

Exceptional Powers in Franchise Contracts in Administrative Law and Its Applications: (A Comparative Study Between Saudi and British Law)

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Abstract

Franchise contracts with their exceptional powers are considered as an essential part of administrative law that contain an essential tool of administrative authorities to cover the advanced needs of individuals through providing individuals with an exploitation privilege to utilise some general services and facilities. The main aim of the study is to investigate exceptional powers in franchise contracts either in the administrative law of Saudi Arabia and United Kingdom. This paper is a comparative study in which the exceptional powers in franchise contracts in the administrative law and its applications in both Saudi Arabia and British law are discussed and compared. The main conclusion that taken from this study is that franchise contracts is widely used in UK and Saudi Arabia in several country activities. But, UK uses return to the regulation in the administrative/public law in most of its issues (KD Ewing and AW Bradley, 2011).

Keywords: Franchises, Exceptional powers, Administrative law

1. Introduction

With scientific and technological development of communication means that accompany with the globalization phenomenon; this enhance the importance of administrative contracts as a tool to cover public demands. This forced countries all over the world to find a framework that govern relations between people and organize them to achieve security, justice and welfare for them. International regulation came to achieve nation's interests. The idea of international organization is a long-standing idea.

Administrative contracts and administrative resolutions are the common utilised tools to cover public demands for citizens by the administration. Franchise contracts are considered as an essential tool of administrative authorities to cover the advanced needs of individuals through providing individuals with an exploitation privilege to utilise some general services and facilities.

Contracts can be defined as an agreement between two people or more for doing something or abstaining from doing it. According to the fact that the main purpose of administrative contracts is to achieve public benefit, and as public benefit is directly connected with general facilities which is the core of administrative contracts and the state in general, so achieving it suits with general facilities evolution and diversity.

Recently, general facilities concept gains a huge attention in administrative law all over the world. Several nations have defined administrative law as the law of public facilities (Jaber, Waleed haider, 2009).

Administrative contracts have been used to determine rights and obligations in administrative transactions (Omar Al-Kholi, 2012).

The administrative contract is subject to general law. As well as, franchise contracts directly connected with various state functions as it considered as a way to achieve public services and to enhance its performance in the light of recent heightened civic awareness of citizens.

Franchise contracts are recognised as one of the main administrative contracts that includes exceptional and unusual conditions (Omar Al-Kholi, 2012).

With regard to the significant role of franchise contract including its exceptional powers, especially in achieving cooperation between public and private sectors in each state and in covering their citizens' public demands, several countries have paid a huge attention to exceptional powers in franchise contracts in administrative law.

The Kingdom of Saudi Arabia requires in its administrative contracts that they must be written and documented, except for the contracts that are held by contracting or direct purchasing of an amount that not exceed 300 thousand riyals, while considering formality nullification of the contract (Omar Al-Kholi, 2012).

Furthermore, the administrative law in the United Kingdom (UK) is a branch of British public law that focuses on the structure, transaction, rights, duties and power of nation (Omar Al-Kholi, 2012).

A general rule in UK is to govern in a fair, responsible and in a way that comply with general laws (KD Ewing and AW Bradley).

Contracts are part of policies that basically implemented to govern societies and countries; they in all their forms are subject to a set of pillars which are; satisfaction, formality, legality and reasonability (Sir Robin Cooke, 1995).

Despite the similarity of civil and administrative contracts in terms of pillars, the annulment of administrative contracts is wider than the civil contracts; because of the connection between administrative contracts and the public interest (Mahmoud Helmy, 1977).

This paper will focus on comparing between exceptional powers in franchise contracts in administrative law in both Saudi Arabia and Britain.

2. Study problem

The lack of awareness toward franchise contracts in several countries, including KSA and UK, and its exceptional powers in the administrative law, and according to the ambiguity of the legal nature of such contracts, all of this constitutes the study problem. Furthermore, the differentiation in legal laws that define the nature of franchise contracts according to countries laws. All of this motivates the researcher to choose this topic specifically to cover this little studied topic.

One of the main problems that could face franchise contract is the effects of termination of the contract by the franchisor for the licensed project.

3. Study questions

This study aims to answer the following questions:

- What are the main types of administrative franchise contracts and its applications?
- What are the exceptional powers in franchise contracts in administrative law in Saudi Arabia?
- What are the exceptional powers in franchise contracts in administrative law in Britain?
- What are the similarities and differences between franchise contract in Saudi Arabia and Britain?

4. Study objectives

This study aims to:

- Investigate the main types of administrative franchise contracts and their applications.
- Clarify the exceptional powers in franchise contracts in administrative law in Saudi Arabia.
- Clarify the exceptional powers in franchise contracts in administrative law in Britain.
- Define the similarities and differences between franchise contract in Saudi Arabia and Britain.

5. Study significance

The significance of this study came from the importance of franchise contract as it considered as one of the main administrative contracts that could strengthening the economy of developing countries.

Administrative contract law especially in the franchise contracts has a big effect in expansion and rapid deployment in targeted markets without incurring high costs (Ben Kamy, 2005).

Due to the importance role of the franchise contracts in Saudi economy at the moment and its active contribution in creating job opportunities, especially for Saudi youth, the companies must look forward to create a separate system in commercial agencies or Saudi commercial law that directly handles with the commercial franchise in detailed and objective way in line with the rapid development in which is taking place in international transactions (Shareef, 2008).

There is a project of Saudi commercial franchise system attached to the address of the Undersecretary of the Ministry trade and Industry No. 163/221 dated 20/2/1442, which Directed to the Council of Chambers of Commerce and Industry of Saudi Arabia (cited in six texts only). So in recent days, the demand of creating an independent, detailed and sophisticated organization that regulates the commercial franchise enhanced in the Saudi Kingdom (Shareef, 2008).

In United Kingdom there is no widely used franchise contract, the general law applies even if a special laws exists, which could affect this type of contracts, such as: competition law (The Honourable Mr Justice Bernard McCloskey, 2010).

6. Study methodology

The comparative approach was used in this study, based on a comparison of franchise contracts, and their exceptional powers in both Saudi Arabia and the United Kingdom, while highlighting the similarities and differences between them in this type of contract.

Initially, franchise contract details in Saudi Arabia were collected through previous studies and research, to understand the mechanism, applications and fields used to hold the franchise.

After that, information of the franchise system was collected in UK based on previous studies and multiple references.

7. Types and applications of administrative franchise contracts

The administrative contract is an agreement between different administrative bodies, individuals, or either companies in order to organise facilities and public affairs. Such contracts must satisfy all various aspects such as: satisfaction, legal investigation, reasonability and, formality. If the administrative contract loses any aspect of them, the ordinary judiciary is used (Omar Al-Kholi, 2012).

There are several types of administrative contracts (Omar Al-Kholi, 2012):

- **Consulting Services Contract:** It is a contract that assigned between the administration and individuals or companies which licensed to do a preparation of studies.
- **Public works contract:** It is a construction contract between the administrator and special companies for building, restoration of a property, and constructing a Bridge or tunnel for a fee.
- **Transportation contracts:** Is a contract dealing with a private enterprise or company to transfer persons, goods or objects to the account of the contracting party for a fee.
- **General Loan:** A contract that one company, especially financial company or bank, used to lend a State or an individual (local or incorporated) a sum of money in exchange for the undertaking of the State or public legal person to repay the amount of the debt.
- **Insurance contract:** It is a contract between administrative entities with an insurance company to insure a project, facility, building or property, which refers to administrative entities, against risks (Omar Al-Kholi, 2012).
- **Lease contract:** It is a contract for renting and leasing properties to be used for the administration side like schools and hospitals.
- **Importing contracts (trade):** It is a contract between the administration and special companies or corporations to import several goods and special objects to the administration company to serve a public facility for a fee.
- **Franchise contracts:** It is an administrative contract that based on a possession of particular facility with a good legal status which enables doing special activities in different fields like: natural resources and run or manage a public utility.

Additionally, there are two types of franchise contracts:

- Franchise contracts (exploitation): This type of franchise contract exploits public wealth, like Aramco franchise.
- Franchise contracts (employment).

There are several properties of a franchise contracts in general (Omar Al-Kholi, 2012):

- The franchise must be an economic contract, not an administrative contract.
- The contract must have a financial return; the contract without financial returns is not a franchise.
- Contracted for a long period.
- The owner can expropriate and decide from one side.
- The owner of the franchise endures the Expenses and the government can help in a necessary issues.

8. Exceptional powers in franchise contracts in administrative law in Saudi Arabia

The Ministry of Economy of Saudi Arabia has developed a Unified model for Franchise Contract. Studies show that there are more than 100 Saudi companies in all fields, proved its success and qualification to work with the franchise system. This increase the possibility of spreading the utilization of franchise contracts in the Saudi Kingdom and abroad. The size of a franchise trading in Saudi markets is enlarged recently and reached to approximately \$ 3 billion (Ben Kamy, 2005).

Official data from the Ministry of Commerce and Industry in Saudi Arabia shows that there are many franchise-enabled fields that have been utilised in the market for the past two decades, and reached o 200 franchises by the end of July 2004. Franchise contract has now covered a lot of activities, such as restaurants, clothing stores, branded toiletries, factories manufacturing, selling paints, decorations, medical devices, household furniture, water treatment, educational and recreational centers (Ben Kamy, 2005).

The success of the franchise system is that the work does not entail the franchise of the franchiser of the rights of industrial property or technical knowledge; it is mainly based on cooperation between the parties (the franchiser and the franchisee) in exploitation of technical knowledge and property rights under the supervision and control of the franchiser, as well as the franchisee hold an activity that has been tried and success before, so it will not enter into new activity and bear risk of success or failure.

In the Kingdom of Saudi Arabia, there are many examples of some successful companies that have started utilising the franchise system, including four companies such as (Ben Kamy, 2005):

- Famous restaurants began to spread in some Arab and foreign countries.
- Large supermarkets are on their way to work with this system.

8.1 Fields of franchise contracts in Saudi Arabia

The number of franchise activities in Saudi Arabia was enlarged recently, and included 26 different activities, according to the official data that illustrated by the Ministry of Commerce, with 200 franchisee that are involved in various activities as shown in table (1) (Riyadh Chamber of Commerce and Industry, 2016).

Table 1: Fields of franchise contracts in Saudi Arabia (Riyadh Chamber of Commerce and Industry, 2016).

| No. | Type of activity | Number | Percentage % |
|-----|---|--------|--------------|
| 1 | Restaurants of various foods, sweets and dairy products and Ice-cream, including express services and delivery. | 65 | 32.5% |
| 2 | Men's and women's clothing trade, children shoes, manufacturing and selling leathers. | 83 | 41.5% |
| 3 | Manufacturing and selling decorative paints. | 9 | 4.5% |
| 4 | Cosmetics. | 6 | 3% |
| 5 | Home furnishings. | 6 | 3% |
| 6 | Recreation and educational centers. | 5 | 2.5% |
| 7 | Publications and office equipment. | 3 | 1.5% |
| 8 | Sell glasses. | 2 | 1% |
| 9 | Drugs and Medications. | 2 | 1% |
| 10 | Manufacture of concrete. | 2 | 1% |
| 11 | Car dealer. | 2 | 1% |
| 12 | Medical products and devices. | 1 | 0.5% |
| 13 | Electrical Supplies Trading. | 1 | 0.5% |
| 14 | Sell sports tools and accessories. | 1 | 0.5% |
| 15 | Toys. | 1 | 0.5% |
| 16 | Store Management System. | 1 | 0.5% |
| 17 | Manufacturing of welding skewers. | 1 | 0.5% |
| 18 | Photography. | 1 | 0.5% |
| 19 | Diet systems and weight loss. | 1 | 0.5% |
| 20 | Communication products. | 1 | 0.5% |
| 21 | Maintenance of electrical appliances. | 1 | 0.5% |
| 22 | Wastewater treatment. | 1 | 0.5% |
| 23 | Postal services. | 1 | 0.5% |
| 24 | Water purifiers. | 1 | 0.5% |
| 25 | Medical services. | 1 | 0.5% |
| 26 | Environmental services. | 1 | 0.5% |
| T | Total | 200 | 100 |

Riyadh occupies the largest share of franchise activity with 66% of the total activity in the Kingdom. Franchise activities must fit the Saudi environment and lead to develop its economy in the best way. There are several activities in a several fields and sectors which can lead to the development process such as (Riyadh Chamber of Commerce and Industry, 2016):

- **Tourism sector and global hotel sectors:** Aims to develop the services that provided for pilgrims and tourism field in the Kingdom in general. Tourism is developing other service sectors like a tourism Agencies, maintenance services, construction and construction sector and wholesale and retail shops.
- **Construction and Construction Sector:** This sector helps in achieving the goal of continuing to develop services for pilgrims and in developing the tourism sector, and work to find a balance in the development of the regions of the Kingdom. World Inspection Network, Eagle's Nest Homes, SGO Stained Glass Overlay, Mr. Handyman, and Brick Kicker are examples of some Franchise donors in this area (Riyadh Chamber of Commerce and Industry, 2016).
- **IT sector and computers:** This sector covers the employment and training programs, internet services and e-commerce, internal networks and computer hardware sales. IT sector helps in a human resources development operation to meet the requirements of the national economy of educational services, health and social, information technology which forms the database information which is important and necessary to develop and improve the industry in general (Riyadh Chamber of Commerce and Industry, 2016).

Education sector and its services and teaching aids, Water treatment sector, cleaning services sector are other Saudi sectors that employed franchise contracts within their activities.

9. Exceptional powers in franchise contracts in administrative law in Britain

In Britain, there are no special laws relating to Franchise, and public law is applied even if there are some special laws, which can affect this type of contract, such as: Competition law (KD Ewing and AW Bradley, 2011). The Constitution of the United Kingdom is a set of laws and principles governed by the United Kingdom (Prof. Dr. Helmut Weber, 1999).

It is known that Britain is a democratic country that does not have a written constitution. The English Constitution is not written, in other words, the provisions of this Constitution are not included in a single document similar to the French or American Constitution or other constitutions (Barnett, 2005).

The British Union defines the franchise as a contract between a two parties, franchisor who own the project and the franchisee according to the following items (Al-Awfi, 1998):

- It is required by the franchisee to exercise within a certain period, a specific work under a given name and field owned by the franchisor (grantor).
- The franchisor has a duty to control and supervision all the work done by the franchisee during the franchise contract period.
- The franchisor committed to support the franchisee with all that is necessary to perform the business and to help him in Organization of the work.
- The franchisee committed in paying the franchise fees and the commissions' payable as a result of sales made by the franchisee.
- This contract can't be made between a holding company and a subsidiary, or between the individual and the company controls it.

9.1 Main activities of franchise contracts in UK

Franchise contracts in United Kingdom were used a lot in brewers (Ritchie, 1992). Despite the franchise rapid growth in the world, the establishment of the franchise in United Kingdom remained doubted (Fraud Trials (Roskill Report) HMSO, 1986). The utilization of franchise contracts in UK was limited in minor activities as shown in the table below;

Table 2: Main activities of franchise contracts in UK

| No. | The activity | Date |
|-----|---|------|
| 1 | Classic Franchise Structures Developed (Wimpy master franchisee opens in UK) (Stanworth and Smith, 1991). | 1955 |
| 2 | Service Master franchisee (Stanworth and Smith, 1991). | 1958 |
| 3 | Golden Egg Restaurants (“Ihr Platz”, “Nordsee” and “OBI”). | 1965 |
| 4 | Dyno Rod opened (“Ihr Platz”, “Nordsee” and “OBI”). | 1966 |

There were a lot of studies about the franchise possibilities during 2008, by interviewing the people who attends the franchise exhibitions in London, Paris, and Madrid. The main aim of interviewing these individuals was for trying to identify the profile of potential franchisees and their reasons for considering purchasing a franchise (Stanworth and Smith, 1991).

10. The similarities and differences between franchises contract in Saudi Arabia and Britain

In general, the form and items of the franchise contract is the same in most of countries in the world. In which it has important value in economic and commercial development.

Any contract in the world depends on four conditions (Doctor. Mahmoud Helmy, 1977):

- The satisfaction.
- The legal investigation process.
- Reasonability.
- Formality.

When comparing between franchise contracts in UK and Saudi Arabia, we can conclude that both countries utilised this type of contract in several activities, with the difference in spreading amount of utilising such contracts in their activities as shown in table (1) and (2) above.

United Kingdom does not use the franchise contracts widely like Kingdom of Saudi Arabia which is has a variety of fields and activities (Riyadh Chamber of Commerce and Industry, 2016).

The vast majority of Saudi companies in different fields have proved the significance of Franchise Contracts which as a result enhanced the recognition franchise contracts. In contrast, the utilization of franchise contracts in United Kingdom is comparatively limited, as UK uses the administrative/public law in most of its issues (KD Ewing and AW Bradley, 2011).

Conclusion

Contracts are part of policies that basically implemented to govern societies and countries. Franchise is

considered as an essential type of administrative contracts which is utilised to manage and utilise general facilities.

Franchise contracts directly connected with various state functions as it considered as a way to achieve public services and to enhance its performance in the light of recent heightened civic awareness of citizens.

The Ministry of Economy of Saudi Arabia has developed a Unified model for Franchise Contract. On the other hand, In Britain, there are no special laws relating to Franchise, and public law is applied even if there are some special laws, which can affect this type of contract, such as: Competition law.

Finally, we can conclude that Franchise contracts applications spread all over the world, and the nature of such contracts and their Exceptional powers differs according to the country public law.

References

- Al-Awfi, Saleh Bin Abdullah Bin Attaf: Legal Principles in the Formulation of International Trade Contracts. Institute of Public Administration , 1998.
- Barnett H. (2005). Constitutional and Administrative Law. London: Cavendish. Conversely, "A written constitution is one contained within a single document or a [finite] series of documents, with or without amendments", id.
- Ben Kamy, Ziad: Franchise system in Saudi Arabia between the absence of regulations and a society that embraces the demands of investors. Al Sharq 2 Middle News. No. 9682, June 1, 2005.
- Doctor. Mahmoud Helmy, Administrative Contract, Dar al-Fikr al-Arabi, second edition, 1977.
- Fraud Trials (Roskill Report) HMSO, 1986.
- Ihr Platz" (drugstore), "Nordsee" (fish restaurant) and "OBI" (do-it-yourself-store).
- KD Ewing and AW Bradley, *Constitutional and Administrative Law* (2011) ch 27, 605.
- Omar Al-Kholi, 2012. "Briefing in administrative contracts", King Abdulaziz University.
- Prof. Dr. Helmut Weber: Guards the Constitution?, English version of a paper delivered on 22 October 1999 at the Centre for British Studies, Humboldt University Berlin, Colloquium of the Graduiertenkolleg "Das neue Europa".
- Ritchie. B, 1992, An Uncommon Brewer: The Story of Whitbread 1742-1992, James and James).
- Riyadh Chamber of Commerce and Industry, 2016.
- Shareef Fared Aqqad, The Commercial Privatization Committee in Riyadh Chamber of Commerce and Industry, 2008.
- Sir Robin Cooke, quoted in R(Baker) v Devon CC [1995] 1 All ER 73, 88.
- Stanworth. J and Smith. B, 1991, *Barclays Guide to Franchising for Small Businesses*, Blackwell.
- The Honourable Mr Justice Bernard McCloskey (17 October 2010). "Administrative Law and Administrative Courts in the United Kingdom: An Overview".
- Jaber, Waleed haider, 2009. : methods of general facilities administration , 1 st edition, legal halabi publications, Beirut.