obligations that are commercially significant to the franchisor in the transaction. Such undertaking may be in the main body of the agreement, although it would be preferable to provide the undertaking in a separate, carefully drafted comfort letter.

146 Ministerial Resolution No. 168.
2. **Governing Law and Dispute Resolution.**

   a. **Governing Law.**

   Practitioners are split on whether to choose foreign governing law or the law of the U.A.E. (see the discussion for Saudi Arabia above).

   The CAL confers exclusive jurisdiction over cases involving registered agency relationships upon the U.A.E. courts. If a U.A.E. court accepts jurisdiction over a case, the court can be expected to apply U.A.E. law to the dispute regardless of any contrary choice of law by the parties. Even if a court were to uphold the choice of non-U.A.E. law, the party invoking such law would have to prove the contents of such law as a factual matter, requiring submitting extensive and costly translations of statutes and educating civil law judges in common law.

   However, selecting a non-U.A.E. forum (and governing law) may be essential if the agreement is to remain unregistered, because the CAL appears to preclude the U.A.E. courts from hearing cases involving unregistered agencies. Note that a stand-alone trademark license agreement could possibly provide an alternative basis for action in the event a U.A.E. court declined jurisdiction because the agreement was not registered. Whether a franchise agreement is registered or not, a U.A.E. court could possibly disregard a foreign choice-of-forum provision in a specific dispute and accept jurisdiction over the cause of action if a case is filed in the U.A.E.

   b. **Foreign Judgments.**

   Both the U.A.E. Federal court system and the Dubai court system traditionally have been reluctant to grant recognition and enforcement to foreign judgments and would require de novo proceedings. Section 235(2)(a) appears to preclude the recognition and enforcement of a foreign judgment arising in a case in which the U.A.E. courts would have had jurisdiction (any case involving U.A.E. nationals and residents).\(^{147}\) Courts also may refuse jurisdiction if the foreign judgment violates public policy or morals. U.A.E. courts have typically broadly construed the public policy exception.

   c. **Injunctive Relief.**

   U.A.E. courts would not likely grant timely injunctive or equitable relief with respect to post-termination obligations to de-identify and cease use of trademarks and to honor confidentiality and post-term covenants not to compete. Liquidated damages are advisable as a deterrent and possible alternative method of recovery. Also the discussion regarding letters of credits as a deterrent is applicable (see Section I.G and Section I.H under Global Legal Issues).

   d. **Arbitration.**

   If a franchise agreement is registered under the CAL, the dispute would have to be brought before a U.A.E. court, excluding the possibility of arbitration. If the franchise agreement is not registered, the parties are free to agree to arbitration. The U.S. has no bilateral treaty with the U.A.E. that provides for the recognition and enforcement of foreign judgments and arbitral

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\(^{147}\) Section 235(2)(a) of the Civil Procedure Code.
awards, although there is such a treaty with France. As far as could be determined, a foreign arbitral award has never been successfully enforced in the U.A.E. The U.A.E. has acceded to the New York Convention. Uncertainties regarding implementation of the New York Convention in the U.A.E. include that U.A.E. courts are the exclusive forum for resolving registered agency disputes, and the fact that the Emirates of Abu Dhabi, Dubai and Ras Al Khaimah, maintain their own court systems.

Nevertheless, the franchise agreement should provide for arbitration under suitable procedural rules at a location in a country that has ratified or acceded to the New York Convention as an appropriate choice when selecting a foreign forum. Out of an abundance of caution, the franchisor may wish to select a location in France, with whom the U.A.E. has a bilateral judicial cooperation treaty that does provide for the recognition and enforcement of foreign judgments and arbitral awards. A franchisor would, in theory, be able to invoke both the New York Convention and the U.A.E.-France treaty as alternative grounds for enforcement of an arbitral award rendered in France. Egypt and India have similar treaties with the U.A.E. The fallback option is normally arbitration inside the U.A.E. under neutral and transparent procedural rules. Franchisors should consider use of the International Chamber of Commerce rules because the ICC has an administrative infrastructure that has significant experience applying the rules.

3. **Taxes.**

No withholding taxes are imposed by the U.A.E. on franchise fees, royalties, reimbursement of expenses or interest due on past payments. Although the Emirates have tax decrees, currently, they are not enforced against most businesses, however this is an informal policy and could change. Neither the U.A.E. nor any of the Emirates have a double taxation treaty with the U.S. The local press has speculated about the possible introduction of a VAT system in the near future. There are currently no restrictions in the U.A.E. concerning the purchase, repatriation or remittance of U.S. dollars. No approval from the Central Bank of the U.A.E. or other government agency, is required for the transfer of U.S. dollars outside the U.A.E. The Central Bank promulgated regulations aimed at combating money laundering that impose reporting requirements for certain large cash transactions. The U.A.E. has enacted a statute criminalizing money laundering.148

4. **Termination.**

In the event of a disputed termination of a franchise relationship that has not been registered under the CAL, a stand-alone short form of trademark license agreement could possibly provide the basis for an alternative cause of action by a franchisor, in addition to those arising under the franchise agreement. Such alternative cause of action may be desirable to the extent a franchisor wishes to provide an alternative basis for U.A.E. court jurisdiction in light of the CAL, which provides that the U.A.E. courts shall not hear cases arising from unregistered agencies. Also see the discussions under “Injunctive Relief” above and under Section I.H., Enforcement Environment.

5. **Religious Laws and Customs.**

While heavily regulated, limited sales of pork products are normally permissible in the U.A.E., and the purchase/consumption of pork products by non-Muslims is allowed (although the import

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and sale of pork products was temporarily banned in connection with the swine flu epidemic). The U.A.E. permits the sale and consumption of alcoholic beverages subject to regulation at the Emirate level. Local government ordinances may require restaurants (including restaurants located in hotels) to be closed during the fasting hours of Ramadan, although some Emirates permit take-away sales.

Successful development in each Emirate requires knowledge of the local market and local contacts. A franchisor should consider restricting the geographical scope of the grant to the franchisee's home Emirate, unless the franchisee can assure the franchisor of its ability to develop outside of its home Emirate.

III. CONCLUSION.

Legal work, particularly in the Middle East countries, is marked by complexity, common legal themes such as protection of agents, and a noticeable lack of certainty in legal interpretation and enforcement. Experience confirms that certain tools are needed to ensure that transactions in MENA countries can be conducted with reasonable comfort about the legal impact the applicable law may have on the deal and with reasonable certainty about the costs involved. These tools include legal issue memoranda covering material information on areas of law that include but far exceed the number of topics selected in this paper. Common legal principles are recognizable country to country and highlight the need for remedies devised to mitigate the risks of an uncertain legal regime, such as the use of a letter of credit, bank guaranty or executable assets when there are serious doubts about the ability of the franchisor to enforce the terms of agreement. Local ownership restrictions and the difficulty of confirming ownership and organizational structure of the "real" prospect begs for aggressively pursued documentation and comfort with same at a very early stage. Negotiating and enforcing provisions prohibiting the translation and authentication of agreements are learned behaviors from the "lore" of international franchising. These actions confront potential unilateral registration and claims of special treatment under the Agency Laws, preventing considerable harmful consequences to the franchisor. Of course, ongoing policing of compliance with anti-corruption and anti-terrorism laws as well as focused due diligence and investigation of target prospects far beyond the application are givens. These examples highlight the need for process - agreed procedures for legal/international in-house and outside resources to use as a guide to better ensure consistency of position on the protection of the brand. It is my hope that these materials inform the reader on doing exactly that.
### 2008 Corruption Perceptions Index
Regional Highlights: Middle East and North Africa
Source: Transparency International

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FRANCHISING IN THE MIDDLE EAST AND NORTH AFRICA (“MENA”): BUSINESS PERSPECTIVE

J. Perry Maisonneuve
Northern Lights Franchise Consultants Corp.

October 14 -16, 2009
The Westin Harbour Castle Hotel
Toronto, Ontario, Canada
LEGAL AND BUSINESS PERSPECTIVES

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FRANCHISING IN THE MIDDLE EAST AND NORTH AFRICA (“MENA”):
Business Perspective¹

I. INTRODUCTION:

A. Objective of this Paper

Notwithstanding enduring global economic and political challenges, the expansion of western-based brands into the Middle East and North Africa has grown exponentially. Several North American-based franchise systems appear to have entered the Middle East prior to entering other countries with more closely aligned cultures and legal systems. The objective of this paper is to explore the reasons why North American franchise systems appear to find these markets so attractive relative to other potential markets as well as outline certain of their experiences to date. This paper will also address certain of the business risks that may be considered characteristic of these markets as well as outline certain of the practical considerations or “know-how” that may be considered useful in successfully entering and establishing franchise brands in the region. Special attention will be devoted to the risk profile for entry, including Islamic cultural, legal and financial considerations.

B. Thesis

This paper explores the hypothesis that one of the key catalysts to the growth of franchising in the MENA (specifically the countries of the Cooperation Council for the Arab States of the Gulf, also known as the Gulf Cooperation Council or “GCC”) is a “demand-pull” dynamic on the part of MENA business interests rather than a “supply-push” of North American or European Union (“EU”) franchisors. Therefore, in the vernacular of some academics and franchise practitioners, the growth has been largely “opportunistic” rather than “strategic” in nature.

The anecdotal evidence suggests that one of the key catalysts to the growth of franchising in the Middle East has been the desire of certain indigenous business interests – flush with revenues generated from exporting crude oil (or “petro dollars”) over the course of decades - to diversify their investment portfolios and by extension their respective economies away from a dependence on oil revenues. The evidence shows that one of the key manifestations of this objective was through investments in real estate – specifically in this case in enclosed malls. The direct causal impact on franchising occurs from the fact that, once a mall has been built, the next logical step is to fill it with viable and profitable tenants. Therefore these same business interests – through related party business entities ultimately controlled by them – also acquired the rights to various retail franchise concepts which in turn became the tenants in their own

¹ Mr. Maisonneuve gratefully acknowledges the advice and assistance received from the following professional colleagues, clients and associates: Sary M. Hamway, Chief Executive Officer of FranExcel Media Productions FZ LLC, Dubai, UAE; Hatem Zaki, Deputy Chairman and Executive Director, Business Enterprise Support Tools (“BEST”) Foundation and Board member of the Egyptian Franchise Development Association (“EFDA”), Cairo, Egypt; Gareth Parry, President of Global Franchise Marketing, London, United Kingdom; Mohamed A Benjelloun, Board member of the American Moroccan Professionals Association (“AMPA”), Warrington, Virginia; Bachir Mihoubi, Chief Executive Officer, FranCounsel Group LLC Atlanta, Georgia, USA; Brian Smith, Vice President, Cirrus Tenant Lease Services, Toronto, Ontario, Canada and Avinash Bal, President and Chief Executive Officer, Hot Brands International, Dubai, UAE. Mr. Maisonneuve would also like to thank Jonah Rimer, a post-graduate student at Oxford University, England and a summer research assistant with the firm.
properties. Hence, the expatriates (commonly known as “expats”) employed in the petroleum industry and paid by these business interests will purchase goods and services from other businesses also controlled by the same interests. The benefit to the indigenous business entity may be said to be a net reduction in the outflow of foreign currency, and by extension the country itself. In effect, it is similar in substance to the “company town” phenomenon that historically characterized the development of the mining and extraction sector in Canada and other extraction-based economies.

II. OVERVIEW OF THE MIDDLE EAST AND NORTH AFRICA (“MENA”)

A. Overview

This section of the paper provides a brief overview of the countries and discrete regions within the geographic area commonly referred to as the “Middle East and North Africa” (or simply, “MENA”). A brief overview of these regions will provide context within which one may better understand the historical development of franchising throughout this region, as well as certain of the practical considerations to conducting business effectively there.

Notwithstanding that MENA may be generally described as Arab-speaking, Muslim and politically autocratic, the region in question is in fact historically and culturally divided into several separate and distinct sub-regions. These sub-regions are characterized by unique historical and economic development, as well as cultural and linguistic distinctions that have evolved over the course of centuries. Further, the Muslim religion tends to place a high degree of value on family and family relationships – including extended family relationships. Hence, an appreciation of the nature and general characteristics of these sub-regions is valuable when evaluating the scope of any franchise development rights within any geographic area or “territory”. One suggested sub-division of MENA countries is presented in Figure 4 attached hereto. Note that this particular categorization includes certain sub-regions that may not be commonly accepted as “MENA”. An example of this may include the Arab-African countries of Sudan, Mauritania, Somalia, Eritrea and Djibouti.

Geographic distance from one end of MENA (say, Casablanca, Morocco in the west, to Riyadh, Saudi Arabia in the east) is also an important consideration in understanding franchising in the region. Figure 2, attached hereto, provides a map of MENA so that one may visual the size and extent of the land mass in question. To place this map in context, it might take the average traveler 7 ½ hours to fly from New York to London. It would take that same traveler an additional 2 ½ hours to travel from London to Casablanca (due south) but 7 ½ hours to travel from London to Dubai. A direct flight from Casablanca to Riyadh is approximately 8 hours. The practical considerations of time and travel costs become important when considering on-going operational support costs of any franchised entity.

While the popular media appears to be constantly reporting on the MENA region, there is currently a profound lack of research about franchising in the area. However, it can be said that

much of the region may be characterized as an “emerging market.” According to Welsh, Alon, & Falbe, emerging markets provide the following advantages for franchisors: an expanding middle class; relatively untapped markets; a large youth population; free-trade economic agreement areas; friendly business laws; and a demand for Western goods. Emerging markets are also considered to be environmentally volatile for the following factors: quick population growth; weak political institutions; and heavy dependence on one type of earning commodity (e.g., oil in the Middle East). As will be demonstrated, many countries in the MENA region exemplify these characteristics.

Finally, and very significantly, an Arabic word for “franchising” (or more specifically “Business Format Franchising” as it has come to be known in North America) has not existed until very recently. The word commonly used for franchising actually refers to a “license” – no different than a driver’s license, a simple business license or a software license. This has had a number of subtle but profound ramifications. First, the emphasis placed on operating system compliance and the on-going relationship inherent to operational support with franchise systems is significantly more extensive than that found in a simple licensing arrangement of any kind. Franchisors generally believe that these qualities represent competitive advantages in the marketplace and therefore non-negotiable elements of the contractual arrangement. Second, it has taken some time for public and private sector organizations in the region to appreciate the distinct differences between the two business forms as well as their respective applications in the marketplace. Finally, much of the data available regarding franchise activity in the region tends not to differentiate between the two forms. Therefore this paper will distinguish between the two forms by reference to “franchising” as “business format franchising” versus “licensing” as a “trade name license” usually applied to fashion retail and apparel brands.

B. The Middle East

Figure 1 attached hereto presents a map of those countries generally included in any working definition of the Middle East. While financial investment in the region is dependent on political stability, franchised brands have experienced a boom in particular areas of the Middle East up until the global economic downturn in the latter half of 2008. The franchise industry in the region is currently valued at $14 billion (U.S.) and has experienced an average annual growth rate of 27%. The industry is estimated to be worth $30 billion (U.S.), suggesting a wealth of untapped potential. Fast food retail accounts for 40% of all franchising in the MENA region.

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4 Id. at 135.

5 Id.


(e.g., Wendy’s has just signed an agreement with the Al-Jammaz Group in Saudi Arabia and plans to open over 135 stores across the MENA region⁹), with demand increasing in the fields of fashion, education, consulting services, convenience stores, laundry, dry cleaning, the automobile industry, information technology, hotels, and car rentals.¹⁰ Corresponding to this is the International Franchise Association’s (IFA) prediction that the global retail food industry is likely to reduce in employment opportunities while also increasing total numbers of establishments by 1.5% in light of the global recession.¹¹

The demand for North American brands in MENA has been growing for some decades. The population patterns in the region provide a partial explanation for a seemingly increasing demand for new products. Half of the local population is under the age of 25, with a growth rate of 3.5% per year predicted for the region.¹² This growth, coupled with a fairly large consumer market with a high per-capita income thereby represents a large and affluent young population that will continue to expand as the respective countries’ growth rates increase with time.¹³

Culturally, although generalizations are difficult, it may be said that the Middle East tends to be less “individualistic” than the Western world. There are close and long-term commitments to in-groups, and an emphasis on family honor, tradition, religion, and friendship duties.¹⁴ The region is united somewhat by language and religion, however interpretations of the Quran differ across communities, including interpretations of the specific business guidelines in the Quran.¹⁵ In addition, the Middle East is highly rule-oriented, with laws and regulations corresponding to an attempt to limit uncertainty.¹⁶ As a result, the franchising format of business may be most applicable to this region, as it is a “tried and tested” business method.

C. The Gulf Cooperation Countries (the “GCC”)

Referring to the map of the Middle East provided in Figure 1, the GCC is comprised of the United Arab Emirates (UAE), Kuwait, Qatar, Saudi Arabia, Oman, and Bahrain.¹⁷ The GCC has been experiencing the largest boom in franchising for some decades. Established in 1981 to

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⁹ Id.

¹⁰ Bawaba, supra note 7; for a complete list, see Bringing, supra note 7, at 69-70.


¹² Bringing, supra note 8, at 70.


¹⁶ El Zeini & Cliquet, supra note 14, at 12.

¹⁷ Tracey Furey, Franchising in the Middle East, Dubai and Beyond, Franchising World, Jan. 2007, at 86 (hereinafter “Furey”).
create a common market.\textsuperscript{18} It has a growing population of 34 million people, including 500,000 high-income professionals.\textsuperscript{19} It is currently ranked as the world’s 17\textsuperscript{th} largest economy.\textsuperscript{20}

The GCC contains the three essential items that every franchisor wishes to see before investing: a middle-class market with a demand for service; governments amenable to trade and investment; and local businesspeople keen to invest.\textsuperscript{21} The franchising market is increasing for three central reasons: high purchasing power of the population; a profound reliance on imported goods; and a high demand for new products coupling population growth.\textsuperscript{22} In 2006, the GCC’s GDP was $500 billion (U.S.), with oil producing $250 billion (U.S.) in revenue per year.\textsuperscript{23} The GCC is said to already showcase over 250 international brands, and is projected to have a retail market worth of $500 billion (U.S.) by the year 2010.\textsuperscript{24} Currently, the French supermarket chain “Carrefour” is leading the market with annual revenue of $1 billion (U.S.).\textsuperscript{25}

Arab entrepreneurs are leading the franchising market in the GCC. Culturally, the Gulf is generally viewed as highly contextual in comparison to the Western culture; meaning, communication tends to depend on context, rely less on verbal cues, and produce meanings based on contextual variables.\textsuperscript{26}

It has been postulated that one of the more compelling explanations for this phenomenon has been the explosive growth in retail malls throughout the region. In the early 1990’s, there were five million square feet of leasable area in the GCC. In 2006, this jumped to 53 million square feet, and it is predicted to increase again to 130 million by 2010.\textsuperscript{27} Another source predicts that the growth in shopping center space is predicted to grow by 200% from 2006 to 2010.\textsuperscript{28} As of 2008, Dubai alone was estimated to support 15 million square feet of retail space, with an expectation of expansion to 20 million by 2010. The number of retail stores in shopping malls in


\textsuperscript{20} Furey, \textit{supra} note 17, at 86.

\textsuperscript{21} Martin, \textit{supra} note 6, at 38.


\textsuperscript{23} Thomson, \textit{supra} note 19, at 36.


\textsuperscript{25} Thomson, \textit{supra} note 19, at 38.

\textsuperscript{26} Peter Raven & Dianne H. B. Welsh, \textit{An Exploratory Study of Influences on Retail Service Quality: a Focus on Kuwait and Lebanon}, 18 J. Serv. Mark. 198 (2004).

\textsuperscript{27} Id.

Dubai is predicted to grow from 3,700 in 2008, to 5,000 in 2010. Another source estimates that 22 million square feet of mall retail space will exist in Dubai by the end of 2009. There are an estimated 140.5 million visitors to malls each year in Dubai. This has almost doubled from an estimated 79 million people were said to visit malls in Dubai in 2005, which reflected over half of the mall visits in the whole of the UAE in that year. Also in 2005, the city of Muscat in Oman created 2.1 million square feet of retail space, Riyadh in Saudi Arabia added 8.4 million square feet, Abu Dhabi added 5 million, Qatar’s Doha added 2.8 million, and Kuwait City added 2.6 million. In Doha in 2002, there was only one shopping mall. Four years later in 2006, there were five large shopping centres with four additional malls under construction. In the Kingdom of Saudi Arabia, Riyadh has 8.25 million square feet of leasable shopping space. Jeddah has 3.63 million square feet of leasable shopping space. In 2008, the cities of Jeddah and Riyadh in Saudi Arabia were ranked just after Dubai in terms of gross leasable retail space.

The explosive growth in retail space provides compelling evidence that the corresponding growth in franchising in the region is a direct result of mall property management firms and landlords searching for and in some cases competing for strong North American and European brands. Hence, one observer stated that “American franchisors (felt there was) no need to advertise”. This same observer stated that North American expats and American-educated nationals from the GCC were actively approaching foreign (North American and European) companies. This view was supported by a second source who observed the phenomenon of North American mall managers being recruited by GCC business interests to re-locate to and manage similar properties in the GCC. With a mandate to fill their properties with viable, profitable retail businesses, these Northern American property managers will naturally fall back on their own business connections from back home. Significantly, these reflections will also include experiences with different franchised and licensed retail concepts – both good and bad. Hence, a North American franchisor’s operating history in its host country will likely have a material bearing on the receptivity of the property managers in the GCC.

It has been observed that franchising in the GCC is dominated by a small number of wealthy businesses; for example, three companies franchise a majority of labels such as Ralph Lauren

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31 Id.


35 Oliver Klaus, *From the Souk to the Mall*, Middle East Economic Digest, Mar. 26, 2004, at 54.

36 Martin, supra note 6, at 39.

37 Brian Smith, Vice President, Cirrus Tenant Lease Services, Toronto, Ontario, Canada, telephone interview, Jul. 2009 (hereinafter “Smith”).

38 Id.
and Marks & Spencer. These businesses tend to be vertically integrated conglomerates with significant financial and management resources. Single unit franchising as is known in North America or other developed economies is therefore virtually unknown in MENA. Rather, these well-established conglomerates tend to favor area development rights with management provided by an educated management infrastructure – similar to their approach to managing their real estate interests.

There are several examples of companies that have dual-level interests in retail malls and franchise rights in the GCC market. In the UAE, the Majid Al Futtaim Group owns and operates some of the largest and most successful shopping malls (Mall of the Emirates, Dubai City Centre, three others in the UAE, two in Oman, one in Bahrain, one in Egypt and so on) as well as controlling the rights to approximately 10 franchised and/or licensed brands that operate in those malls. The largest licensed brand operated by this group is the Carrefour supermarket concept operated under a joint venture arrangement with the French parent. The fact that the licensee is also the landlord ensures these retail outlets have premium locations in their malls. Another example of this dual-level interest in the UAE and reputedly across the GCC is Nakheel Retail. Nakheel Retail is a Dubai government-owned entity that developed the Palm Islands, The World Islands and other 'iconic' developments. However, it also operates a number of malls as well as the franchise and license rights to a number of brands.

In Saudi Arabia, the Al Othaim Group has a number of malls as well as a number of licensed brands in each of these malls. Interestingly, they also have their own home-grown franchise supermarket, which anchors their real estate. Another example of a large conglomerate with multiple interests in the Kingdom of Saudi Arabia ("KSA") is the Fawaz Al Hokhair Group, which has multiple malls and many, many brands, especially fashion brands. This group owns the new and huge Mall of Arabia in Jeddah. A final example of dual-level interests would be the MH Alshaya Group that maintains an interest in the Marina Mall in Kuwait as well as having a number of their licensed brands present.

The dramatic growth in retail space also serves to underscore the fact that the corresponding demand for North American and European brands includes not only traditional “business-format franchised” brands (McDonalds, KFC, Pizza Hut, etc.) but also “trade name licensed” brands such as Sony, Levi’s, La Senza, La Vie en Rose and Carrefour.

D. North Africa and the Maghreb

North Africa encompasses seven nations: Algeria, Egypt, Libya, Morocco, Sudan, Tunisia, and the Western Sahara (see Figure 2 for a map of North Africa and including the region known as the Maghreb). In North Africa, franchising is much sparser and tends to focus on areas that have large middle to upper-classes, high spending power, and trade agreements. For example, Tunisia has a population of which 80% are in the middle class, with 28.9% of the total

39 Jones, supra note 24, at 14.
40 Gareth Parry, President of Global Franchise Marketing, London, United Kingdom, Personal Correspondence, Aug. 17, 2009.
41 Id.
population under fifteen years of age.\textsuperscript{42} Tunisia also has a free trade agreement with the European Union (EU), which was first enacted in 1995.\textsuperscript{43} This presents a possible market for franchisors.

The Maghreb is a region of North Africa organized in 1989 in order to promote economic unity. It consists of Morocco, Algeria, Tunisia, Libya, and Mauritania. Due to political unrest, much of the Maghreb has not experienced large-scale franchising; with Morocco being the notable exception.

Given any significant level of franchise activity in North Africa is limited to Egypt and Morocco, particular focus in this paper will be given to these two countries. Country profiles for Egypt and Morocco are provided in a further section of the paper, and thus will not be repeated here. Perhaps not coincidentally, the best available data and market research with regard to franchising are also limited to Egypt and Morocco.

III. ANALYSIS OF THE FRANCHISE SECTOR IN MENA

A. Overview

As stated in the previous section, franchising in the MENA region is currently focused on the retail sector, particularly fast-food restaurants. Tourism is only a small part of the economy in the region. A large majority of tourists to the Middle East are from the region, with the most popular tourist areas being Egypt, Israel, and Bahrain.\textsuperscript{44} There is a wealth of untapped resources and markets that have incredible potential for franchisors looking to expand internationally. This includes creating local franchise ownership, which works to foster cultural and political acceptability of Western goods.

Refer to Figure 4 for pertinent Middle East and North African statistics that will be cited on multiple occasions in future sections (statistics include population, percent in urban centres, GDP per capita, GDP real growth rate, control of corruption, rule of law, inflation rate, literacy rate, population below poverty line, percent in the lowest 10\% of income, and percent in the highest 10\% of income).

B. The Nature of Franchising in MENA

In some areas of MENA, the spoken word provides a proven track-record of reliability, with “who said what” often deemed to be more important in business dealings than what is actually communicated.\textsuperscript{45} A similar reasoning may explain the franchising boom in certain MENA countries. For example, as stated by an Egyptian manager of “Stirling,” a local franchised

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{42} Beligh Ghedira & Rozenn Perrigot, The Importance of Laws in the Development of Franchise Business in Emerging Markets: the Tunisian Case, Presentation at the 18\textsuperscript{th} Annual International Society of Franchising Conference, Mar. 6-7, 2004, at 6.
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Welsh, Raven & Al-Mutair, supra note 22.
\item \textsuperscript{45} George Makdisi, The Diary in Islamic Historiography, 25 Hist. & Theo. 173 (1986).
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jewelry company, “We Egyptians tend to trust safe waters – which means business concepts that have proven fruitful to others. Franchising is one such formula and hence the growing interest in it.”

Area development agreements with local business interests constitute a practical method used to avoid cultural distance. Narrowing this cultural distance provides greater opportunity for success for both the franchisor and franchisee due to the fact that the local franchisee has increased knowledge of local customs and culture; language; market conditions; networks; local politics; business norms; and industry trends. However, risks to the franchisor include possible difficulties in the payment of royalties; protecting intellectual property; monitoring quality standards; understanding limitations within local laws and regulations; and the monitoring and training of franchisees.

Creating culturally-relevant products also proves to be a concept that is not uniformly applicable across the region. For example, in a focus group study in three Egyptian cities regarding the U.S. fast food industry, Grünhagen et al. found the following: an increase in health-conscious consumers; a belief that Western fast food was a transitory product, largely consumed by children and students; the need to adapt marketing strategies to create a more “local” brand; and the need to change marketing strategies that focus efforts on retaining customers over the lifetime. Culturally-relevant customs are particularly relevant when they delineate acceptable and forbidden consumption patterns. Of importance to this notion is food preparation. For example, in the Middle East, McDonald’s produces the same meat products as in North America; however, the meat used is slaughtered and produced in accordance with Islamic law and excludes any pork products.

Franchising local and “home grown” businesses in the MENA region is an increasing phenomenon. Studies have shown that there are advantages for the home country in fostering Small and Medium Enterprise (“SME”) growth through franchising. These advantages include: obtaining foreign currency; increases in employment; and growth in taxes and GDP. These benefits are said to be due to the franchise business model transferring a known brand and established business model to a new context. To date, Egypt and Lebanon are acknowledged as significant exporters of indigenously developed franchise brands. For example, the Egyptian brand of Mo’men Fast food has established three outlets in Libya, two in the Sudan and Djibouti.

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47 Welsh, Alon & Falbe, *supra* note 3.

48 Id.


51 Welsh, Alon & Falbe, *supra* note 3, at 137.

and one in the UAE with another coming soon to the KSA. Similarly, the Egyptian franchise system “Cookdor” has established outlets in Libya, Algeria and Syria and is also expected to open very soon in KSA. Conversely, Lebanese franchise systems appear to largely utilize the prolific number of Lebanese expatriates around the globe as a viable vehicle for franchise expansion. As a result, there are a number of examples of a franchisor with one outlet in Lebanon but with several franchisees abroad.\(^\text{53}\) While these brands are acknowledged as being “culturally familiar” to the region, they are not perceived as favorably by franchisee investors in MENA due to a perception that their business processes or “back of the house” systems (including product and service consistency, quality control and assurance protocols and branding tactics) are not as well developed as Western franchise systems – and therefore not as competitive in the marketplace.\(^\text{54}\) The most pertinent negative effect of franchising is the possible homogenization of culture, tradition, and consumer choice (also known as the “McDonaldization” of society).\(^\text{55}\) This is especially applicable among the youth that cling to Western brands, while elders in communities and political organizations resist Westernization.\(^\text{56}\) Hence, as noted earlier, there is a growing demand for indigenous or regional franchisors in the GCC, combined with the observation that indigenous franchisors are learning from their Western and European competitors quite rapidly.\(^\text{57}\) A second criticism of franchising is that while more jobs do become available for the local population, many jobs are menial and do not reflect the acquisition of important skills (e.g., a cook in a fast food restaurant).\(^\text{58}\)

As noted above, franchising in MENA has traditionally been a function of local investors importing globally recognized brands in order to capture a disproportionate amount of consumer demand in specific markets. Investors tended to be well-organized, well-managed and well-financed conglomerates which acquired area development rights and owned and managed all of the franchised units under a traditional “master-servant” organizational structure in their respective development territories. As a result, little knowledge of franchising principles and “best practices” was requested or required. However, there is limited evidence to suggest that the continuous introduction of successful franchised businesses into the region over the course of decades has started to incubate indigenous franchise activity.

One body of research explored the impact of foreign franchising on indigenous franchise growth. Theoretically, one would presume that foreign franchise systems would have an overwhelming competitive advantage compared to indigenous franchise systems. This competitive advantage is based upon the relative size, financial strength, management resources and level of sophistication of the foreign firm versus the domestic one. Superior marketing savvy and high quality-assurance of operational systems is required by discerning consumers in mature, highly competitive markets. When combined with deep financial

\(^{53}\) Hatem Zaki, Deputy Chairman and Executive Director, Business Enterprise Support Tools (“BEST”) Foundation and Board member of the Egyptian Franchise Development Association (“EFDA”), Cairo, Egypt, Personal Correspondence, Aug. 17, 2009 (hereinafter “Zaki”).

\(^{54}\) Sary Hamway, Chief Executive Officer of FranExel Media Productions FZ LLC, Dubai, UAE; telephone interview, Jul. 2009 (hereinafter “Hamway”).

\(^{55}\) Alon, supra note 52, at 161.

\(^{56}\) Welsh, Alon & Falbe, supra note 3, at 137.

\(^{57}\) Zaki, supra note 53.

\(^{58}\) Alon, supra note 52, at 161.
resources accumulated from an established and sustained domestic market share, this adds up to a barrier to entry that most domestic franchisors from emerging markets would find difficult to penetrate. Assuming this is the case, one would predict that there would be an inverse relationship between the presence of foreign franchise systems and indigenous systems over time. This was generally not found to be the case, however.\(^5^9\)

A limited analysis of franchising in MENA suggests that, notwithstanding the existence of a significant percentage of foreign-based franchised systems in certain countries, certain other countries have been found to be net exporters of indigenous franchise systems (Egypt, Lebanon). This would suggest that international franchisors facilitate an indirect transfer of knowledge about franchising, especially with regards to business techniques such as networking in order to achieve economies of scale, consolidated purchasing power, and operational standardization and consistency in an essentially de-centralized organizational structure. A possible explanation as to the process by which this knowledge is transferred could be found in the concept of economic clusters, which leads to the notion of strategic platforms. To the extent that this hypothesis holds true, international franchising may be considered to be an “incubator” of indigenous franchise systems in MENA.

C. **Commonly Accepted Mode of Entry**

1. **Overview**

   International franchisors have created a body of precedents or models by which they establish themselves in foreign jurisdictions. The specific mode of entry is largely determined by the strategy of the franchisor in connection with a new market. This strategy must be codified in a legal form. There is a body of thought that suggests that due to the economic, cultural, religious, legal, and administrative differences between Western and Middle Eastern contexts, the master-franchising model might be considered to be the safest approach.\(^6^0\) However, it is significant to note that the majority of franchise transactions throughout the region appear to take the form of what is commonly referred to as “area development.”

2. **Characteristics of Area Development Transactions**

   Area development typically involves the granting to a local party within the host market the rights to establish, own and operate an unlimited or fixed numbers of units on an exclusive or non-exclusive basis within a specific geographic territory. The territory in question could be either a part or whole of a given country, or several countries in close proximity to one another.\(^6^1\) As a result, the franchisor will effectively have one area development agreement with one entrepreneur or group of entrepreneurs, who in turn directly own and operate many franchised businesses. As noted earlier, area developers tend to be well-established, often vertically integrated conglomerates with strong financial resources and seasoned management

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59 Alon, *supra* note 52.


infrastructure. The franchisor thereby leverages his management infrastructure by supporting one multi-unit franchisee rather than a number of individual franchisees for the same number of retail locations. In some cases, the franchisor can reserve its rights to make other forms of direct entry so as to diversify its dependency on the efforts and resources of one party, or otherwise to secure its own opportunity for direct participation in the future.

Area development modes of entry offer the franchisor the advantages of allowing some or all of the business risks to be assumed by a knowledgeable indigenous party. This is especially significant in MENA countries due to the existence of Shari’a law and other cultural and religious sensitivities. Similarly, area development can transfer most of the capital investment risk to the area developer and its franchisees. Area development arrangements may be particularly well suited to MENA countries that do not have effective legislative or judicial environments or otherwise have relatively small but nonetheless viable markets. Experience has shown that the geographic scope of an area developer’s territory will have a direct impact on the timeliness and quality of its ability to support its various franchised outlets, and therefore the control of its operations. For similar reasons, area development franchising may also have a role to play in franchise development in MENA through the use of strategic platforms and regional development initiatives.

3. Determining Territorial Development Rights

Area development agreements usually contain an obligation on the part of the area developer to open and operate a certain number of franchised businesses within a certain period of time, generally known as “performance criteria.” These performance criteria are important to a franchisor because they ensure the given geographic territory is in fact developed within a reasonable period of time. This is especially crucial in the event an area developer wishes to secure “exclusive” developmental rights for the term of the contract.

There is a predictable tendency for area developers to negotiate for the largest land mass possible, including the greatest number of geographic markets (towns, cities, counties, states or provinces or for that matter, countries). Most mature franchisors would agree that a franchisee’s “reach is often greater than his grasp”. The practitioners interviewed in this paper all support the view very strongly that any area developer must be able to demonstrate that it has existing and successful operations already in existence in the geographic markets under consideration.62

Further, one practitioner went on to insist that an integral part of his due diligence was to actually interview and qualify the individuals forming the proposed management team for the specific franchised project.63

62 Bachir Mihoubi, Chief Executive Officer, FranCounsel Group LLC Atlanta, Georgia, USA, Personal Communication; see also Hamway, supra note 54.

63 Id.
4. Determining Area Development Licensing Fees

Licensing an area developer franchisee, the most common form of licensing in MENA, usually necessitates the payment of an up-front fee, called an “area development licensing fee”. There are a number of methods used to determine and negotiate the amount of these initial fees. Determining market opportunity is an inexact science that ranges from unsubstantiated guess work to econometric formulas. Two examples would include:

1. Applying a ratio of domestic units to those of major competing international franchise systems in Canada to the number of those same competing international franchise systems operating in Kuwait (or the region).
2. Applying a ratio of domestic market viability to the local market using Purchasing Power Parity or Gross Domestic Product per capita. These statistics are readily available of the World Fact Book.

According to one practitioner in the field, the range in fees can vary broadly depending on a number of factors including, inter alia, the total number of locations that the market might conceivably support, the capital investment of each franchised unit or location, the aggressiveness of the development schedule (inversely correlated to the opportunity cost to the franchisor), the industry, competitiveness of the market, projected cash flow and return on investment of the project and other matters. A range in initial licensing fees negotiated by this practitioner in the past for specific sub-regions of MENA is illustrated in Figure 4. What is relevant here is that regardless of the amount of money involved, these fees are in excess of what would otherwise be invested to establish and operate a similar non-franchised business or even to create a franchise system from inception onward.

IV. ENVIRONMENTAL ISSUES AFFECTING FRANCHISING IN MENA & TARGET COUNTRIES

A. Country Business Analysis

1. Overview

The selection of franchising partners across cultures and nationalities creates issues not as relevant in domestic settings. Altinay & Wang demonstrated in their study of international hotel franchising the following characteristics: first, that nations have differing business traditions that may be in conflict (e.g., Italy and Greece do not have a “franchising culture” due to the predominance of family-owned businesses); and second that branding in differing cultural contexts can be challenging as a franchisee must be selected who is not likely to change the brand in an attempt to adapt it to the local population; hence offering a possible explanation as to why a business’ strategy and entrenched practices might be difficult to cross cultures. As a consequence, international franchisors must adapt their prior business knowledge to local

64 Id.

contexts. Selecting franchise partners that are familiar with the franchising business model is viewed as critically important for long-term success.\(^{66}\)

A possible solution to the above issue is foreign partnerships between local and international companies. An example of this is the case of Debenhams (a UK department-store chain) in the Gulf. Debenhams was approached by M & H Alshaya (an established Kuwaiti retailer), and formed a partnerships whereby the local knowledge of M & H Alshaya became an invaluable resource. This knowledge included: locating wealthy and under-shopped locations; choosing the most applicable and sought-after brands; local pricing that is known to be competitive; local purchasing culture (e.g., women matching outfits in the Gulf in comparison to mixing outfits in the UK); and limitations on advertising due to religious norms.\(^{67}\) As a result, Debenhams has been successful, with seven stores located in the most prominent Gulf malls.\(^{68}\)

2. **General Assessment**

In countries that have evidence of franchising, structural issues include peace in the region, a lack of knowledge in the region, upfront expenses, unsupportive legislation, laws, and religious constraints.

First, foremost, and very simply, increased franchising and unification of the Middle East as a market depends on peace in the region. For example, many Arab countries will not conduct business with Israel, demonstrating that a unified market depends on political elements.\(^{69}\)

Second, a lack of knowledge of MENA countries can contribute to difficulties in franchising. For example, in Egypt regional differences are plenty. Unaware of this, franchisors expanding into Egypt may adopt an improper regional strategy. As stated by the Oxford Business Group, “Some industry insiders say the current trend of offering master franchises to MENA regional directors does little to help Egyptian business as they have a tendency to expand only into big cities and are often unaware of regional differences...They would be better served by appointing area developers for each country and sub-franchising to talented local entrepreneurs who are more aware of the local market and have the resources to expand outside of major cities.”\(^{70}\)

Third, the expense in starting a franchise in the Middle East can be high. In Egypt, for example, starting a clothing franchise of a major European clothing line (e.g., “Morgan”) will cost between 260,000 and 900,000 Egyptian pounds ($46,500 to $161,000 U.S.).\(^{71}\)

Finally, there are local legislative and religious constraints that do not support the franchising sector. Most pertinent to this is Saudi Arabia, which is examined in the following subsection of this paper. Also refer to Section IV of this paper, which is directed specifically to issues within the laws of specific MENA countries.

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\(^{66}\) Id. at 430.

\(^{67}\) Jones, supra note 24, at 15.

\(^{68}\) Id.

\(^{69}\) Welsh, Raven & Al-Mutair, supra note 22.

\(^{70}\) Oxford, supra note 2.

\(^{71}\) Sandels, supra note 46.
While a lack of data for countries with minimal potential for franchising also exists, based on the population statistics in Figure 4, it can be inferred that there is a lack of franchising in these countries due to political instability, a low GDP, and low numbers of individuals living in urban areas. For example, Libya, Iraq, Afghanistan, Iran, Syria, and Yemen all have high corruption indices, lower rule of law indices, lower GDP in comparison to Gulf nations, and lower percentages of the population living in urban centres in comparison to countries with more evidence of franchising. Refer to the Legal Perspective portion of this paper prepared by Joyce Mazero for an expanded discussion on corruption in the MENA region.

In addition to the above issues, franchisors from the U.S. are said to be neglecting parts of the MENA region due to a lack of accurate information about the area’s potential for franchising. An alleged common reason cited by American franchisors is priority in developing the North American market before that of the Middle East. Related, another important factor that may inhibit American franchising to the Middle East is perceptions of compromised safety (attributed to the media).

B. Target Country Business Analysis

1. Franchising in North Africa

   a. Egypt

Franchising was first seen in Egypt in the 1970’s during Sadat’s presidency, with the “Wimpy” chain from the United Kingdom initially entering the market. Currently, Egypt has a population of 83.1 million people, with 43% living in urban centres. It has a per capita GDP of $5,400, a literacy rate of 71.4%, and a corruption and rule of law index in the middle-range for the region. There are a number of consumers with dispensable income, defined in the Egyptian context as earning over 10,000 Egyptian Pounds per month ($1,755 U.S.). Specifically identified are 72 million potential consumers, with a current pool of 350 franchises, and 4,000 franchise outlets. However, it has been observed that a large majority of these systems

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74 Kouatly, supra note 13, at 42.

75 Id.

76 Oxford, supra note 2.

77 CIA, supra note 73.

78 Id.

79 Kaufmann, Kraay & Mastruzzi, supra note 72.

80 CIA, supra note 73.
consist of less than 10 outlets. This is partially due to the current unavailability of shopping malls outside Greater Cairo, Alexandria and Sharm El Sheikh.82

Egypt is also one of the only countries in the region to have a franchise association,83 created in 2004. Although it does not have specific franchising legislation,84 it is currently being considered. The Egyptian government is currently debating whether the form of the new legislation will be a separate act or alternatively an amendment to other commercial laws with provisions specific to franchising. Regardless, it is expected to have a registrar for franchise contracts as well as some form of “franchise advisory council” reporting directly to the Minister of Trade and Industry. The intent of the legislation and the proposed advisory body is to increase the transparency of franchise transactions. There is some speculation that it may be based on the Malaysian franchise act but without physical penalties (prison sentences) 85

High import taxes, which have historically inhibited foreign franchise investment, have been significantly lowered during Ahmed Nazif’s time as Prime Minister (2004 to present).86 As a result, franchising has greatly increased; for example, the clothing industry saw a 200% growth increase between 2005 and 2007.87 The number of franchisees is also growing. For example, the Egyptian Franchise Development Association (“EFDA”) cites growth from 212 franchisees in 2005 to 250 in 2007,88 to the present number of 300.89 According to the EFDA, in 2006, sales revenues directly attributed to franchised businesses amounted to seven billion Egyptian Pounds ($1.25 billion U.S.) while indirect franchising sales amounted to 30 billion Egyptian Pounds ($5.3 billion U.S.).90 The African Development Bank has also recently financed Egypt’s “Franchising Sector Support Program,” inserting $40 million (U.S.) into the program. The program encourages growth of local franchising ideas in order to foster development, increase employment, and stimulate economic growth. The project is projected to create 375 franchise outlets (largely SMEs) and 7,000 direct jobs.91 Although the program is not yet operational, it has already been observed to have triggered many other initiatives. For example, the Egyptian

81 Sandels, supra note 46; see also El Zeini & Cliquet, supra note 14, at 2; and Zaki, supra note 53.
82 Zaki, supra note 53.
84 El Zeini & Cliquet, supra note 14, at 20.
85 Zaki, supra note 53.
86 Oxford, supra note 2.
87 Sandels, supra note 46.
88 Oxford, supra note 2.
89 El Zeini & Cliquet, supra note 14, at 2.
90 Sandels, supra note 46.
Cabinet has recently directed the Social Fund for Development to allocate 500 thousand Egyptian Pounds (approximately $90.5 thousand U.S.) to finance a franchise business.\footnote{Zaki, \textit{supra} note 53.}

While the restaurant sector is showing progress (e.g., Sbarro and Papa John’s Pizza have opened stores in the last two years, and 25 of the known 40 international franchises are fast-food\footnote{El Zeini \& Cliquet, \textit{supra} note 14, at 2.}), other promising areas for future development are believed to clothing, lifestyle products, and home furnishings (e.g., IKEA).\footnote{Oxford, \textit{supra} note 2.} Multiple sources state that Egypt is a “brand-obsessed” country, corresponding to these franchise patterns and future predictions.\footnote{\textit{Id.}; see also Sandels, \textit{supra} note 46.} In addition, SMEs are said to be a viable route for franchising, as SMEs currently represent 99\% of all non-agricultural businesses, and 20\% of total employment.\footnote{El Zeini \& Cliquet, \textit{supra} note 14, at 1.}

Unique elements in Egypt society that relate to franchising are important to consider: only 6\% of the country’s land is inhabited (predominantly around the Nile Valley); the society is very risk-averse, with a strong emphasis on job security and loyalty; friendship is of the utmost importance, with favors seen as a friendship duty; and Egyptians do not like saying “no” in an attempt to retain societal harmony.\footnote{\textit{Id.} at 14.} Available data is also showing that, although the Egyptian franchise market is growing, many in the local population are not aware of the franchising business model. \textit{El Zeini \& Cliquet} conducted an exploratory study in which 62 Egyptian individuals (marketing professors, franchising experts, and store owners) were interviewed about franchising.\footnote{\textit{Id.} at 17.} The results illustrated the following: the sample believed that franchising was not a well-known concept in Egypt (receiving an average score of two on a five-point ascending scale); economic risk, franchising laws, political conditions, and brand protection were viewed as the most important environmental aspects that could influence adoption of franchising; and culturally, attitudes toward strangers and importance of control were viewed as the most important variables in relation to franchising. Also important were franchisors’ experience and franchisees’ trustworthiness.\footnote{\textit{Id.} at 20.} Thus, there are unique cultural elements in Egypt that must be taken into consideration. Last, bargaining, negotiation, and price sensitivity are also of central importance in Egyptian business dealings, corresponding to the country’s low GDP on the world scale.\footnote{Hoffman \& Preble, \textit{supra} note 82, at 107.}

Franchising is having a positive impact on the local Egyptian job market. For example, it is estimated that franchising in Egypt has directly created 40,000 new jobs and indirectly created 500,000 positions of employment.\footnote{Sandels, \textit{supra} note 46.}
Geographical location and corresponding trade agreements with neighboring countries provide unique opportunities for private sector investment. For example, the Greater Arab Free Trade Agreement (GAFTA) and the Common Market for Eastern and Southern Africa (COMESA) render trade tariffs between Egypt and neighboring nations almost negligible. As a result, many international and local entrepreneurs are using Egypt as a franchise starting point.  

b. **Morocco**

The business enabling environment of Morocco has been undergoing fundamental changes since Prince Sidi Muhammed was crowned King Muhammed VI in 1999. Since then, Muhammed VI has pledged to make the political system more open, allow freedom of expression, and support economic reform. He has also advocated more rights for women, a position opposed by Islamic fundamentalists. The entrenched political elite and the military have also been leery of some reform proposals. With about 20% of the population living in dire poverty, economic expansion is a primary goal. Parliamentary elections were held in November 2002 and were considered largely free, fair, and transparent. At that time, King Mohammed VI formed a government appointing then-Interior Minister Driss Jettou as Prime Minister. Cabinet level positions were drawn from most major parties in the coalition.

Following the 2002 elections, King Mohammed VI highlighted several goals toward which the new government should work: expanded employment opportunities, economic development, meaningful education, and increased housing availability. To meet the King's objectives, the Jettou government embarked on a series of initiatives and reforms, which Jettou laid out in his early days as Prime Minister.

Jettou emphasized that modernization and revitalization of the country's infrastructure (roads, trains, communications, water, etc.) and national economy (support for Moroccan businesses, preparations for competition, modernization of modes of production, etc.), were necessary to further development progress in Morocco. In order to create employment opportunities, the government is promoting investment in the tourism, industrial, fishing, and service industries, and is ameliorating, restructuring, and modernizing the education system.

With a population of 34.9 million and 56% living in urban centres, Morocco is the third largest market among the surveyed nations. Respondents surveyed considered only 10 per cent of the population to have the purchasing power necessary to support viable consumer goods business. Adult literacy is estimated at 52.3%. Morocco has taken strong market-oriented steps in recent years, including waves of privatization, and the modernization of its commercial law, along with the establishment of a separate commercial court. Foreign Direct Investment has flourished, particularly in textiles. The Moroccan per capita GDP is $4,000 U.S. With inflation at 4.6%, mid-range corruption indices, and a pegged local currency, Morocco

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102 *Id.*
104 CIA, *supra* note 73.
105 *Id.*
106 *Id.*
offers a stable economic environment. The workforce, particularly in the food industry, is considered readily available. Securing prime real estate is considered to be a challenge in that it is only recently being developed in significant amounts and the process is time consuming and bureaucratic. However, the government is making progress in addressing these issues.

As of 1997, it was estimated that Morocco had 47 franchise systems with 120 franchised locations. As of 2001, this number had increased to 84 franchise brands with 200 outlets. By 2004, Morocco boasted 144 franchise systems with 560 franchised outlets. A further source documented that U.S. franchising in Morocco was growing at an annual rate of 50%. In 2003, a study conducted by the Private Sector Department of the African Development Bank (the “AfDB”) identified Morocco as a “strategic platform” from which to incubate business format franchise systems for development throughout French West Africa. The Moroccan government has been working closely with the AfDB since that time to promulgate the use of business format franchising as a key strategy to SME development and employment creation. A further initiative launched by the government provided funding to Moroccan expatriates to return to Morocco with a viable and successful business of some kind. This funding initiative applies directly to franchise and license opportunities.

1. **Legal Environment**

Morocco is a civil law jurisdiction that closely emulates French law. Franchise related cases in France would therefore likely be used to assist Moroccan courts in similar matters. The legal and regulatory environment is generally considered to be amenable to franchising. Business format franchising is understood to be a variant of the better known and widely accepted licensing arrangements commonly used with consumer retail brands. However, given certain fundamental and significant differences between licensing and business format franchising, the treatment of business format franchising by the courts may be considered uncertain. There are only a few known lawyers that specialize in franchising. Most of them have been educated in France and therefore apply their knowledge of French law to their practices.

Morocco is very much in legal transition. New laws have been promulgated for securities and antitrust/competition. The future impact of these new laws on franchising is unknown. There is some danger of these new laws being misapplied to franchising as they were likely formulated without taking franchising into account. In other areas of law, the statutory rights of an

107 *Id.*


112 Mohamed A Benjelloun, Board member of the American Moroccan Professionals Association (“AMPA”), Warrington, Virginia, Discussion during AMPA Conference in Casablanca, Morocco, 2007.

113 AfDB, *supra* note 110, at 90 – 91. This section was subsequently reviewed and up-dated to reflect comments provided by Stéphane Teasdale, partner of the law firm Fraser, Milner, Casgrain in Montreal, Quebec, Canada.
employee exceed the norms found in other franchising nations. This is something to be considered carefully in a foreign investment. The Moroccan legislature is currently considering re-aligning its labor laws toward a market orientation.

a. **Judiciary**

Moroccan courts and their enforcement apparatus have made some progress in becoming efficient and effective. On the one hand, court cases are not interminable, estimated to take one to two years, and injunctions are regarded as effective; on the other hand, the system continues to battle corruption. More training for judges is desirable according to most of the interviewed lawyers. And while in a general way, the courts are seen to be fair by three of the five; bias is regarded as likely in matters involving politically influential parties. The hesitancy of interviewees to discuss issues of fairness belied perhaps the need for caution more than might appear from their answers and perhaps the need for alternatives to the courts such as arbitration.

b. **Implied Warranties**

A minority, two of the five interviewees, felt that implied warranties could be read into a franchise agreement. These are terms of a contract that are not written, but understood to be part of the agreement, due to the surrounding circumstances to the agreement. Again, this may be a theoretical position, given the lack of case law. Courts in some other franchising nations, where primacy of contract is highly regarded, are often interventionists. But this is against the understood background of how and why franchising works, in general. Abuses of franchising of course do exist, and intervention can be appropriate, but without adequate knowledge of franchising, a court could impose unexpected obligations on a franchisor.

c. **Antitrust Clarification**

Moroccan lawyers have had very limited experience with franchising and do not know the results that would follow from franchising’s ultimate contact with their recently enacted Competition Act. This Act, though similar to more tested legislation from which it is modelled, remains untested in Moroccan courts as yet.

d. **Intellectual Property Legislation**

Morocco has a good range of intellectual property provisions, being a signatory to the Paris Convention for the protection of Industrial Property. There is a lack of protection of concepts such as know-how and trade dress, but these types of property could conceivably be protected by contract and the courts seem amenable to primacy of contract. Four of the five interviewees felt such covenants were enforceable and injunctions were felt to be timely and effective.

e. **Labor Laws**

Labor laws are employee-biased, but these are currently under review. At present, the dismissal of an employee presents serious difficulties and may involve significant severance remuneration.

f. **Supporting Laws**

In all of the areas of law that deal with real estate, tax, and product liability, Morocco is aligned to liberal expectations. It is only in the areas of foreign exchange and labour that some concerns arise. Foreign exchange, though not straightforward, is navigable with proper legal guidance.
g. **Education Needs**

The interviewees were clear that the greatest need in Morocco is a better understanding by prospective franchisors, franchisees, lawyers, judges and business consultants of the mechanisms of franchising. Some felt a regulatory framework was needed to help clarify the rights and obligations of contracting parties. A framework could work to help all of the legal, regulatory and private parties coalesce around one legal definition of franchising. Ideally, this legal definition would identify franchising as more than just a channel of distribution, but as a business vehicle in its own right. Some of the interviewees mentioned the need for education about franchising for local entrepreneurs. All agreed that foreign franchising was limited by the initial cost imposed by the franchisor. Whether they felt that cost was magnified by legal and regulatory uncertainties is unclear.

2. **Franchising in the GCC**

a. **Dubai, UAE**

The UAE (most importantly, Dubai) is part of the GCC, as outlined earlier. It has a population of 4.8 million, with 78% of people living in urban centres.\(^{114}\) It has one of the largest per capita GDPs of the MENA region at $40,000, a literacy rate of 77.9%,\(^{115}\) and corruption indices among the lowest in the region.\(^{116}\) 80% of the UAE’s income is oil-dependent, however the country is attempting to diversify.\(^{117}\) There is currently no franchising association or franchising-specific legislation in the UAE. Exact numbers of franchise systems and franchisees is unknown.

The UAE is a preferred gateway for franchising due to its location and growth rate within the Middle East. Dubai is the fastest growing emirate in the UAE, and has one of the largest ports in the Persian Gulf, making the UAE incredibly accessible.\(^{118}\) It has been labelled “a window to the world.”\(^{119}\) Further, the UAE is centred between the Eastern and Western world, rendering it not only a regional hub, but a world hub.\(^{120}\) According to the World Bank, the UAE is one of the most manageable countries in which to set up a new business, with initial costs being lower than most nations.\(^{121}\) In addition, the UAE ranks as the 14\(^{th}\) most innovative country in the world.\(^{122}\)

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114 CIA, *supra* note 73.

115 *Id.*


118 Bringing, *supra* note 8, at 69.

119 *Id.*

120 Grant, Golawala & McKechnie, *supra* note 1116, at 529.

121 *Id.*

40% of the market in the UAE is youth under the age of 20, which brings unique opportunities not only for brands and retail, but an increase in educational franchising (e.g., language centres, management education, e-learning).\textsuperscript{123} Dubai provides a particularly unique and diverse market for franchising. The expatriate population constitutes 80% of the workforce and 160 nationalities (a majority from the Indian sub-continent, Europe, and the United States).\textsuperscript{124} The need for a diverse market of goods that appeals to this wide range of inhabitants provides the opportunity for franchising from a wide range of services and products.\textsuperscript{125} In addition, like other GCC countries, many UAE nationals are foreign-educated, well-travelled, and demand Western services and products.\textsuperscript{126} The consumer profile in the UAE is said to be “image-driven, fashion-wise, playful and unrelenting in pursuit of the best,”\textsuperscript{127} existing within a “shopping mall culture.”\textsuperscript{128}

The retail sector is the fourth largest contributor to the UAE’s GDP, estimated at $30 billion Dirhams per year ($8.2 billion U.S.).\textsuperscript{129} Next to real estate, retail is the fastest growing sector in Dubai. In 2006 alone, 6.7 million feet of retail space was added, and the Emirate’s retail economy represents 23% of the entire Gulf’s $65 billion (U.S.) retail industry.\textsuperscript{130} In terms of franchising, 50% of the retail industry’s sales are represented by foreign brands, and similar to Egypt and Saudi Arabia, 40% of retail franchising is in the fast-food industry.\textsuperscript{131} Between 1994 and 2004, the number of American fast food chains quadrupled. In total, the United States fast food industry holds 84% of the chains in the region.\textsuperscript{132} For example, there are currently 55 Dunkin’ Donuts stores in the UAE.\textsuperscript{133} The fast food franchise industry is currently experiencing a 27% annual growth rate in the UAE.\textsuperscript{134} Tourism is also inextricably linked to retail in Dubai; by 2010, it is estimated that 50% of all retail spending will be from tourists.\textsuperscript{135} Due to the global recession, there has recently been a 30% retail sales drop in Dubai, but this decrease appears to be slowing and coming to a halt.\textsuperscript{136} In the whole, franchising in the UAE is estimated to be

\begin{itemize}
\item \textsuperscript{123} Bringing, supra note 8, at 70.
\item \textsuperscript{124} Bawaba, supra note 7.
\item \textsuperscript{125} Id.
\item \textsuperscript{126} Furey, supra note 17, at 86.
\item \textsuperscript{127} Id, at 89.
\item \textsuperscript{128} Grant, Golawala & McKechnie, supra note 116, at 529.
\item \textsuperscript{129} Bawaba, supra note 7.
\item \textsuperscript{130} Furey, supra note 17, at 88.
\item \textsuperscript{131} Id, at 89.
\item \textsuperscript{132} Bringing, supra note, at 70.
\item \textsuperscript{133} Recovery, supra note 8.
\item \textsuperscript{134} Grant, Golawala & McKechnie, supra note 116, at 530.
\item \textsuperscript{135} Furey, supra note 17, at 88.
\item \textsuperscript{136} Recovery, supra note 8.
\end{itemize}
worth $300 million (U.S.). The most promising areas for future franchising in the UAE include soft drinks and fast food, the automobile industry, and consulting services.

Franchising has been expanding in the UAE because of its geographical location and population described above, but also because Dubai was the first of the GCC countries to allow 100% foreign ownership of businesses, perhaps as a plan to counteract depleting oil reserves. In addition to this, the UAE offers corporate tax holidays, exemption from personal tax, no currency restrictions, and no import duties. In order to enter the UAE marketplace, the assistance of "municipality services" is often employed. These are often government agencies that assist outsiders in understanding cultural differences and challenges in penetrating the market. Voluntary private groups of businesspeople from Western nations also exist in the country to assist trade (e.g., "the American Business Council of Dubai").

b. **Kuwait**

Kuwait is another GCC country, and has a population of 2.7 million people, 98% of whom live in urban centres. It also one of the largest per capita GDPs in the region at $57,400, a literacy rate of 93.3%, and mid-range corruption indices. There is no franchise association or specific franchise legislation in Kuwait, and current franchise system and franchisee numbers are unknown.

Franchising data for Kuwait is sparse in comparison to the UAE and Saudi Arabia. Similar to the UAE, 50% of the Kuwaiti population is under the age of 29. Kuwait has a free market, with customs fees incurred at 4% (in 1998). Many companies from the United States succeed in Kuwait because a large number of Kuwaitis have studied in the United States and are familiar with American firms and brands. Riva, a clothing company originally from Paris, has expanded successfully into Kuwait. In addition, the Kuwaiti market is said to be more dynamic than constant. As stated by Welsh, Raven, & Al-Mutair, "One characteristic of the

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137 *Franchising Industry Expected to Expand in Middle East*, Franchising World, Jul. 2008, at 76.
139 *Furey*, supra note 17, at 88.
140 *Grant, Golawala & McKechnie*, supra note 116, at 529.
141 *Id.*
142 *Id.*
143 *CIA*, supra note 73.
144 *Id.*
145 *Kaufmann, Kraay & Mastruzzi*, supra note 72.
146 *Kouatly*, supra note 13, at 42.
147 *Welsh, Raven & Al-Mutair*, supra note 22.
148 *Id.*
149 *Oxford*, supra note 2.
Kuwaiti market that U.S. businesses should be aware of is that Kuwaiti tastes tend to change, switching from traditional to what is new and trendy. Kuwaitis travel frequently and are aware of the latest fashions in Europe and the USA. As a result, some businesses go out of vogue after about ten years on average.  

Culturally, Kuwaitis are said to appear more fatalistic in comparison to Westerners. That is, attributing fate to higher powers is more likely in Kuwaiti culture, possibly impacting service quality perceptions. In the first-ever study examining service industry norms in Kuwait, Raven & Welsh document that Kuwaitis have lower service-quality perceptions compared to other Middle Eastern countries. They hypothesize that, while international travel may make Kuwaitis (and others from the GCC) familiar with foreign brands, this travel may also increase expectations for service quality; in short, globalization increases the level of quality needed to satisfy customers. In addition, corresponding to gender norms in the region, women perceived and received lower service quality in comparison to males. The authors provide two possible explanations for this: females perceive service quality differently from men, or women actually did receive poorer service, which corresponds to the public gender separation in the Gulf region. In both cases, cultural differences and globalization impact franchising.

Kuwaitis are also said to differ from other Middle Eastern cultures in the following other ways: they tend to govern themselves through extended family relationships and “traditional” values and modes of behavior. These cultural norms extend to the generally accepted management style that tends to value the appearance of consensus. These characteristics may be considered significant for franchising in the region due to their similarities to the qualitative characteristics of franchisor/franchisee relationships. In essence, it may be said that franchise business relationships are “familial” in nature in that the franchisor and its franchisees act as a collectivity of independent businesses that coordinate and focus resources in order to increase competitiveness in the marketplace. The ability to create and maintain consensus among disparate business interests is therefore a highly valued attribute in franchise systems as well. Finally, Kuwait’s increased exposure to Western culture in comparison to other Gulf nations tends to create an openness to Western and European franchise concepts – including cuisine and fashion trends.

c. **Saudi Arabia**

Saudi Arabia has the largest population of any country in the GCC at 28.7 million, with 82% living in Urban centres. It has a per capita GDP of $20,700, a literacy rate of 78.8%, and

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152 *Id.*

153 *Id.*


155 CIA, *supra* note 73.

156 *Id.*
mid-range corruption indices.\textsuperscript{157} It does not have a franchise association, but does have basic franchise legislation that was enacted in 1992.\textsuperscript{158} Exact numbers of franchisees and franchise systems is currently unknown.

While a majority of the Saudi economy is dependent on the oil market (as it is the world’s largest oil producer), the Saudi government has recognized that complete reliance on oil is not a sustainable plan for the future. As a result, the government has launched initiatives to attract foreign investment and encourage local investment in different markets. Consequently, investment has spiked, with $18 billion dollars (U.S.) from foreign investment estimated in 2006.\textsuperscript{159} The Saudi government has also established the “Saudi Credit Bank,” which has a capital of $1.6 billion (U.S.) to provide loans to investors at low interest rates.\textsuperscript{160} Saudi Arabia is also a proponent of free trade without restriction. The government does not impose foreign exchange controls, tariff obstacles, or price restrictions or quotas on imports (other than prohibited items).\textsuperscript{161}

Similar to Egypt, the UAE and Kuwait, half of the Saudi population is under 15 years of age, 65% is under 30 years of age, and many have travelled to Europe and North America thereby rendering them familiar with Western products.\textsuperscript{162} In addition, close to 30% of the population is expatriate, thereby creating a larger market for potential franchises.\textsuperscript{163} Franchising has been steadily increasing in Saudi Arabia, with sub-franchising typically avoided. Sub-franchising is avoided because in most cases, franchisees are wealthy enough to open several outlets without the need to sub-franchise.\textsuperscript{164} It is currently estimated that 30 Saudi concepts have become franchises, with an estimated 300 total that have the potential to be successful franchises.\textsuperscript{165} Fast food is, yet again, popular in the Saudi context; for example, Wendy’s is set to open its first restaurant in Saudi Arabia in early 2010.\textsuperscript{166}

In order to set up a business in Saudi Arabia, most require a license from the Saudi government, and some require the employment of local people (known as the policy of “Saudization”).\textsuperscript{167} For example, if international experience and consultation is required, 

\begin{itemize}
  \item Kaufmann, Kraay & Mastruzzi, \textit{supra} note 72.
  \item \textit{Id.} at 73
  \item Al-Qahtany, \textit{supra} note 157, at 14.
  \item Ali, \textit{supra} note 158, at 72-73.
  \item \textit{Id.} at 73.
  \item \textit{Id.} at 72.
  \item \textit{Id.}
  \item Recovery, \textit{supra} note 8.
  \item Al-Qahtany, \textit{supra} note 157, at 7.
\end{itemize}
preference is given to universities and institutions within Saudi Arabia. Specific to franchising, the government created laws in 1992, which require the following: the franchisor must register the franchise as a commercial agency and must be the original franchisor (not a third-party sub-franchise); a franchise agreement must be approved by the Ministry of Commerce; and all commercial agency laws apply to the franchise agreement.168 As such, it is recommended that anyone considering franchising in Saudi Arabia consult a lawyer familiar with these franchise laws.

Saudi entrepreneurs are said to prefer self-employment and to operate their own businesses.169 Coupled with this is the fact that many have sufficient capital to start a business, but are not comfortable with the risks associated with establishing a completely novel business.170 This suggests that franchising is a particularly powerful business model in Saudi Arabia.

Environmental constraints are currently impeding large scale franchise expansion in the region, which include: a lack of legislation about the franchisee/franchisor relationship; no franchise associations; and a lack of franchise consultants.171 There are also particular religious considerations that must be taken into account in Saudi Arabia. Society is heavily mediated by Islam, as Saudi Arabia houses Mecca and Medina, Islam’s two holiest sites. As a result, daily life is shaped by the major tenets of Islam: confession of faith, prayer five times a day, donating to charity, fasting during Ramadan, and undertaking the yearly pilgrimage to Mecca.172 Franchisors must take cultural and religious norms into consideration when adapting their brand to local customs. For example, corresponding to Saudi interpretation of religious norms of public/private, gender roles, and modesty, restaurants have two entrances: one for women (with or without their family), and one for men whereby each is served separately.173 In addition, businesses close during each prayer time during the day, and advertisements must be conservative and not sexually suggestive.174 Finally, pork and alcoholic products are banned.175 These considerations are unique to the region and must be understood for franchises to be successful.

168 Id. at 5.
169 Ali, supra note 158, at 73.
170 Id.
171 Id.
172 Id.
173 Id.
174 Id.
175 Id.
3. **Other Middle Eastern Countries**

a. **Turkey**

Turkey is a country with a population of 76.8 million people, 69% of whom live in urban centres.\(^{176}\) It has a per capita GDP of $12,000, a literacy rate of 87.4%,\(^{177}\) and mid-range corruption indices.\(^{178}\) A franchise association does exist,\(^{179}\) however exact numbers of franchise systems and franchisees is currently unknown.

Scholarly research and data about Turkey is especially lacking. The only available facts found about Turkey are that franchises that offer a unique product have been shown to fair best in comparison to low-cost products or products that offer a specific service.\(^{180}\)

b. **Israel**

Israel has a population of 7.2 million people, 92% of which live in urban centres.\(^{181}\) It has a per capita GDP of $28,200, a literacy rate of 97.1%,\(^{182}\) and corruption indices among the lowest in the region.\(^{183}\) A franchise association does exist in Israel,\(^{184}\) however specific franchise laws do not, and exact numbers of franchisees and franchise systems is currently unknown.

Similar to Turkey, data on Israel is greatly lacking. Fast food is the only franchising in Israel where minimal data is available. The leading fast food franchise is a local company called “Burger Ranch.” It has 82 outlets, followed by McDonald’s with 80, and Burger King with 52.\(^{185}\) As stated by Pizanti & Lerner, “There is no public or privately organized and up-to-date data base; and there are no lists detailing the number of franchisees and outlets in various sectors in Israel, or the dates of entry and exit from franchising. There are no scientific publications (except for a limited number of financial surveys) that focus on franchising organizations in Israel.”\(^{186}\) As a result, much of the reason for franchising in Israel is speculative. However, one source speculated that the correlation of mall development in the region has had a similar

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176 CIA, supra note 73.
177 Id.
178 Kaufmann, Kraay & Mastruzzi, supra note 72.
179 Hoffman & Preble, supra note 82, at 104.
180 Id. at 108.
181 CIA, supra note 73.
182 Id.
183 Kaufmann, Kraay & Mastruzzi, supra note 72.
184 Hoffman & Preble, supra note 82, at 104.
186 Id. at 141.
impact on the growth of franchising and licensing as in the GCC – but for significantly different reasons. Malls in Israel are perceived to be relatively secure environments within which families can safely shop and socialize. For example, each enclosed mall is equipped with extensive security personnel that search each entrant as well as metal detectors at each entrance.\footnote{Smith, supra note 37.}

However, Israel is said to appeal to franchisors for the following reasons: it has a high level of technological advancement and computerization; the government provides economic incentives for franchising and has decreased barriers for trade entry; demographically, culturally, and economically, Israel is similar to the West in comparison to the rest of the region; Israel has a heterogeneous population with immigrants from multiple countries; and there is a general rise in the standard of living and increase of women into the workforce.\footnote{Id.}

V. CONCLUSION

This paper has substantiated the view that the expansion of western-based brands into the Middle East and North Africa has grown exponentially over the span of some decades. It has been observed that North American-based franchise systems have ventured to the GCC region of MENA as an initial point of entry to international markets largely due to the “demand-pull” dynamic on the part of GCC business interests rather than a “supply-push” of North American or EU franchisors. The evidence suggests that one of the key catalysts to the growth of franchising in the Middle East (specifically the GCC) has been the desire of certain indigenous business interests to diversify their investment portfolios and by extension their respective economies away from a dependence on oil revenues. The evidence illustrated that one of the key manifestations of this objective was through investments in real estate – specifically in this case in enclosed malls. The direct causal impact on franchising occurs from the fact that, once a mall has been built, the next logical step is to fill it with viable and profitable tenants. Therefore these same business interests – through related party business entities ultimately controlled by them – also acquired the rights to various retail franchise concepts which in turn became the tenants in their own properties. It has therefore been shown that, in the vernacular of some academics and franchise practitioners, the growth has been largely “opportunistic” rather than “strategic” in nature.

A second key catalyst to the growth of franchising and licensing in MENA is the public sector desire to stimulate economic growth through SME development and thereby positively impact employment creation and increase the tax base. This is especially true in the North African countries of Morocco and Egypt.

Notwithstanding the general characteristics of MENA as Arab speaking and Muslim, MENA is far from culturally homogenous. Morocco and Egypt are profoundly cosmopolitan in style and dress with business protocols largely consistent with the EU and North America. The same can be said for Turkey, Israel, Bahrain and the UAE. Conversely, the Kingdom of Saudi Arabia, Iran and Syria are more traditional in style and business dealings.

The central reason why North American franchise systems appear to find these markets so attractive therefore appears to be the relative ease of transactions with well-capitalized,
sophisticated business conglomerates in the form of area developers that are willing to pay attractive initial licensing fees while requiring minimal support. This paper also suggested that the profile of these sophisticated business entities as area developers tends to mitigate the risk generally associated with transactions of this size and complexity.
Figure 1 – Map of the Middle East

Available at http://www.travelnotes.org/MiddleEast/index.htm

© 1800-Countries.com
Figure 2 - Map of Africa, Including North Africa and the Magreb

Available at http://www.travelnotes.org/1800/Countries/Maps/continent_maps.htm.
### Figure 3 – Summary of Pertinent MENA Statistics

<table>
<thead>
<tr>
<th>Nation</th>
<th>Population (Millions)</th>
<th>% in Urban Centres</th>
<th>GDP Per Capita (U.S.$)</th>
<th>GDP Real Growth Rate</th>
<th>Control of Corruption (Quartile)*</th>
<th>Rule of Law (Quartile)*</th>
<th>Inflation Rate</th>
<th>Total Literacy Rate (Male, Female)</th>
<th>Population Below Poverty Line</th>
<th>% in Lowest 10% of Income</th>
<th>% in Highest 10% of Income</th>
<th>Number of Franchise Systems</th>
<th>Number of Franchisees</th>
<th>Existence of a Franchise Association</th>
<th>Existence of Franchise Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>83.1</td>
<td>43%</td>
<td>$5,400</td>
<td>6.9%</td>
<td>2</td>
<td>2</td>
<td>18%</td>
<td>71.4% (83%, 59.4%)</td>
<td>20.0%</td>
<td>3.7%</td>
<td>29.5%</td>
<td>40** 404</td>
<td>290**</td>
<td>Yes**</td>
<td>Pending</td>
</tr>
<tr>
<td>Morocco</td>
<td>34.9</td>
<td>56%</td>
<td>$4,000</td>
<td>5.9%</td>
<td>2</td>
<td>2</td>
<td>4.6%</td>
<td>52.3% (65.7%, 39.6%)</td>
<td>15.0%</td>
<td>2.6%</td>
<td>30.9%</td>
<td>80** 200**</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Algeria</td>
<td>34.2</td>
<td>65%</td>
<td>$7,000</td>
<td>3.0%</td>
<td>2</td>
<td>1</td>
<td>3.6%</td>
<td>69.9% (79.6%, 60.1%)</td>
<td>25.0%</td>
<td>2.8%</td>
<td>26.8%</td>
<td>N/A** N/A**</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>10.5</td>
<td>67%</td>
<td>$7,900</td>
<td>4.7%</td>
<td>2</td>
<td>2</td>
<td>5.0%</td>
<td>74.3% (83.4%, 65.3%)</td>
<td>7.4%</td>
<td>2.3%</td>
<td>31.5%</td>
<td>N/A** N/A**</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Libya</td>
<td>6.3</td>
<td>78%</td>
<td>$14,400</td>
<td>6.3%</td>
<td>1</td>
<td>2</td>
<td>10.5%</td>
<td>82.6% (92.4%, 72.0%)</td>
<td>7.4%</td>
<td>N/A**</td>
<td>N/A**</td>
<td>N/A** N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>76.8</td>
<td>69%</td>
<td>$12,000</td>
<td>1.5%</td>
<td>2</td>
<td>2</td>
<td>10.2%</td>
<td>87.4% (95.3%, 79.6%)</td>
<td>20.0%</td>
<td>2.0%</td>
<td>34.1%</td>
<td>N/A** N/A**</td>
<td>Yes**</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

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191 CIA, supra note 73.
192 Id.
193 Id.
194 Id.
195 Kaufmann, Kraay & Mastruzzi, supra note 72.
196 CIA, supra note 73.
197 Id.
198 Id.
199 Id.
200 Id.
201 Id.
203 Tyre, supra note 90, at 1.
204 Oxford, supra note 2.
205 Hoffman & Preble, supra note 82, at 104.
206 Morocco: Trends in Financing, Middle East Business Intelligence, June 20, 2001, at 7.
207 Id.
208 Hoffman & Preble, supra note 82, at 104.

*Higher quartile values (range of 1-3) indicates lower corruption and increased rule of law (and a higher percentile ranking of both)

**Statistic not available
<table>
<thead>
<tr>
<th>Country</th>
<th>Index</th>
<th>Population</th>
<th>GDP per Capita</th>
<th>Inflation Rate</th>
<th>GDP Growth (Year)</th>
<th>Unemployment Rate</th>
<th>Poverty Rate</th>
<th>New</th>
<th>Old</th>
<th>National Debt</th>
<th>Percentage</th>
<th>Status</th>
<th>No.1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>20.2</td>
<td>54%</td>
<td>$4,800</td>
<td>4.8%</td>
<td>1</td>
<td>14.9%</td>
<td>11.9%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jordan</td>
<td>6.3</td>
<td>78%</td>
<td>$5,000</td>
<td>5.8%</td>
<td>2</td>
<td>14.9%</td>
<td>14.2%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>7.2</td>
<td>92%</td>
<td>$28,200</td>
<td>3.9%</td>
<td>3</td>
<td>4.7%</td>
<td>21.6%</td>
<td>Yes</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yemen</td>
<td>23.8</td>
<td>31%</td>
<td>$2,400</td>
<td>3.2%</td>
<td>1</td>
<td>18.0%</td>
<td>45.2%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oman</td>
<td>3.4</td>
<td>72%</td>
<td>$20,200</td>
<td>6.7%</td>
<td>3</td>
<td>12.5%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UAE</td>
<td>4.8</td>
<td>78%</td>
<td>$40,000</td>
<td>7.7%</td>
<td>3</td>
<td>14.4%</td>
<td>19.5%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>28.7</td>
<td>82%</td>
<td>$20,700</td>
<td>4.2%</td>
<td>2</td>
<td>10.3%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
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<td></td>
</tr>
<tr>
<td>Kuwait</td>
<td>2.7</td>
<td>98%</td>
<td>$57,400</td>
<td>8.5%</td>
<td>2</td>
<td>11.7%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iraq</td>
<td>28.9</td>
<td>67%</td>
<td>$4,000</td>
<td>9.8%</td>
<td>1</td>
<td>6.8%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
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</tr>
<tr>
<td>Bahrain</td>
<td>0.73</td>
<td>89%</td>
<td>$37,200</td>
<td>6.1%</td>
<td>2</td>
<td>7.0%</td>
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<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lebanon</td>
<td>4.0</td>
<td>87%</td>
<td>$11,100</td>
<td>7.0%</td>
<td>1</td>
<td>10.0%</td>
<td>28.0%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td>66.4</td>
<td>68%</td>
<td>$12,800</td>
<td>6.5%</td>
<td>2</td>
<td>28.0%</td>
<td>18.0%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qatar</td>
<td>0.83</td>
<td>96%</td>
<td>$103,500</td>
<td>11.2%</td>
<td>3</td>
<td>15.2%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
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<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>0.80</td>
<td>70%</td>
<td>$28,600</td>
<td>3.6%</td>
<td>3</td>
<td>5.1%</td>
<td>N/A**</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Afghanistan</td>
<td>33.6</td>
<td>24%</td>
<td>$800</td>
<td>7.5%</td>
<td>1</td>
<td>13.0%</td>
<td>53.0%</td>
<td>No</td>
<td>No</td>
<td></td>
<td>N/A**</td>
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</tr>
<tr>
<td>Averages</td>
<td>22.8</td>
<td>70%</td>
<td>$20,352</td>
<td>5.94%</td>
<td>N/A</td>
<td>11%</td>
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<td></td>
<td>N/A**</td>
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</table>

209 | Id.
### Figure 4 - Area Development Fees by MENA Region\textsuperscript{210}

<table>
<thead>
<tr>
<th>Country</th>
<th>Possible Range in Area Development Fees</th>
<th>Low</th>
<th>High</th>
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<tbody>
<tr>
<td><strong>GCC</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KSA</td>
<td>150,000</td>
<td>250,000</td>
<td></td>
</tr>
<tr>
<td>UAE</td>
<td>125,000</td>
<td>175,000</td>
<td></td>
</tr>
<tr>
<td>Kuwait</td>
<td>85,000</td>
<td>125,000</td>
<td></td>
</tr>
<tr>
<td>Bahrain</td>
<td>75,000</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Qatar</td>
<td>75,000</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Oman</td>
<td>65,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>575,000</strong></td>
<td><strong>835,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>South of the Peninsula</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yemen</td>
<td>65,000</td>
<td>75,000</td>
<td></td>
</tr>
<tr>
<td><strong>North of the Peninsula</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iraq</td>
<td>75,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td>Syria</td>
<td>75,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td>Jordan</td>
<td>65,000</td>
<td>75,000</td>
<td></td>
</tr>
<tr>
<td>Lebanon</td>
<td>75,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td>West Bank</td>
<td>55,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>345,000</strong></td>
<td><strong>390,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>North Africa</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>100,000</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>Libya</td>
<td>75,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>65,000</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Algeria</td>
<td>65,000</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Morocco</td>
<td>75,000</td>
<td>85,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>380,000</strong></td>
<td><strong>460,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>African Arabian Countries</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mauritania</td>
<td>50,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Somalia</td>
<td>50,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Eritrea</td>
<td>50,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Sudan</td>
<td>65,000</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td>50,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>265,000</strong></td>
<td><strong>310,000</strong></td>
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</tr>
<tr>
<td><strong>Other Countries in the Middle East</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td>100,000</td>
<td>125,000</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>125,000</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td>100,000</td>
<td>125,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>325,000</strong></td>
<td><strong>400,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total for All Countries</strong></td>
<td></td>
<td><strong>1,955,000</strong></td>
<td><strong>2,470,000</strong></td>
</tr>
</tbody>
</table>

\textsuperscript{210} Hamway, \textit{supra} note 54.
Joyce Mazero

Joyce Mazero is Partner and Leader of the Haynes and Boone Restaurant and Retail Industries and Franchise and Distribution Law Practices. She has substantial experience as lead project partner assisting clients in developing strategy, structuring, negotiating, implementing, and resolving disputes for product and service-based domestic and international license, franchise, distribution, and shared services systems. This includes organizational and governance matters for international purchasing groups, cooperatives, manufacturers, suppliers, joint ventures, and sales representative systems as well as the full gauntlet of relationship, competition, and enforcement issues associated with such systems.

Among her various honors and awards, Joyce was named by Chambers USA as one of the nation’s leading franchise attorneys for 2007 and received the prestigious Band 1 recognition in 2008 and 2009. She was also named by Franchise Times to “20 to Watch” in 2007. She served as a Board Member of the Women’s Foodservice Forum (2004-2009) and continues as Chair of the Governance Committee (2006-present). She also served as Legal Advisor, Franchising for Dummies (Wiley Publishing, 2001) and its update (2006); was the 2006 recipient of the International Franchise Association’s Bonny LeVine Award for leadership in franchising and recipient of the International Franchise Association’s WFC Crystal Compass in 2003.

She is the founding member and Chair of the DFW Chapter of Women Corporate Directors (2008-present); a member of the Hospitality Management Board of Governors for the School of Merchandising and Hospitality Management at the University of North Texas (2008-present) and is a member of the Advisory Board of New York-based fashion design house, Nina McLemore (2007-present). She also serves on the Susan G. Komen for the Cure Advocacy Alliance Board and served on the Promise House Board of Directors (2000-2008), received recognition as Outstanding Board Member in 2006 and was Chair of the Board (2007-2008).

J. Perry Maisonneuve

J. Perry Maisonneuve is the Founder and Principal of Northern Lights Franchise Consultants Corp. Northern Lights is a management consulting firm specializing in developing and expanding small and medium-sized businesses (“SMEs”), with an expertise in franchising and licensing principles and practices. The firm has worked in or consulted with small and medium sized businesses, publicly traded enterprises and franchisor organizations in education, health care, retail, automotive repair, insurance, and food service. The firm provides consulting services to franchised and non-franchised businesses in the areas of feasibility studies, private placement and commercial lending, business valuations, strategic planning, management information systems, operations and training manuals, marketing plans and materials, and expansion systems and strategies.

Mr. Maisonneuve is often interviewed and quoted by the media, and has published numerous articles on the subject of franchising. He is also a frequent public speaker and lecturer in this area. Mr. Maisonneuve has also been listed in LEXPERT as an Expert Witness for litigation purposes regarding franchising matters.