The Disproportionate Power Between the Parties in a Franchise Agreement

by

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Abstract:

The study of franchise businesses in both the United States and Saudi Arabia entails an analysis of fairness and equity for all parties involved. This paper specifically highlights the relationship between the franchisor of the business to be franchised and the franchisee, who invests for the benefit of opening a similar company, maintains uniformity with the original concept, enjoys brand recognition, and attracts customers who are familiar with the enterprise. In addition, this article explores the various laws in place that seek to prevent fraud on the part of the franchisor, along with rules and regulations, practical suggestions, and other instructional assistance for the novice franchisee. This paper also draws a comparison with commercial contracts that serves to illustrate the nature of the franchise system as a basically unbalanced legal agreement, which allows the franchisor to remain as the principal, with powers wielded over the franchisee or agent in most aspects of the business relationship. A commercial contract, however, represents an equitable agreement throughout its contract clauses, both in termination terms or scope of work, and is-in comparison with franchises—a standard of fairness and freedom for both parties.

Keywords:

Power. Business. Agreements. Commercial. Supply. Leverage.

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عدم تكافئ السلطات بين أطراف عقد الامتياز

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الملخص:

تقتضي دراسةُ أعمال الامتياز في كلٍّ من الولايات المتحدة الأمريكية والمملكة العربية السعودية تحليلَ العدالةِ والإنصافَ لجميع أطراف العقد المعنيَّة. وهذه الورقةَ تسلِّطُ الضوءَ بشكلٍ خاصٍ على العلاقة بين مانح الامتياز التجاري– الذي له حقُّ الامتياز– ومتلقي الامتياز– المستثمِر لصالح افتتاح شركةٍ مماثلة–، وتحافظُ على الاتِّساق مع المفهوم الأصلي، وتستفيد من سمعة العلامة التجارية، وتَجذِب العملاءَ الذين لهم معرفة بها. إضافةً إلى ذلك، تين هذه المقالةُ مختلفَ القوانين المعمول بها التي تسعى إلى منع الاحتيال من جهة مانح الامتياز، مدعومةً بالقواعد واللوائح والاقتراحات العملية، والإرشادات التعليمية الأخرى للمبتدِئ الحاصل على حق الامتياز.

كما أنَّ هذه الورقة تَرسُم مقارنةً مع العقود التجارية الْمُعِينَةِ في توضيحِ طبيعةِ نظامِ الامتياز باعتباره اتفاقًا قانونيًّا غيرَ متوازنٍ بشكلٍ أساسي؛ مما يسمح لمانح الامتياز البقاءَ كمسؤول، مع السلطات التي تمارَس على صاحب الامتياز أو الوكيل في معظم جوانب علاقة العمل. ومع ذلك، فإن العقد التجاري يمثِّلُ اتفاقيةً مُنصِفةً في جميع بُنود العقد، سواءً في شروط فَسخ العقد أو في نطاقِ العمل، وهو– مقارنةً بالامتيازات– معيارٌ للعدالة والحرية لكلا طرفي العقد.

الكلمات المفتاحية:

النفوذ– السلطات– القدرة– الاعمال– التجارة– الامداد.

Introduction

In studying the franchise systems in both the United States and Saudi Arabia, a comparison of the two countries and their franchise rules can be helpful while highlighting the disproportionate power within such agreements. In addition, commercial contract regulations become a useful tool juxtaposed with the rules of the franchise agreement. As a business model, the franchise is a somewhat hybrid enterprise (Bisio & Kohler, 2011). Some of the unique franchise rules may be similar to other kinds of contracts, but are regulated in the United States by the U.S. Federal Trade Commission (FTC) and under the authority of the Franchise Rule and the Franchise Law in Saudi Arabia. By definition, a franchise is created using a type of license that a party (the franchisee) acquires, allowing access to a company's (franchisor's) proprietary rights (e.g., secret formulas, processes, methods used in production processes, and trademarks), so that the franchisee can sell a particular product or provide a service under the franchise business name. A franchise agreement is a legal contract between a franchisor and franchisee, which is binding and enforceable (Matherly & Blair, 2005).

In other words, a franchise enables an individual or investor (the franchisee) to operate a business that is a clone of the franchise; the contract is based upon the payment of the franchise fees, which allow the franchisee to utilize a format or system developed by the company (franchisor), as well as giving the right to use the franchisor's name and assistance for a specific number of years in return for royalty payments (Barkoff & Selden, 2008). Examples of well-known franchise business models in the U.S. include McDonalds, Subway, UPS, and H & R Block; in Saudi Arabia, franchises such as Hashi Basha, Mama Noura and Konafa Time are popular with consumers. There are innumerable franchise business opportunities available across a wide variety of industries. Franchise agreements usually involve retail outlets (e.g., fast food restaurants, hotels, and automotive parts) that come under a franchisor's trademark and follow the franchisor's business and operations model.

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In studying the franchise business, this paper will focus on the predominance of franchisors over franchisees and the relative dominance that the former maintains over the latter, whether by increasing fees required, or in controlling most aspects of the franchisee's ability to operate the contracted business. In fact, an in-depth analysis of the protections and equities of the parties in franchise agreements, compared to those parties of commercial contracts, illustrates the impact of the relative freedom of individuals and provides an interesting and instructive landscape for such entrepreneurs. Finally, studying the regulations of termination is of particular importance when looking at the inequality, as well as the consequential damage, that is usually burdened by a franchisee-in stark contrast to the parties in commercial contracts.

Chapter 1: Examples of franchise agreements, laws and regulations

United States and Saudi Arabia

The history of the franchise business model in the U.S. dates back to the 1890s; the first business format franchise was Harber's Beauty Shop, with more than 500 branches in the U.S., Canada, and Europe (Osterwalder, et al., 2020). The publication *Business format franchising* promoted entrepreneurs' rights and privileges to an operating system, providing guidelines on how to conduct such a business. The new franchisee is provided with a model and given delineated steps for how to effectively operate such a business, what types of foods or products to promote, business hours to operate, and where to establish the entity. This system of support is almost a guarantee of success in exchange for fees and royalties paid to the franchisor.

In the United States, franchise agreements and terms are enforced at the state level. Prior to a franchisee signing a contract, the U.S. Federal Trade Commission (FTC) provides information and disclosures contained in the Franchise Rule (Seid & Thomas, 2010). This includes protections for the franchisee regarding how the process works, how the franchisee can avoid deception by the transferor, and other essential information prior to signing the agreement. It does not, however, regulate the substance of the terms that control the relationship between franchisors and franchisees (Khan 2014).

The Franchise Rule has the force and effect of law, and it may be prosecuted under civil penalty actions in federal courts; the FTC Act authorizes courts to impose civil penalties. Required franchise disclosure document topics include: the franchise's litigation history, past and current franchisees and their contact information, any exclusive territory that comes with the franchise, assistance the franchisor provides franchisees, and the cost of purchasing and starting up a franchise. "If a franchisor makes representations about the financial performance of the franchise, this topic also must be covered, as well as the material basis backing up those representations" (FTC Act). Franchise terms are addressed in the franchise agreement between the franchiser and franchisee. In the 2007 Franchise Rule Amendment, comments from former franchisees are listed regarding confidentiality agreements and types of franchise fraud.

Similarly, the Saudi Arabian Franchise Law, originally drafted in 1971, has recently been updated (2020). It now aligns well with the franchise rules in the U.S., although there are some differences; Saudi Arabia makes a few more provisions for the franchisee to be more independent of the franchisor (Commercial Franchise Law). There seems to be a renaissance of small and medium-sized businesses in Saudi Arabia, with national encouragement to diversify the state's economic resources (**Saudi Arabia commercial and trade laws- basic laws affecting business, 2020).** A growing number of individuals are developing their own ventures and enterprises, including franchises. Indeed, there is an upswing in creativity as noted by the numerous trademarks being registered, as well as the sale of franchises both within the country and from international ventures. The various trademark stores and shops reflect global cultures noticeable in the streets of Saudi cities. Since many Saudis have traveled to numerous distant countries, including thousands who have studied abroad, they seem

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more amenable to considering entrepreneurship when they return home. New ventures include restaurants and cafés, clothing stores, car dealerships, and many other types of product and technology businesses. Saudi Arabia is also home to around 200 different nationalities from all around the world, with their own ethnic customs and tastes to share with their new residency. Investment and financial enterprises are also proving to be attractive ideas and opportunities, especially in such a booming economy and society.

Chapter 2: The equity of franchises and contracts

1. The quality of standards in commercial contracts

When comparing with the quality of contract language and clauses in most commercial agreements, a franchise agreement does not usually include the same safeguards, obligations and promises. In fact, the franchise as first established does not commonly include a clause for termination; rather termination rights are implied. However, substantial and material breaches of a commercial contract by one party (the offending party) have been depicted as a cancellation of the contract, relieving the other (injured) party from any further performance as well as the right to file a complaint against the other party for damages (Wittman, 2008). It is common practice in contracts of indefinite duration, or if stipulated in the contract, that either party can terminate the contract at their discretion, since cause is not necessary. Once notice is served, the contract should be deemed null and void.

In basic commercial contract theory, the principle of freedom implies that individuals should be at liberty to make contracts as they please. Are franchisees given the opportunity to question the fairness of the termination condition, or the franchisor’s incentive in terminating the franchise? A court will not break the principle of freedom of contract, but will issue a reaffirming decision for the franchisor so that the impact of the termination and the real incentives will never be part of the court’s concerns. The prime mover behind a court’s decision in enforcing the contracts clause is that it is basically a private concern. It is left to the free market to illustrate any imbalance in bargaining power; the parties are free to choose their partners and to determine the playing cards. This theory of unbounded freedom of contract has been criticized in the commercial field, in particular the harsh application of the theory. With contracts, parties are presumed to conclusively know the terms of their contract and to accept responsibility for the consequences that come from assenting to them.

Commercial contracts can be terminated by the parties for many reasons, such as:

- Impossibility of performance: When one or both parties cannot deliver or meet the
  obligations under the contract, then the contract can be terminated.
- Objective impossibility: The contract may be performed by another party, which
  eliminates the impossibility altogether. For example, a car repair shop promises to fix a car, but the mechanic falls ill before the repair occurs (Brunner, 2009, p. 17).
- Fraud, misrepresentation and mistake: If the contract was entered into under
  circumstances that demonstrate fraud, misrepresentation, or error, terminating the
  contract is substantiated. Hence, a legal contract will not have taken place since the true facts were unknown to the parties (Klass, 2008, p. 46).
- Illegality: It is possible that some issues written into a contract, or even the subject of the contract, may become illegal because a law has been passed after the contract was executed by the parties; the supervening illegality makes the contract illegal and can be terminated as a result.
- Prior agreement: Parties may also agree (as per the contract) that they can terminate under specific circumstances. These specific conditions, under which the contract can be terminated, must already exist in the contract.
- Breach of contracts: Parties must perform according to the terms and conditions of the contract. However, if a party fails to act according to such terms and hinders the other party from

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performing or even violating the terms of the contract without a legal reason, the non-breaching party can file a complaint caused by the breach. A material breach is one of the more significant breaches, and the impacted party can demand financial restitution for damages. When a shipment is significantly late, for example, the company may experience a large financial impact**.**

Furthermore, one or both of the parties may be liable for breach of the obligations in contracts before the contract is terminated. Contracts may contain the terms for determining the possible consequences of such terminations. In the absence of such language, the parties have several legal choices:

- Financial damages: Compensatory damages are granted so that the innocent party is maintained in the position they would have been in if the contract had been performed according to the terms originally agreed by the parties. The funds are retroactive and as a result the innocent party is provided with the “benefit of the bargain,” or the innocent party is allowed to have a new contract with another party for the same service.
- Punishing the breaching party: This is another option where punitive damages might be awarded, but it is less common to be granted. Restitution is granted with the purpose of putting the innocent party back into their usual situation before the contract was entered into by the parties. Courts look at the monetary gains of the breaching party prior to the breach of the contract, ordering the party to return the gain obtained during contract activities.
- Specific performance: This is used when the financial damages are not enough to compensate the innocent party. The breaching party would be required to perform its obligations under the contract or face a contempt of court charge. Specific performance is not usually ordered by courts for breach of contract, but courts might award specific performance when the subject of the contract is rare or unique, and compensation could not put the innocent party in the position they would have been in if there had been no breach of contract.

- Contracts can also be terminated if specific conditions have changed since the contract was originally created. Also, contracts can be terminated if they were created unlawfully in the first place.

For contract breaches there may be several practical remedies that could avoid termination. The types of damages awarded includes: compensatory damages, incidental damages, nominal damages, punitive damages, consequential damages, and liquidated damages. Another helpful remedy, reformation, happens when courts order that the contract be rewritten more accurately, reflecting the expectations of the parties (Levy, et al., 2017).
*A cautionary note: When a party determines to void a contract, it should be careful not to end up with the lowest amount of damages.

2. The quality of termination standards in franchise agreements

In a discussion of the termination conditions for a franchise agreement, it is critical for a potential franchisee to comprehend the extent of control over the business that the franchisor maintains. The reality is that in this type of business arrangement the franchisor is the boss, and therefore determines the mandatory obligations that the franchisee must follow. Franchise agreements dictate how the franchisee can run the business, so there may be little room for creativity. In addition, there are usually restrictions about the location of the enterprise, the products that can be sold, and the suppliers to use. “The franchisor […] has the authority to exert a significant degree of control over the franchisee’s methods of operation or to provide significant assistance in the franchisee’s method of operation”. In the end, termination rights of franchisees may be somewhat abusive and painful, since the franchisor maintains ascendancy over franchisees.
A franchisor can end the franchise agreement for a variety of reasons, including when the franchisee fails to pay royalties or abide by performance standards and sales quotas. Many franchise contracts will provide a grace period to make up a late payment or for the franchisee to amend service faults. At the same time, the

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franchisor maintains the right to terminate the franchise agreement for other failures. There seems to be little room for negotiating with the franchisor if compliance with the contract terms is not met. If the franchise is terminated, the franchisee will likely lose their entire investment.

One of the recurring problems with the franchise system is "paramount loss" or "hard to recover" situations in case of termination. The right to terminate franchise contracts is always reserved in the contract, and not surprisingly cases of franchise termination usually end up in court. Franchise termination is likely triggered by a specified event; when one party can prove the existence of such events as specified in the contract, they can then exercise the conditioned power of termination (American Bar Association, 2004).

For example, if a franchisor has stipulated in the franchise contract that if the franchisee does not sell a certain quota of products the franchisor can then terminate the contract. Alternatively, if the franchisee does not agree with the conditions the court will be more focused on whether the quota was met as required, and in this case the court will usually uphold the termination because the franchisee did not meet the terms of the contract; it is the franchisor's right to terminate despite the loss that may be incurred by the franchisee. Indeed, franchisees have been crippled by the peculiar legal classification of the relationship between them and their franchisors; the franchise agreement is neither an agency contract nor a sales contract, but instead it covers both. The relationship has something in common with that of principal and agent.

Seeking to enhance the precarious position in the franchise contract, some courts have ruled against terminating a franchise contract when the franchisee has spent a substantial amount of money-and until a reasonable period of time has elapsed-in a contract where the duration is indefinite. In other words, the franchisee is entitled to a reasonable time to recover if there is no time period spelled out; a fair opportunity to recover their money, given the effort they have expended. Of course, a reasonable period of time for the franchise agreement varies from one business to another, depending on the significance of the contract to each party and the potential loss that may be suffered within the minimum duration period. Courts have the power to decide the reasonable duration for each case, weighing the circumstances for each contract at the time of termination rather than the time when the contract was first commenced.

The relationships in a franchise termination act may become soured, with the terminating party justifying the termination under reserved or implied power in the contract. Nevertheless, the terminated party may argue that the termination reflected foul play or personal enmity, spite or malice, and that the termination was not revoked in good faith. Further, the franchisee may suffer a great loss because of the tremendous amount of money used for promoting the products, confirming that a termination can sometimes be erroneously unfair. In such cases, the franchisee is left with a substantial debt or deprived of expected benefit, while the franchisor is reaping an unearned windfall.

The rules in relation to franchise termination are often dangerous and may not be related to the needs of the parties, or even to the minimum standards of fairness. It is obvious that franchisors have the upper hand, and they can impose conditions even after the franchise agreement has been signed. Franchisees are usually the monetary loser of a termination action, causing them tremendous financial hardship, while possibly unjustly rewarding the franchisor. It is clear that franchisors can easily abuse their power and mistreat their franchisees when terminating contracts.

Courts have long recognized the necessity of a minimum level of fairness in contracts, albeit the theory of freedom of contract may be exploited. Therefore, some limitations have been applied regarding the freedom to choose guidelines for terminating contracts without liability. Also, there are several rules and procedures related to termination, such as notice of termination and tort liability when termination is exercised in bad faith and harms the terminated party. Moreover, there are restrictions pertinent to the contract rights, such as unjust wealth, that come directly from

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taking advantage of superior economic power, which can be actionable under the doctrine of economic duress. Reciprocal rights for termination can be set aside under the doctrine of waiver and estopple, as well as termination clauses that heavily favor one party that may not be enforceable because they are deemed to be unconscionable.

Under Saudi Arabia's new Franchise Law, which recognizes a "legitimate cause" during the franchise term, the franchisee may have a few more options regarding termination. While legitimate cause is an undefined term, the new Franchise Law outlines nine cases that constitute such legitimate causes. Common reasons found in most franchise agreements cover events such as voluntary abandonment of the franchise business (up to a 90-day period), infringement of the franchisor's intellectual property, or violation of its obligations in the franchise agreement if uncorrected within a 14-day period.

However, in addition to the nine cases in Article 18.10, there is a "catch-all" provision enabling a franchisor to terminate for any other legitimate cause in the franchise agreement. The use of such a provision will be evaluated by the courts and decided according to the judge's discretion. Furthermore, it is highly recommended that franchisees study the drafting of the provisions in their franchise agreements to ensure understanding of the definitions, royalty percentages, and how their own authority is stated in the agreement. Termination is also a clause that needs to be well defined so that the franchisor is not given carte blanche.

Additionally, under Shariah Law if a franchisee dies the business will be split amongst the heirs of the estate. Although most franchise agreements contain a clause allowing for the termination upon the death or disability of the franchisee, in practice this can be difficult to enforce, especially where there are minors' rights of inheritance.

Chapter 3: How franchise businesses disproportionately favor the franchisor

In the previous chapters, the discussion of U.S. and Saudi Arabian franchise rules has outlined the protections for the franchisee in such a business arrangement from making damaging mistakes if any deceptions are being committed by the franchisor. Of course, franchisors do have their own agenda in wanting to make substantial profits; they may not always provide the most effective support in how to run the business with the quality mandated. A franchisee in the restaurant business may even lack the freedom to change the furniture when it needs replacing, affecting the appearance of the enterprise. Therefore, a balanced relationship between franchisor and franchisee creates satisfaction on both sides. However, a franchisor must be able to protect their business from any untoward actions by their franchisee that could ruin the reputation of the franchise, while allowing the franchisee to maintain the latitude to conduct the business according to individual discernment.

Even if no deceptions have occurred, there are many other areas that can ensnare the franchisee along the way, including various fees and costs in getting the business up and going such as payments for royalties, and costs associated with advertising and ordering the supplies and products for the business before opening to the public. In addition, there are innumerable rules and regulations for the franchisee to understand, as well as conflicts which may crop up and even lead to straining the relationship or, as a last resort, termination of the agreement. Termination is emphasized because it is the ultimate action that can be taken and has a substantial impact on the franchisee, if not both parties; such actions may affect the whole economy in smaller communities (International Franchise Sales Laws, 2017).

Of course, the vulnerability of franchisees is obvious in a franchise contract, and that is usually due to the franchisor's significantly disproportionate power over the franchisee (Buchan, 2013). Inevitable conflicts occur between parties, and the questions around termination are whether such an act is made in good faith.

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The franchisor cannot be held accountable for the devastating effects that may negatively impact the franchisee when exercising the right of termination, regardless of the motive. The right to terminate is absolute unless conditions are defined in the contract, and therefore cannot be questioned. However, the legal freedom theory of contracts is limited, since the right cannot be used in an uncontainable or oppressive manner.

It is expedient to realize that because franchise agreements are under the management and supervision of the franchisor, the franchisee must thoroughly understand not only their termination rights, but also their own limited input throughout the duration of the agreement. In fact, there is no equality between the parties in a franchise, since the franchisor holds most of the cards. It is known that the basis of a franchise is to ensure uniformity in subsequent new franchises in the conduct of the business; all McDonalds restaurants need to look and operate like every other McDonald's franchise in the U.S., and in other nations around the world. Although uniformity is important for business coherence, franchisors may go too far, imposing trivial controls that are irrelevant and that significantly restrict the franchisee's freedom of creativity (The Unofficial Guide to Opening a Franchise, 2007).

Many franchisors retain the right to approve future sites for their businesses in locations where they may be most likely to attract customers; their franchisees may not have such an option. Similarly, a franchisor may insist on certain designs and appearances to ensure a uniform appearance, but if certain renovations or design changes are contemplated, the franchisee will also bear the costs.

Franchise contracts last only for the number of years stated in the contract and there may be no right to renew unless the franchisor is amenable. Franchise agreements may run for up to 20 years, but renewals are not automatic. At the end of the contract term the franchisor may decline to renew or may offer a renewal that lacks the same terms and conditions as the original contract. This may be due to disagreements between the parties, such as each believing they have entrenched rights in running the business, decisions related to the conduct of the operation, or issues that arise during the duration of the relationship. For example, the franchisor may raise the royalty payments, impose new design standards and sales restrictions, or reduce the franchisee’s territory. The franchisor, when considering renewal, can insist that the franchisee buys the trademark again. Any modifications may result in higher costs, reduced profits, or more competition from company-owned outlets or other franchisees (Ajami & Khambata, 2006).

Franchisors may impose several types of restrictions in the areas of goods and services. Restaurant franchisees can be hampered in making menu changes, or in the case of an automobile transmission repair shop other types of automotive work may not be possible. Franchisors may insist on the type of employee uniforms, advertisement style, or even the accounting procedures. Some goods and services can be mandated to be sold at specific discounted prices, consequently affecting the franchisee’s profits. Further, the franchisor may have established a monopoly with suppliers obligating the franchisee to buy certain brands such as Coca Cola rather than Pepsi Cola, or meat products from a specified supplier. This is due to deals made by the franchisor with certain companies to provide the same products for all of the restaurants, with considerable wholesale savings and interest for the franchisor. In addition, the franchisee may be required to buy supplies from an approved supplier even though the products could be obtained elsewhere at a reduced price. As a result, the franchisee could be paying more than the market value for produce and products, even though such a situation was not a part of the franchise agreement. Finally, the franchisee can be limited to a specific location or sales territory. Even if the franchisee has a protected area, the franchisor may still be able to offer the same goods or services in that area through websites, or other retailers of competing outlets. Another franchisee may be granted a license within the same territory.

In terms of the funds that the franchisee is expected to pay out for the franchise, the initial investment may range from tens of thousands to several hundred thousand dollars, all of which is

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usually non-refundable. A typical local franchise restaurant in Saudi Arabia, for example, may cost from $100,000 to $200,000, in addition to royalty fees ranging from 4% to 15% of the gross income. The royalty percentage required from the monthly gross income is fixed, whether the company is profitable or not. Whatever the franchisee is earning, the percentage designated is going to be deducted. It would seem more reasonable to limit the percentage to a flexible amount, tied to the franchisee's net earnings.

In addition, there are significant start-up costs and fees such as rent, equipping and buying the initial inventory for the outlet, operating licenses, insurance, and promotion. In another unforeseen twist, the franchisee may be obliged to sell goods and services only to certain customers, and even the right to access the internet for soliciting customers within and outside the region. These kinds of restrictions may limit the ability to exercise personal business judgment in operating the outlet. The franchisor can limit the territory where each franchisee can sell, thus provoking the franchisor and other franchisees to compete for the same customers by establishing their own outlets or selling through the internet, catalogs, or telemarketing (Internicola, 2006).

Conclusions

In comparing franchise agreements with standard commercial contracts, it is fair to question whether the two are similar or more like comparing apples to oranges. However, since both are commercial contracts, involving two parties working together for their mutual benefit, it seems proper. In terms of establishing a retail business on the part of the franchise, then the relationship may be a bit skewed. Nevertheless, fair and equitable arrangements are critical for everyone involved.

Of course, franchisors do have their problems and want to make the most profit possible; the profit motive may cause the franchisor to provide only superficial services or offer little support to the inexperienced franchisee. For example, in restaurants franchisees may not change furniture when it needs to be replaced, which may affect the enterprise and the franchisor as a result. Therefore, there has to be balanced relationship from both sides for the franchisees not to be used and the franchisor not to be undermined. In summary, the franchisor must have the ability to protect his or her business in the long run, so that the franchisee does not ruin the reputation of the enterprise.

On the other hand, the franchisee is given a blueprint of how to run the business: the setup, equipment, supplies and products to buy, and certainly the assurance that customers are virtually built-in due to name recognition and experience with the brand. Customers are already familiar with the enterprise, and as a result the clientele is easily obtainable. The franchisor continues partnering with the franchisee for a period of time so that the business is supported with a road map to follow. These are definite benefits that seemingly assure success for the franchisee. However, it is the overlying control by the franchisor that complicates the trajectory of the individual franchise. There is a significant monetary commitment from the franchisee at the beginning and throughout the relationship, including exorbitant initial investments, various fees and royalty payments, along with the everyday expenses of advertisements, product costs, equipment, rent, insurance, and employees. In addition, the terms for any possible termination by either party are firmly in the hands of the franchisor.

Changes often occur during the business relationship, yet the franchisor may use excessive control to force the franchisee to adopt mandated modifications. This may mean that the franchisee must make improvements to the enterprise without any additional monetary support by the franchisor. Often, franchisors undertake the changes without discussion. Although some changes can be helpful to the franchisee, others seem to benefit only the franchisor (Spinelli, et al., 2004). It is usual that parties cannot anticipate any changes that can happen over the duration of the contract, but the parties should have in the contract mechanisms to adjust to the market.

Ultimately, the franchisees are the weaker party in the contract: They are laymen who take on a huge risk of investing borrowed

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money, having little to no legal experience or even entrepreneur skills; yet they feel happy to have obtained the franchise. The details, however, become increasingly burdensome, allowing franchisors to control most aspects of the business, even including making changes at any time in the percentage they receive from the franchisee, or imposing new conditions.

Recommendations

1. It is imperative that lawmakers enact a rational approach to deter franchisors from imposing outsized control and power over the franchisee through contract abuse. The inequities that exist within franchise agreements favor the franchisor. They are based on laws that are inadequate and should be balanced to ensure that proscribing terminations are eliminated.
2. Regarding royalty percentages, it would seem more reasonable to tie the franchisee's royalty percentage owed to a flexible amount (net earnings) rather than the gross amount.
3. In the situation where the franchisor imposes control over the types of soft drinks that can be sold by the franchise, for example Coca-Cola rather than Pepsi, the franchisee should also be part of such a the supplier deal: If the franchisor is receiving a 50% cost reduction or a certain net income from the supplier , such income is unfair; the franchisee should also receive some negotiated percentage.
4. Rather than requiring the franchisee to purchase products and supplies from a specified business, both parties can mutually agree to use the supplier offering the best possible prices. In addition, the parties can reach a consensus as to the minimum standard required for good quality.
5. When parties agree to establish a commercial relationship, the franchisor should supply a third party, specifically an engineering officer, who has blueprints of the store and interior décor requirements. This person will monitor any

work to ensure that all criteria are met, thereby avoiding continual complaints and debates between the two parties.

6. It would seem more uniform to require franchisors to set policies for their franchises and register them with the Ministry of Commerce. This would protect the franchisees from fluctuating policies that incur more expense with every change in the management at the franchisors. Also, the Ministry of Commerce can standardize the rules, and set a reasonable policy for how franchisees handle their business.
7. The quality standards of the store, and the services provided, should be overseen by professional personnel at the municipality that manages the registration of the store and its renewal. The various unpredictable and frequent demands that franchisors impose on franchisees can weigh heavily on their budgets. The monitoring can also be conducted by franchisors and the municipality together, to ensure better performance and fairness for both parties.

References

Ajami, R. A., & Khambata, D. (2006). *International business: Theory and practice, 2nd ed*., 24–25. Armonk, New York: M. E. Sharp.

American Bar Association (2004). *The franchise and dealership termination handbook. Section of Antitrust Law*, 30. Chicago, Ill: American Bar Association.

Barkoff, R. M. & Selden, A. C. (2008). *Fundamentals of franchising*, 4. Chicago: American Bar Association, Forum on Franchising.

Bisio, R. & Koler, M. (2011). *The educated franchisee: The how-to book for choosing a winning franchise*. Minneapolis: Hillcrest Media Group, Inc.

Brunner, C. (2009). *Force majeure and hardship under general contract principles: Exemption for non-performance in international arbitration*, 17. Alphen aan den Rijn: Wolters Kluwer Law & Business.

Buchan, J. (2013). *Franchisees as consumers: Benchmarks, perspectives and consequences*. New York: Springer.

Commercial Franchise Law (Law). Issued by Royal Decree No. M/22 on 09/02/1441AH.

(ISSN: 2537 - 0758)

Andrew P. Loewinger, Michael K. Lindsey. (2017). International Franchise Sales Laws, 16. Chicago: American Bar Association.

IBP. Inc. (2003). ***Saudi Arabia commercial and trade laws – basic laws affecting business*, 168.** Washington, DC, USA P. O. Box. 15343: International Business Publication.

Internicola, C. N. (2006). *An entrepreneur's guide to purchasing a business or franchise: A practical no nonsense guide to education, inform and empower business purchasers and prospective franchisees*, 32–33. Tarentum, Pennsylvania : Word Association Publishers.

Klass, G. (2008). *Insincere Promises: The Law of Misrepresented Intent,* p. 46. New Haven, CT: Yale University Press.

Levy, R., O'Brien, M. T., Rice, S., Ridge, P. & Thornton, M. (2017). *New directions for law in Australia: Essays in contemporary law reform*, 68. Australian National University Press.

Matherly, W. J. & Blair, R. D. (2005). *The economics of franchising*, 3. New York: Cambridge University Press.

Osterwalder, A., Pigneur, Y., Smith, A. & Etiemble, F. (2020). The invincible company: ***How to constantly reinvent your organization with inspiration from the world's best business models*.** Hoboken, NY: Wiley.

Khan. A. Mahmood. (2014). *Restaurant franchising: Concepts, regulations and practices (3rd ed.)*, 81. Hoboken, United States: Apple Academic Press.

Seid, M. & Thomas, D. (2010). *Franchising for dummies*, 5. Hoboken, N. J: Wiley.

Spinelli, S., Rosenberg, R. & Birley, S. (2004). *Franchise: Pathway to wealth creation*. London: FT Prentice Hall.

Jason R. Rich. (2007). *The Unofficial Guide to Opening a Franchise*, 4. Princeton, NJ: Recording for the Blind & Dyslexic.

Wittman, D. A. (2008). ***Economic analysis of the law: Selected readings***, 137. New York: John Wiley & Sons.