

The Adequacy of Current Laws Governing Franchise Agreement in Jordan

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Abstract

Purpose: This study examines the current laws and regulations governing franchise business in Jordan. The paper focuses on whether the current laws and regulations governing franchise agreement in Jordan is sufficient to govern the franchise agreement.

Design/methodology/approach: This study is qualitative. Eleven in-depth semi-structured interviews were conducted with the relevant parties involved in franchise agreements as well as legislatures. The analysis was thematically conducted and accordingly supported by sufficient excerpts.

Findings: The paper concludes that the existing laws governing franchise in Jordan are insufficient and fail to address comprehensively the legal aspects of franchise. Thus, there is a dire need for specific legal framework to govern franchise business in Jordan.

Research limitations: The research participants were franchisors, franchisees and parliamentarians in Jordan. Additionally, the data collection constrained by funds paucity and difficulties in securing appointments with the participants who were always busy and not available. Two of the participant answered the interview questions by filling up the questions instead of face to face and recorded interview.

Practical implications: The study suggests that the law in Jordan need to be developed and the franchise agreement need to be more specific and limited to certain provisions which should be provided by specific act for this purpose.

Originality/value: Even though franchise agreement literatures are aplenty, this study, however, is the first attempt at qualitatively exploring in-depth the sufficiency of the law governing franchise agreement in Jordan.

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1. Introduction

Jordan is a country in size smaller than Indiana state in the U.S, and located in the Middle East. Jordan borders Iraq, Israel and Saudi Arabia, contains a total population of 6.5 million and occupies a total of 89,342 square kilometers with a 0.14% growth rate. The capital city of Jordan is Amman which has 1.08 million people of population that are mostly Muslims (Sharp, 2014). English language is extensively spoken among middle and upper classes, while official language is Arabic and the country is governed by a constitutional monarchy. Jordanian Dinar is the currency in Jordan and Jordan with its moderate climate and historical locations such as Dead Sea and Petra being a famous tourist destination in the Middle East (Prados, 2002). Therefore, deferent types of businesses including the franchise have been operated in Jordan.

In the 1980s, franchise business has been established in Jordan and currently more than 150 franchise businesses are established in Jordan (Khasawneh et al., 2016a). Indeed, the employment for more than 12,000 people is provided by the franchise sector and boasts yearly sales of U.S \$100 million as well. In regard to franchises, the local market is attractive to U.S franchises business (Jones, 2003), where local investors are paying more attention to franchise, especially in the fast food and services sector (International Franchise Association [IFA], 2015). The U.S service and retail franchises have exponentially increased in the last decade. Recently, franchise business in Jordan includes Applebees, TGI Fridays, Ruby Tuesdays and ACE Hardware and in the food sector, franchises include Pizza Hut, KFC and McDonalds.

In Jordan, there are different sectors of franchise businesses which cover child care/development such as FasTracKids, which is becoming popular. In addition, various shopping malls recently have been established in the past few years in Jordan, which includes more new franchise industries, with other malls still under construction (Khasawneh et al., 2016a). This includes plans for establishing outlet stores in Amman's southern suburbs. These plans are predicted to make greater chances for future retail franchise business (IFA, 2015).

According to the IFA, Jordan in the second year of the Arab Spring became an attractive destination for business interests, and showed its versatility in being a more thriving market and attractive nation for investment (IFA, 2015). Furthermore, Jordan has well-maintained cooperative relationship with the wider international

business community and its neighboring countries. Therefore, franchise in Jordan is a crucial investment method that improves to the country's Gross Domestic Product (GDP) and contributes in enhancing its trade and economic growth. It also maintains foreign investments and provides better planning.

In addition, several legislations have been enacted that particularly addresses trades investments and industries namely the Companies Act (No 22, 1997), the Industry and Trade Act (No 18, 1988), the Trademark Act (No 34, 1999), the Unfair Competition and Trade Secret Act (No 15, 2000) and the Intellectual Property Act (No 32, 1999). Jordan's legal system was adopted from the Egyptian and Ottoman legal systems and Sharia. The country's tribal traditions have also effected the Jordanian legal system (Office of King Hussein I, 2015).

However, various legal challenges to the investors may prevent them from opening up a franchise in Jordan. The main challenge is the absence of specific legal framework to regulate franchise agreement in Jordan, where the rights and duties of the franchisor and franchisee and remedies available in the event of breached are still not clear. This has motivated the authors in this paper to examine the laws and regulations pertaining to franchise agreement in Jordan and its sufficiency to regulate the franchise agreement.

2. Literature Review

The following discussion will focus on the regulation on franchise. The discussion will also include the main laws governing franchise in Jordan, which are the Trademark Act (1952) and the Unfair Competition and Trade Secret Act (2000).

2.1 Regulating Franchise Business

In order to enhance an orderly development of franchising, it necessitate a healthy and underlying law environment (Terry, 2002). Nonetheless, progressively it is a matter of vigorous controversy pertaining to whether a dedicated franchise law is essential or not to support general implementation of commercial laws (Terry, 2003). However, if there is a franchise specific law, here are the possibility that this could affect its improvements as it shortens the entrepreneurial nature of franchising (Mendelsohn, 1999). In another context, it is believed that the sustainable growth of franchising can be insured by introducing a franchise specific law (Khasawneh et al., 2016a). There are various reasons why franchise specific laws are enacted i.e. including the desire to resolve the problems that have arisen; to ensure that breaches either do not occur; or where they have occurred, would not occur again; and to redress the balance between the parties to an agreement where the necessary balance either does not exist or has been distorted (Peters, 2000).

Australia can be an example where in 1998, it enacted a mandatory Franchising Code of Conduct prescribed under the Trade Practices Act 1974. This was introduced in response to the report of the Australian House of Representatives Standing Committee on Industry, Science and Technology (Parliament of Australia, 1997). In that report, the said committee concluded that the previous system of self-regulation was not effective. As such, it was necessary that the legislation be instituted with the codes of conduct instead.

Based on the Franchising Code of Conduct, prior disclosure is compulsory by the franchisor and it regulates the franchisor-franchisee relationship. First and foremost, a wide development of law for the franchise sector has been given. In a later proposal submitted to the government, the Franchise Council of Australia suggested that the Code has had a valuable influence on the franchising industry. There exists overwhelming improvement for a Code and the franchise business does not necessitate to revise the Code from a policy perspective (Terry, 2003).

Among the years 1999 and 2002, studies of franchising were conducted by the University of Southern Queensland. They discovered that the franchising development was slowing down, after enacting of the Franchising Code of Conduct (Terry, 2003). Nonetheless, they considered it as a positive sign as it shows that the franchising industry is consolidating and that the decrease in net growth reflects the franchising business's increasing maturity in the country (Terry, 2003).

The international trend concerning adopting devoted franchise laws grown as there are increasing acknowledgments considering the matter. This arises from the Council of Small Business Organizations in Australia, particularly in situations of franchising where there are various elements to normal businesses development (Binh, 2012). Thus, in order to address the information and imbalances of power that are essential in the franchise relationships, franchise specific laws are enacted. Hence, franchise law in Jordan should be introduced in line with the international trend and settle the problems appeared in franchise business. Therefore, this can ensure the fairness between the parties in the franchise agreement (Khasawneh et al., 2016a).

2.2 Main Laws Governing Franchise in Jordan

There is no specific act governing the legal aspect of franchise agreement in Jordan. However, certain general provisions of several acts may affect franchise agreement in Jordan such as the Trademark Act 1999 and Unfair Competition and Trade Secret Act 2000. These two legislations contain general provisions that can affect the elements of franchise in a franchise agreement.

2.2.1 Trademark Act 1999

The Trademark Act 1999 (TA) grants the owner of a trademark the right to use his trademark alike to any other property. This right contains the legal rights to mortgage, sell and grant license to another person to use same trademark. In regard to the Trademark Act, a franchise agreement can be specified as a license agreement provided in the Act (Khasawneh et al., 2016a).

The franchise agreement is an agreement whereby the franchisor grants the right to others to use his trademark for a specific period with payment of fees (Salah, 2009). Hence, the franchisor shall have the right to get payment from the franchisee while the franchisee shall have the right to use the trademark. Further, both parties have the obligation to draw up a written contract and set the terms and conditions that they have agreed upon (Khasawneh et al., 2016a).

According to section 26 (2) of the TA, the owner of trademark can give license to one person or more to use his trademark by a written contract registered in the Trademark Registration Office at the Ministry of Industry and Trade. This license can be for the whole products that the licensor sells or part of it, and such contract cannot exceed the trademark registration period.

The period for trademark registration is stipulated as ten years from the registration date, and this period is renewable after every ten years according to the TA in section 20 (1). According to this section, the trademark ownership right shall be for ten years as of the trademark registration date and may be renewed for another ten years periods under the provisions of the TA. However, no clear idea has been provided concerning the franchise agreement period – as this provision is not applicable for the franchise contract period. For instance, after eight years of registering the trademark, the franchisor grants the franchisee the license to use the trademark, and in such a case, the contract term will only be for two years and hence, the franchisor as well as the franchisee will fall short of obtaining the agreement's potential benefits.

The franchise agreement length is dependent on the intentions of the franchisor, the premises potential life, and other factors that differ from one contract to the next. It is however common for franchise agreements to have a long duration in order to enable the parties to obtain the potential profits from the agreement. Such a long term agreement also enables the franchisor to obtain the expected profits from the business and the franchisee to satisfactorily develop the franchise business in the eyes of the franchisor (Khasawneh et al., 2016a). Hence, if the duration of the franchise contract is linked with the trademark registration term, the parties' interests may be affected and this may prevent them from achieving their contract objectives.

On the other hand, the TA prevents any third party from using a trademark without license as this is considered as criminal action. The violation of this provision makes a person liable to criminal sanction. According to section 38 (1) (b) of the TA, each person who assisted or incited the use of trademark owned by another person illegally without license is liable to an imprisonment for period not exceeding one year or fine not exceeding three thousand Jordanian dinars or may be liable for both. Thus, the TA provides the protection for the franchisor by preventing others from using his trademark without license under the franchise contract. Nevertheless, the TA does not protect neither the franchisor nor the franchisee in the event of breach of the terms and conditions of franchise contract by any of them.

2.2.2 Unfair Competition and Trade Secret Act 2000

A potential purchaser of a business, for example potential franchisee, will want to know the business's turnover and profit. With the purchase of existing businesses, the information such as turnover and profit can be provided. Some vendors, however, are less than truthful and many purchasers claim that misrepresentations have been made over turnover and profit levels (Gunasekara & Sims, 2007). The Unfair Competition and Trade Secret Act 2000 (UCTSA) focuses on the issues regarding the confidentiality of commercial contracts including franchise contract, the scope of confidentiality includes all secret information regarding the business, such as turnover and profit. There is no doubt that secrets are important element of a franchise.

Accordingly, section 4 (A) of the UCTSA considers any information as trade secret if this information usually unknown in its final form or components or not easy to be obtained by the people who are dealing with, has commercial value and the person who owned this information made some measures to keep it secret (Khasawneh et al., 2016a). Therefore, it can be said that confidential information covers the franchisors marketing manual, promotions management manual, concept overview manual and other manuals dealing with specific topics such as operations, human resources, finances and administrations and purchasing of the franchise business.

In addition, a franchisor has the right to protect his confidential information absolutely from anyone, as section 5 of the UCTSA mandates that the franchisee must keep the confidential information of the franchisor intact and require each of his employees not to disclose such confidential information.

It should be noted that both the franchisor and the franchisee have the right to prevent each other from disclosing the confidential information of the franchise business to any third party. This is due to the UCTSA which considers each person (franchisor or franchisee) has the right to give, keep or use secret commercial information as owner for this information and has the right to prevent others from misusing this information under the provisions of the UCTSA, and the Act does not determine specific type of people to apply these provisions on

them.

In addition, the UCTSA prohibits a breach of confidentiality duty in several forms. According to section 6 of the UCTSA, the misuse of trade secret information can be considered as a breach of the honest commercial practices provided under the Act. This will include breach of the franchise contract, breach of the confidential information relating to the franchise entrusted by the franchisor and obtaining trade secrets from a third party if the person knows or can know that this third party got the information by breaching honest commercial practice.

The provisions provided by the UCTSA do not mention franchise in particular. However, it can be argued that the law can affect the confidentiality provision and also relevant trade secrets in a franchise agreement (Khasawneh et al., 2016a). The UCTSA also does not state or provide any criminal penalties for breach of its provisions. However, the UCTSA in section 7 gives the right to the trade secret owner to claim for compensation regarding any damages resulting from misuse of his trade secrets. For example, he can claim to discontinue the abuse and seize the materials that contain trade secret misused or the products resulting from misuse of the trade secrets.

Furthermore, the franchisor controls the franchise system, brand name, marketing strategy and intellectual property, all of which are among the main elements of the franchise business and important for the franchisee (Frazer et al., 2012). For example, the franchisor might set condition in the contract to grant back to himself any innovation activities made by the franchisee. However, the law has more power to control terms and conditions that are created by the parties in the contract.

The UCTSA provides an advantage to the franchisee. Section 9 (A) of the UCTSA clarifies that each term or condition contained in the franchise agreement that might affect negatively on the trade is considered void. This section listed the conditions that might affect negatively on the trade such as preventing the franchisee of grant the improvements that he added to the business to other than the franchisor or preventing the franchisee to claim compensation regarding the trademark or brand name affected by unfair competition action.

3. Methodology

The most widely used method to collect data within qualitative research is the interview method (Hollowaay & Fulbrook, 2001). In this qualitative method research, the researchers conducted in-depth interviews which is considered as primary data. The interviews were conducted in Jordan. Eleven respondents were interviewed, comprising of four franchisors, four franchisees and three parliamentarians. The interviews were conducted from December 2014 to March, 2015. The interviews duration for each session ranged between 50 to 90 minutes. The interviewer also used IC recorder to record and at the same time the interviewer jotted some key points for crosschecking purposes.

On the other hand, secondary sources of data in legal research are described as documents that interpret primary sources (Yaqin, 2007). These encapsulate legal writing (books, journals encyclopedias, digests of cases, local/international documents, official statistics, government/international bodies reports) along with other sources are found in the library (Yaqin, 2007). The aim behind these secondary sources is to explain how things are often done locally and internationally. They are invaluable in learning the fundamental application of law and in conducting a comparison among different jurisdictions handling of the same issue (Mersky and Dunn, 2002). It is to be noted that, since secondary sources only elaborate what legal scholars say about a legal principle, they are therefore only considered as persuasive arguments. In this research, the secondary sources that the researchers referring are the legal writing in books, journals, encyclopedias, digests of cases, indexes, official statistics, local or international documents, and reports of governments or international bodies.

All the data, which have been obtained are analysed by using thematic and descriptive analysis methods. Legal research, for sure serves numerous objectives, the common and beneficial purposes are explanation, exploration as well as a description (Khasawneh et al., 2016b). The analytical descriptive method will allow the researcher to systematically and scientifically explain, define, examine, determine and even provide conclusions for example from the point of problems, research questions, current situations and several reasonable solutions (Ramsay, 2006). All the data will as much as possible strengthen each other. This will also prevent misinterpretation of the data or data that is unconnected between one another.

4. Findings

In life, an average person encounters a myriad of contracts particularly during employment, hire purchase, and loan agreements (Khasawneh et al., 2016b). The contracts usually contain a clause stipulating the governing law of contract, which covers extensive ramifications on contractual performance and remedies (Khasawneh et al., 2016b). These contracts usually contain a number of terms.

When a dispute arises, the court will use the governing law of a contract to construe the contractual terms. This law governs issues of contractual validity, interpretation, consideration, parties' obligations, mode of performance, and the discharge of the obligation of the contract. In one of the interviews, respondent 10 mentioned, *"the current laws in Jordan did not regulate all contract aspects, and franchise agreement is important and need*

more attention to create fair terms and conditions between the parties.” In other words, the current law does not address the contractual issues between the franchisor and franchisee. Respondent 11 mentioned:

“I think the current laws do not cover all these business matters. Initially the general rule stated that the parties could create terms and conditions as they like, but I think this rule should not apply for all contracts. We hope in the near future we have enough provisions regarding compliance contracts, such as franchise contracts to protect the weak party in this contract and make balance between all the parties involved.”

The law needs to highlight the contractual relations, which include the rights and duties between the franchisor and franchisee. Respondent 2 observed the following:

“Yes, of course. But honestly, usually the breaches don’t happen by the franchisors. Breaches can be done by another franchisee who competes with me, and I think if there is such law it can be more helpful for me and the franchisor at the same time. And it can reduce the breaches from me (franchisee) or him (franchisor), and for the third parties as well.”

The developments of Jordanian industries have necessitated the law or legal provisions on the rights and duties of the parties in a franchise agreement, as respondent 2 said: *“Now we are feeling that the Jordan industry and our commercial situations are going to improve. So we must have such a list in law to protect the parties and make fairness between them.”* Through suitable remedies, the law would carry the most effective role to reduce breaches by the parties in a franchise agreement. *“The law,”* as respondent 3 highlighted, *“can make more balance and fairness, and can reduce the breach of course from both of the parties in a franchise agreement.”* More so, there is a need to demarcate between the rights stated in an agreement and the rights stated by the law. Respondent 1 added:

“You know well what is the difference between the right stated in an agreement and the right stated by law. Of course the right stated by the law can make the investors give more attention to this, whether they are merchants or not. So, I feel it’s very important to list my rights in the law.”

As discussed above, majority of the respondents stated that the law in Jordan does not cover all aspects of a franchise agreement. The current legal provisions are even insufficient to ensure the success of a franchise business in the country. This necessitates a specific act to regulate franchise agreements in Jordan which will stipulate the rights, duties, and remedies of a franchise agreement. Such a measure may reduce the breach of contract terms and conditions by both parties.

5. Discussion

The aim of this study is to provide assistance to the government and the business community in the formulation of measures and policies, in order to develop the franchise sector in the country. In this study, the perception and experience of the parties to franchise agreements in the context of Jordan were examined. The study is equally beneficially to the franchisors and franchisees to understand the sufficiently of the laws governing franchise agreement in Jordan. Based on the interviews conducted, the law in Jordan does not cover all aspects of a franchise agreement. The current legal provisions are even insufficient to ensure the success of a franchise business in the country.

Based on the views from a number of studies such as the study by Terry, 2002; Mendelsohn, 1999; Khasawneh et al., 2016a; and Peters, 2000 it can be perceived that Jordan needs to enact specific law to regulate franchise agreement in the country. Based on the data gathered from the participants, the current legal provisions governing franchise agreement in Jordan are restricted and ambiguous. This necessitates a specific act to regulate franchise agreements in Jordan which will stipulate certain aspects such as the rights, duties, and remedies of a franchise agreement.

This study found that the current provisions governing franchise agreement in Jordan is limited and insufficient, and does not specify important aspects which are rights, duties and remedies of franchisor and franchisee. Therefore, parties of the franchise agreement might suffer due to the unfair terms and conditions of the agreement, especially with the absence of specific legal framework to regulate franchise agreement in Jordan. Thus, the law needs to highlight the contractual relations, which include the rights and duties between the franchisor and franchisee.

6. Further Studies

In this study, the findings represent the insufficiency of current provisions governing franchise agreement in Jordan. It provides a framework where parties set clauses in the franchise agreement regarding their rights and duties. Additionally, the eleven respondents involved in this research were limited to franchisors, franchisees and parliamentarians of the House of Representatives in Jordan. This study is further limited because the paper focuses on the sufficiency of various provisions governing franchise agreement in several laws, due to the fact that there is no legal framework to regulate franchise agreement aspects in the country. It is suggested that future studies explore problems militating from the lack of specific legal framework and the other challenges of franchise agreement in the country. It is also suggested that future studies may investigate quantitatively the lack of legal

remedies in the event of breach the contract terms and conditions by the parties on the franchise agreement.

7. Conclusion

Very less provisions are shown by the current laws governing franchise agreement in Jordan, which is insufficient to regulate the franchise business in the country. In addition, the findings gathered from the in-depth semi-structured interviews with the respondents, which comprised of franchisors, franchisees and parliamentarians exposed the view and the experience of the respondents on a number of contract aspects including rights, duties and remedies in the franchise agreement. As indicated by the findings, the law in Jordan does not cover all the aspects of a franchise agreement. As such, the current legal provisions are even insufficient to ensure the success of a franchise business in the country. In addition, breach of the contract terms and conditions is commonly happened. Therefore, it appears that the major obstacle facing the parties involved in the franchise industry in Jordan is the lack of a detailed legal framework to govern rights, duties and remedies of franchise agreement. Here, both parties are at risk for becoming victims from the breached of the terms and conditions of franchise agreement and this could adversely affect their business. As such, legislation may formulate a solution for this issues.

To conclude, the lack of specific legislation would certainly deter or at least slow down the progress of the foreign and local investor setting up franchise businesses in Jordan, as they could not reasonably anticipate what await them in the market. These in turn, will hamper the development of the country and the working opportunity of the people. Thus, in order to encourage successful home-grown franchises in Jordan, it makes sense for all franchises both local and international to be governed by the same set of rules. The law must ensure that fair rules govern business format franchises and better protection for the interests of both the franchisors as well as the franchisees. All in all, the costs associated with regulations will be outweighed by the benefits.

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