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Saudi Arabia

Franchise & Licensing

Contributor

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This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in Saudi Arabia.

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Saudi Arabia: Franchise & Licensing

The Kingdom of Saudi Arabia (hereafter referred to as “KSA”) is widely known for its vast oil reserves and historically oil-driven economy. In recent years, the government of KSA launched **Vision 2030**, which has become a catalyst for economic diversification aimed at broadening income sources, reducing reliance on oil and gas revenues, attracting foreign investment, and boosting non-oil sectors. These reforms span various industries, reflecting a holistic approach to long-term economic sustainability. For these purposes, the legal environment and e-government legal services in KSA have undergone major reforms, including the issuance of several new regulations and laws. Some examples of the changes in the legal landscape include the introduction of a comprehensive and modern Saudi Bankruptcy Law in 2018, which established the Bankruptcy Commission and provided a framework for financial restructuring that allows debtors to resolve financial difficulties and resume their activities while safeguarding creditors' rights. Additionally, a new comprehensive Civil Code (Civil Transactions Law) was issued, containing over 700 articles regulating civil contracts, civil partnerships, sources of rights, and torts. In mid-2022, a new modern Companies Law was introduced, emphasizing corporate governance, encouraging foreign investment, regulating holding and affiliated companies, mergers and acquisitions (M&A) and non-profit organizations. Additionally, ongoing amendments to the Saudi Labor Law aim to further protect foreign employees' rights, including provisions such as the transfer of sponsorship.

Further to be above, the legal reform in KSA has also included the issuance of the Saudi Franchise Law (Regulation) under Royal Decree No. (M/22) dated 9-2-1441 *Hijri* corresponding to 8-10-2019 Gregorian calendar, which came into effect on 24/8/1441 *Hijri* corresponding to 17-4-2020 Gregorian calendar (herein referred to as the “Franchise Law”), along with its Implementing Rules issued by Ministerial Order No. (591) dated 18-9-1441 *Hijri* corresponding to 22-5-2020 Gregorian calendar, published in the Saudi Official Gazette (*Umm Al-Qura*) on 29-9-1441 *Hijri* corresponding to 22-5-2020 Gregorian calendar (herein referred to as the “Implementing Rules”). Collectively, the Franchise Law and the Implementing Rules are referred to as the “SFL.”

The SFL is a modern, comprehensive, and specialized franchise law that aligns with international franchising standards and practices. It is unique within the Gulf Cooperation Council (GCC) and Arab countries, where in most jurisdictions franchising is still primarily regulated under commercial agency laws. The SFL provides a comprehensive legal framework; however, it does not stand-alone cover the entire franchise industry in KSA. The role of specialized franchise committees and associations, comprising entrepreneurs, franchisors, franchisees, and legal specialists, is essential in this regard. Additionally, in accordance with the issuance provisions of the Franchise Law, the Small and Medium Enterprises General Authority known as “*Monsha'at*” in cooperation with the *Ministry of Commerce* (herein referred to as the “Ministry”), has established the Franchise Center, which is tasked, among other functions, with developing the franchise industry in KSA. In practice, the Franchise Center plays a significant and ongoing role in promoting and supporting the success of franchising in KSA.

It is worth mentioning that prior to the issuance of the SFL, franchising was governed by the provisions of the Commercial Agencies Law and its Implementing Regulations, as per the Ministerial Order No. (1012) dated 17-9-1412 *Hijri* corresponding to 20-3-1992 Gregorian calendar.

Laws in KSA are typically referred to as (regulations); therefore, any reference to a regulation in this document refers to a codified law. Regulations and laws in KSA are promulgated in Arabic, and any English translation is provided for guidance only and does not guarantee exact equivalence with the Arabic text. The translations of articles or sections of the SFL in this document are based on the official translation prepared by the Official Translation Department, established under Council of Ministers' Resolution No. (134) dated 2-5-1422 *Hijri*. This department is responsible for official government document translations and reports to the Chief of the Bureau of Experts at the Council of Ministers (herein referred to as the “Bureau”). However, as mentioned, the translation may not fully capture the precise meaning of the original Arabic text, and in case of any discrepancy, the Arabic version of the regulation or law prevails.

This document is based on the laws and regulations of KSA, particularly the SFL, as of 30 September 2025 Gregorian calendar. These laws are subject to change, and therefore, the accuracy of the information herein cannot be guaranteed at all times. This document does not constitute legal advice or opinion.

According to the official translation prepared by the Bureau, Article 2 of the Franchise Law states: *"The Franchise Law aims to: a) Promote franchise activities in KSA by establishing a legal framework that regulates the relationship between the franchisor and franchisee, emphasizing the principles of freedom to contract and transparency; and b) Provide necessary protections for franchisors and franchisees, particularly upon the expiry of the franchise agreement; and c) Ensure the disclosure of rights, duties, and risks relating to the franchise to assist prospective franchisees in making informed investment decisions; and d) Improve the quality and sustainability of goods and services provided in KSA".*

It should be noted that we have been honoured to be part of the team involved in drafting, reviewing, and editing the SFL. One of the primary objectives and philosophy in drafting the SFL was to establish certain provisions as mandatory, imperative, binding on both franchisors and franchisees and provisions that cannot be waived or altered by agreement between the parties. Examples include the requirements to provide and register the FDD, the registration of the franchise agreement itself, and other conditions stipulated in Article 11 of the Franchise Law, as detailed hereunder. The intent behind these mandatory provisions is to protect the franchise industry as a whole and to practically minimize disputes between the parties by setting minimum rights that safeguard both the franchisee and franchisor, as well as the franchise business. This is clearly reflected in Article 23, which states that *"Any agreement by which the franchisee waives or relinquishes any of the rights he is entitled to under this Law shall be deemed null and void, unless such agreement is part of a final settlement with the franchisor or is authorized under this Law."* As noted earlier, the Franchise Law aims not only to protect franchisors and franchisees but also to support the broader economy by acting as a catalyst for increasing non-oil revenues in KSA. On the other hand, many provisions and articles of the SFL have been drafted with the understanding that certain terms are non-imperative and non-mandatory, allowing the franchisor and franchisee the flexibility to agree in accordance with their own terms to suit their specific needs. These provisions serve primarily as a framework to assist the parties in regulating their contractual relationship. For instance, the first part of Article 11 paragraph 2 of the Franchise Law emphasizes the parties' right to include additional terms and conditions, provided that the mandatory requirements are satisfied, clearly demonstrating that the law is designed to balance practicality with legal certainty.

Pursuant to Article 14 of the Implementing Rules, the Ministry may issue model forms for the franchise agreements and disclosure documents. We are proud that *Monsha'at* entrusted our Firm with the important task of preparing the model form for the franchise agreement in KSA. Our Firm took great care to draft a practical and balanced model forms for the franchise agreement that effectively regulates the franchise legal relationship while providing fair protection for both parties. The said model forms of the franchise agreements are only for guidance and not obligatory.

1. Is there a legal definition of a franchise and, if so, what is it?

According to the official translation prepared by the Bureau, Article 1 paragraph 5 of the Franchise Law defines Franchise as: *"A right granted by a franchisor to a franchisee to run a franchise business on his own account under the trademark or under the brand name of the franchisor or the person licensed to use the same; this shall include transferring technical expertise and specifying the manner of operation. Such right may be granted for a financial or non-financial consideration, excluding the amounts the franchisee pays to the franchisor in return for goods or services".*

Article 1 paragraph 8 of the Franchise Law defines a Franchise Agreement as: *"an agreement between a franchisor and a franchisee, under which a franchise is granted."*

To put it simply, in KSA, a franchise is generally understood as a license that entitles a franchisee to use the franchisor's business model, processes, trademarks, other intellectual property rights, technical expertise, knowhow, and the manner of operating the franchise business, which is usually recorded in what is known as the operation manuals in order to provide services or sell products under the franchisor's brand.

From the above definition, we can conclude that the Franchise Law is advanced and aligned with international

practices and customs in franchising. It clearly distinguishes franchise agreements from commercial agencies, distribution and license agreements by expressly requiring that the franchisor must entitle the franchisee the right to use his trademarks, other IP rights, technical expertise, knowhow, and the franchise business model including specific guidance on operating the franchise business.

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

The Franchise Law in KSA sets out specific conditions and requirements that must be met before a franchise can be offered or sold. These requirements aim to ensure transparency and disclosure of vital information of the franchisor and mainly protect the rights and interests of the franchisees, develop the franchise industry in KSA and regulate the franchise relationship in a balanced manner.

A key pre-condition for offering or granting a franchise is that the franchised business may not be offered or granted unless it has been actively operated for a minimum of one year at no fewer than two points of sale, or by at least two individuals, one of whom may be the franchisor or one of their affiliates. These mandatory requirements, is stated under Article 5 paragraph 1 of the Franchise Law, establish a fundamental eligibility threshold that franchisors must satisfy prior to granting a franchise in KSA.

Other related provisions are mentioned under Article 5 paragraph 2 of the Franchise Law, which are detailed in our response under question 25 hereunder.

Unfortunately, in practice, many franchise agreements are signed and executed without complying with the imperative mandatory provisions of Article 5 mentioned above. In the latter case the franchisee is entitled to terminate the franchise agreement and claim for compensation as the franchisor violates the provisions of the Franchise Law. Based on our practical experience numerous lawsuits have been filed before the Commercial Court in KSA for the said reasons.

Another core requirement under the SFL is the imperative mandatory pre-contractual disclosure obligation set out in Article 7 of the Franchise Law and Article 3 paragraph 1 of the Implementing Rules, which requires that an FDD to be prepared in accordance with the Implementing Rules and provided to the prospective franchisee at least 14

days prior to either the execution of the franchise agreement or the receipt of any payment, whichever occurs first. For further details, please refer to our response to question number 4 here below.

In case a franchisor materially breaches the pre-contractual disclosure obligation mentioned above, the franchisee is entitled to claim damages from the franchisor without terminating the agreement as provided under Article 19 of The Franchise Law. Further, in pursuance of Article 17 of the Franchise Law, the franchisee has the right to terminate the franchise agreement by giving written notice to the franchisor without compensating the franchisor. In the latter case, the franchisee is entitled to claim for compensation as well as the other rights stated under Article 20 of the Franchise Law and Article 12 of the Implementing Rules. To avoid repetition, the details of the aforementioned articles will be explained hereunder, in particular, in our response to questions 3 and 4.

Further, the franchisors may be subject to an administrative fine of up to Saudi Riyals (500,000) for violating the SFL, as entailed under Article 24 of the Franchise Law.

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

As per Article 6 of the Franchise Law, it is mandatory that the franchisor registers the franchise agreements and the FDD with the Ministry.

As prescribed under Article 3 paragraph 1 of the Implementing Rules the franchisor is required to register each signed franchise agreement along with the relevant FDD with the Ministry within a maximum period of 90 days from the date of signing the franchise agreement.

Further, Article 3 paragraph 1 of the Implementing Rules also states that the registration is done by submitting and depositing copies of both the signed franchise agreement along with the relevant FDD to the competent authority at the Ministry.

In practice the registration process, application and relevant documents are currently submitted to the online portal of *Monsha'at*. In practice, several documents must be submitted with the application to register the franchise agreement and the FDD, including, *inter alia*, the

following:

1. A signed franchise agreement; and
2. The FDD relevant to the franchise agreement, satisfying the requirements stated in the SFL, which will be mentioned in our response to question 4 below; and
3. The following additional documents are also required, particularly in cases where the franchisor is a foreign entity:
 - a. A copy of the commercial registration certificate (CR) or the certificate of incorporation of the company of the franchisor; and
 - b. A copy of the CR or certificate of incorporation of the entity of the franchisee; and
 - c. Passport copies of all managers of the franchisor; and
 - d. Mobile numbers of the franchisor and its managers/board members; and
 - e. A copy of the articles of association (or equivalent constitutional documents) of the company of the franchisor; and
 - f. A copy of the VAT certificate or any other available tax certificate of the company of the franchisor; and
 - g. All relevant corporate information of the entity of the franchisee as per its CR; and
 - h. The contact details of the person(s) in charge at the entity of the franchisee; and
 - i. A Power of Attorney authorizing the lawyer, if a local Saudi lawyer has been engaged, to take the steps on behalf of the applicant.

Following the submission of the registration application together with the required documents and information online, the competent authority shall undertake a review of the submitted application, information and documents, and either accepts them or asks for further information or documents. After the competent authority accepts the application a final registration franchise certificate is issued, and the franchisee will be permitted to conduct the franchise business in KSA.

Pursuant to Article 7 paragraph 2 and Article 11 paragraph 1 of the Franchise Law, the franchise agreement and the relevant FDD should be in Arabic, and if drafted in another language, it must be translated into Arabic by a certified translator licensed in KSA.

In case of amending the franchise agreement, whether by changing its parties or its duration, the franchisor must register it by submitting a signed copy of the amendment to the Ministry within 90 days from the date on which the amendment is made.

In addition, Article 4 of the Implementing Rules sets out the applicable fees, which is the registration fee for the franchise agreement and the FDD related thereto equals to 500 Saudi Riyals; and *amendments fee for the franchise agreement* equals to 100 Saudi Riyals.

With respect to the consequences of non-compliance with the above obligations, the SFL has prescribed significant rights to the franchisee in multiple articles.

If the franchisor materially breaches the disclosure or registration obligations stipulated in the Franchise Law and its Implementing Rules, the franchisee has the right to:

1. Claim damages from the franchisor without terminating the agreement as provided under Article 19 of The Franchise Law;
2. Terminate the franchise agreement by giving written notice to the franchisor, without any obligation to compensate the franchisor, provided that such notice is given within one year from the date the franchisee becomes aware of the breach, or within three years from the date the breach occurred whichever is earlier according to Article 17 of the Franchise Law;
3. If the franchise agreement is lawfully terminated according to Article 17 of the Franchise Law, the franchisee is entitled to claim for compensation as well as the other rights stated under Article 20 of the Franchise Law.

As per the provisions of Article 20 of the Franchise Law if the franchisee lawfully terminates the franchise agreement under Article 17 of the Franchise Law, the franchisor or any of its affiliates is required to repurchase any material assets used exclusively in the franchised business. This applies to assets purchased by the franchisee either from the franchisor or from a third party acting on the franchisor's instructions. The repurchase must take place within 60 days of the franchisee's request, and the price must be at least equal to the original purchase price paid by the franchisee, minus depreciation calculated according to standard accounting principles. Furthermore, the franchisor must compensate the franchisee for any losses incurred in establishing, acquiring, or operating the franchised business, unless the refusal to renew or extend the agreement was legally justified.

The franchisee's right to compensation stated under Articles 19 and 20 of the Franchise Law is only limited to the loss or damage which are directly caused by the franchisor's material violation of its obligations pursuant to the provisions of Article 12 paragraph 1 of the Implementation Rules.

If the franchisee desires, pursuant to paragraph 1.a of Article 20 of the Franchise Law, the franchisor to repurchase the material assets used exclusively in the franchise business which the franchisee has purchased, based on the franchisor's directives, from the franchisor or a third party, the franchisee shall submit a written request to the franchisor within (60) days of the date of terminating the franchise agreement (Article 12 paragraph 2 of the Implementation Rules).

While the SFL provides remedies for improper termination and contractual breaches, it also imposes under Article 21 of the Franchise Law time limits on when such claims can be brought. Article 21 paragraph 2 of the Franchise Law states that any claim for compensation filed as a result of the franchisor's or franchisee's violation of their obligations as stipulated under the Franchise Law or the franchise agreement shall not be heard upon the lapse of one year from the date the non-defaulting party becomes aware of the violation or upon the lapse of three years from the date of the occurrence of the violation, whichever occurs earlier.

It is important to note that bringing a claim under the Franchise Law does not prevent either party from pursuing any other rights or remedies available under applicable laws (Article 21 paragraph 3 of the Franchise Law).

Failure to comply with the FDD or registration obligations may also result in monetary fines of up to five hundred thousand Saudi Riyals (500,000).

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

Starting with Article 2 paragraph 3 of the Franchise Law, which sets out the key objectives of the Law and states that one of the main purposes of this Law is to "ensure disclosure of rights, obligations, and risks so any prospective franchisee can make an informed investment decision." Therefore, the SFA requires clear disclosure of rights, obligations and risks to enable the franchisees to

make well-informed investment decisions and evaluation of the franchise opportunity.

Article 1 paragraph 12 of the Franchise Law defines the Franchise Disclosure Document as: "A document disclosing the key rights and duties of the franchise and the substantial risks relating thereto".

As per the SFL the franchisor is obliged to prepare, submit and register a FDD related to the signed franchise agreement.

Article 7 paragraph 1 of the Franchise Law requires that the FDD must be provided to the prospective franchisee at least 14 days before concluding the franchise agreement or accepting any payment in connection with the franchise, whichever occurs earlier.

The FDD should be in Arabic, and if drafted in another language, it must be translated into Arabic by a certified translator licensed in KSA. Moreover, the FDD must be clear, accurate, and complete (Article 7 paragraph 2 of the Franchise Law).

Article 3 paragraph 1 of the Implementing Rules further requires the franchisor to register each signed franchise agreement along with the related FDD with the Ministry within 90 days of execution.

If the franchisor discloses information regarding past or expected financial performance of the franchised business, whether owned by the franchisor or any of its group companies, such information must be included in the FDD and must comply with the conditions and requirements prescribed by the SFL (Article 7 paragraph 3 of the Franchise Law).

As per the express provisions of Article 6 paragraph 1 of the Implementing Rules, the FDD must contain specific items and information stated in the disclosure document requirements attached to the Implementing Rules, including without limitation, the following main points:

1. The details and corporate information of the franchisor and its group; and
2. Business and working experience of the franchisor; and
3. Litigation history of the franchisor; and
4. Bankruptcy filed against the franchisor, if any; and
5. Fees and amounts payable to the franchisor; and
6. Estimated initial investment expected to be invested by the franchisee; and
7. Information on existing franchisees of the franchisor; and
8. Expiration of the term of the agreement.

It is worth noting that previously the Implementing Rules required the FDD to include 17 key disclosure items, one of which related to the franchisor's financial capability specifically, the provision of their balance sheets for the previous one or two fiscal years. Notably, the disclosure form issued by the Ministry was amended by Ministerial Resolution No. 339 dated 14/08/1444H (6 March 2023), which has now removed the obligation on the franchisor to disclose its financial position and to provide audited financial statements for the preceding two years.

Accordingly, the number of mandatory disclosure headings and main items has been reduced to 16, as currently reflected in the amended Implementing Rules. These 16 main items now constitute the minimum disclosure requirements under Saudi law and if an international FDD does not address all of these prescribed points, even if it is otherwise comprehensive, it will not be deemed sufficient and compliant with the Implementing Rules in KSA.

In addition to the main 16 headings and items, the FDD as per the Implantation Rules must also include several sub-headings and items, such as: (i) a list of the members of the board of directors and the current senior executives of the franchisor responsible for the franchise business; (ii) details regarding the locations where the franchise business is conducted; and (iii) information about any ongoing lawsuits or arbitration cases involving the franchisor or its group, related to their participation in the franchise business model.

If there is a material change in the FDD after it has been provided to the franchisee but before the franchise agreement is signed, the franchisor is required to provide a new disclosure document or a separate document indicating the material change. This must be done as soon as possible, prior to signing the franchise agreement or before paying any consideration related to the franchise by the Franchisee, whichever happens first. A 'material change' means any change in facts or circumstances that significantly impacts the value of the franchising business or the franchisor's decision to enter into the franchise agreement (Article 6 paragraph 2 of the Implementing Rules).

Additionally, according to Article 5 of the Implementing Rules, the registration of the franchise agreement and the related FDD shall remain valid throughout the entire term and duration of the relevant franchise agreement. However, the franchisor may revoke the registration by submitting a request to the Ministry within (90) days if the agreement is terminated, expires; or is nullified or terminated by a court's order.

Moreover, as per Article 7 of the Implementing Rules, it is important to note that if the franchisor includes details in the FDD regarding the historical or projected financial performance of the franchises, whether owned by the franchisor or any of its associates, or projections for the financial performance of the franchisee, certain disclosures must be made. These include:

1. the key assumptions used in the preparation and presentation of such financial information; and
2. whether the information is based on actual results of existing retail outlets; and
3. whether the information relates to outlets owned by either the franchisor or the franchisees.

Potential consequences and penalties if the franchisor do not comply with the disclosure requirements may result in significant penalties, these consequences and penalties have been detailed in our response to questions 3 above. For clarity purposes, the SFL has stated similar consequences and penalties in case If the franchisor materially breaches either the disclosure or registration obligations.

It is important to highlight that Article 23 of the Franchise Law confirms the mandatory imperative nature of these legal protections. It provides that any agreement under which a franchisee waives their rights under the Franchise Law shall be deemed null and void, unless it forms part of a final settlement or is otherwise expressly permitted by the Law. Article 23 will specifically apply in case the franchisor materially breaches the disclosure or registration obligations stipulated in the SFA detailed hereabove. That to say that the SFL prevents franchisors from circumventing these disclosure obligations or pressuring franchisees into waiving their statutory rights.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

It is our understanding that, in practice, where a master franchise, area developer or a multi-unit franchise structure is adopted, each franchise agreement must be accompanied by its own FDD as concluded from Article 3 paragraph 1 of the Implementing Rules mentioned hereabove, which clearly requires the franchisor to register each signed franchise agreement along with the related FDD with the Ministry within 90 days of execution. Needless to say, that certain information within the disclosure document i.e., the FDD, may remain the same

across agreements and the content of the FDD will ultimately differ depending on many factors, including, *inter alia*, the estimated initial investment, the type of franchise agreement and the specific geographic location. For instance, the investment required for an outlet in Riyadh will be most likely be higher than that in a smaller city in KSA. Therefore, each agreement must be supported by a separate FDD reflecting the relevant particulars.

6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

Article 10 of the Franchise law clearly states that *"the franchisor and franchisee shall, in good faith, fulfil their obligations under the franchise agreement."* Both the franchisor and the franchisee are required to fulfil their obligations under the franchise agreement in good faith. This duty of good faith is further reinforced by Saudi courts according to the general principles of Islamic *Shari'ah* which represents the public order in KSA, that imposes an overarching obligation on parties to act in good faith in the performance of their contracts.

As such, any disclaimer or clause that is found by Saudi courts or arbitration panel to have been made in bad faith will not be legally recognized or enforceable in KSA.

Further, if a franchisor fails to disclose material information as required under the SFL this may be considered to be mis-selling and if such a failure constitutes a material breach, then the franchisee will have the right to exercise the rights stated under Articles 17, 19 and 20 of the Franchise Law.

Please refer to our response to Question 3, where we have detailed the provisions set out under these Articles.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it", basis?

The SFL requires certain mandatory terms and conditions to be included in a franchise agreement, the most important of these are set out in Article 11 paragraph 2 of the Franchise Law and Article 8 of the Implementing Rules. These Articles prescribe specific mandatory terms and conditions that must be incorporated into every franchise agreement. Please refer to Paragraph 8 of our Introductory Chapter, where the philosophy and intention

of the SFL are set out in more details.

As per the SFL, a franchise agreement must include, in addition to any mutually agreed terms, certain mandatory provisions outlined under Article 11 paragraph 2 of the Implementing Rules. These include, among others:

- a. A description of the franchised business, the duration of the agreement, and the geographic area it covers; and
- b. Details of all payments the franchisee must make to the franchisor, including the initial franchise fee, any training costs, technical support fees, and how payments for goods or services from the franchisor or its affiliates are calculated; and
- c. The franchisor's duty to provide technical, marketing, and other necessary expertise, and its role in supplying goods or services; and
- d. The franchisee's responsibility to follow instructions on marketing, product display; and
- e. The franchisee's right to use trademarks or other IP rights, and how both parties handle any issues or damages related to IP infringement; and
- f. How disputes between the parties will be resolved; and
- g. The consequences of any change in ownership of the franchisee, franchisor, or controlling parties.

In addition, Article 8 of the Implementing Rules also sets out certain key provisions that must be included in the franchise agreement. Some of these include:

- a. Clear identification of the owner of the trademark, trade name, or other intellectual property used in the franchise, and clarification of the relationship between the owner and the franchisor if they differ; and
- b. The rights and obligations of both franchisor and franchisee regarding termination of the agreement; and
- c. The franchisee's right to renew or extend the agreement, if applicable; and
- d. The rights and responsibilities of both parties upon termination or expiration of the agreement; and
- e. Any restrictions on either party from engaging in competing businesses during or after the agreement, subject to the Competition Law; and
- f. The responsibilities of the parties regarding the protection of confidential information and data.

In addition to the above mandatory conditions that must be included in a franchise agreement intended for application in KSA, the franchise agreement must not contain a provision(s) that conflicts with the imperative mandatory provisions of the Franchise Law or its Implementing Rules, which cannot be overridden or

waived contractually by the parties, as also mentioned above in Paragraph 8 of our Introductory Chapter. Such clauses may also include any provisions against the commercial law or the general principles of Islamic *Shari'ah*, for instance; a clause requiring the payment of interest on late payments, would be illegal under law of KSA. For further details regarding this point, please refer to our response provided under question 15 below.

As long as the required disclosures and terms are properly addressed in the franchise agreement and the franchisor complies with all of the procedural requirements (including filing and disclosure obligations), and the above requirements are fulfilled, then, it is ultimately for the parties to decide whether to enter into the agreement or not, and there is no legal prohibition against offering the agreement on a non-negotiable, "take-it-or-leave-it" basis.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

Intellectual property rights in KSA are governed by various laws (regulations) issued through Royal Decrees and enforced by the judicial system, which does not contradict with Islamic *Shari'ah* principles, that represents the public order in KSA. These laws provide protection for copyrights, trademarks, and trade secrets. As mentioned in our response to Question 7 above, Article 11 of the Franchise Law outlines certain mandatory terms and conditions that must be included in a franchise agreement. Specifically, Article 11 paragraph 2.g requires the franchise agreement to specify the franchisee's right to use any trademark or other intellectual property rights related to the franchised business, as well as the respective liabilities of the parties in the event of an infringement of such rights and any resulting damages.

Trademarks: Trademarks in KSA are mainly protected under the Trademark Law issued by Royal Decree No. M/21 dated 7 August 2002 Gregorian calendar (hereafter referred as the "**Trademark Law**"). Under the Trademark Law, a trademark is defined to be distinctive and able to identify the source of goods or services. The registrable marks include names, words, symbols, numbers, images, packaging, shapes, colours, and even sounds and scents. The Saudi Authority for Intellectual Property (hereafter referred as "SAIP") uses and recognize the Nice Classification system for organizing trademark registrations, which are to be filed with the SAIP and once registered, the owner holds exclusive rights to use the trademark for 10 years, with the option of renewal and use by any other party requires the owner's permission. With respect to infringement of trademarks counterfeiting

or imitating a registered mark in a way that causes confusion or using someone else's trademark in bad faith is considered infringement and offenders may face fines ranging from Saudi Riyals (5,000) to Saudi Riyals (1,000,000), imprisonment from 1 to 3 years, or both. Moreover, repeat offenses can lead to doubled penalties and additional measures in cases of infringement may include closing the business for 15 days to six months and publishing the decision at the violator's expense.

Unlike the laws of other countries, in KSA a trademark license nor a trademark user agreement is not required under the SFL; signing and registering a franchise agreement and the related FDD with the Ministry is sufficient to grant franchise rights.

Trade Secrets: Trade secrets are mainly protected under the Regulations for the Protection of Confidential Commercial Information issued by Ministry Decision No. 3218 (as amended), passed in 2005 (hereafter referred as the "**Trade Secrets Regulations**") in KSA. A trade secret is defined as commercially valuable information that is not publicly known or easily accessible, and whose owner takes reasonable steps to keep it confidential. However, protection does not extend to secrets that violate *Shari'ah*, public order, or public morals. Unlawful acts include unauthorized access, use, or disclosure of trade secrets, particularly in ways that violate fair commercial practices. Such conduct is considered an abuse and can lead to legal consequences under the regulations. As long as reasonable efforts are taken by the owner of the information to maintain the information as a trade secret, the Trade Secrets Regulations do not expressly provide for a limit on the duration of the right, although a minimum protection period of 5 years is specified (subject to limited exceptions) in the context of secret information submitted to an official competent authority for the purpose of approval of the marketing of drugs or chemical agricultural products in which new chemical substances are used.

Copyright: Copyright in KSA is mainly regulated by the Copyright Law issued by Royal Decree No. M/41 dated 2/7/1424 *Hijri* (corresponding to August 30, 2003 Gregorian calendar), as amended by Council of Ministers Decision No. 536 dated 19/10/1439 AH (hereafter referred as the "**Copyright Law**"). The Copyright Law protects original works in the fields of literature, art, and science, regardless of the medium, format, or purpose. This law protects works by Saudi and non-Saudi authors first published, performed, or displayed in the KSA; works by Saudi authors first released abroad; as well as works by broadcasters, performers, and producers of sound recordings, and those covered by international treaties to which KSA is a party. Under the Copyright Law, copyright

owners are granted exclusive rights to reproduce, distribute, prepare derivative works, and publicly perform or display them. The provisions of the laws give moral rights to authors that cannot be waived or transferred, except to heirs or to the Ministry of Culture and Information if there are no heirs. It is also important to note that the law does not allow for any future agreements assigning all of an author's future intellectual output to be considered as valid. Under the Copyright Law the duration of protection varies depending on the nature of the work, such as for individual authors, it lasts for their lifetime plus 50 years after death; for joint works, from the death of the last surviving author; and for corporate authors, 50 years from the date of first publication. For audio and audio-visual works, films, collective works, and software the protection lasts for 50 years from their first public release, for applied arts and photographs protection is granted for 25 years from publication, broadcasts for 20 years from transmission, and for sound recordings and performances for 50 years from their recording or performance date. The Copyright Law also provides that "infringement" includes unauthorized publishing, modifying or copying a work, removing copyright information or protective codes, using pirated software or broadcasts, manufacturing tools to bypass protections, and distributing counterfeit materials. The penalties for any violations of the Copyright Law are set out under Article 22 and include warnings, fines up to Saudi Riyals (250,000), temporary closure of the offending business for up to two months, confiscation of infringing materials, and imprisonment for up to six months. For repeat violations, these penalties may be doubled. Certain extreme cases involving imprisonment, fines above Saudi Riyals (100,000), or potential license cancellation are referred to the Board of Grievances.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

One of the key objectives of the Franchise Law is to regulate and govern the relationship between franchisor and franchisee, emphasizing the principles of freedom to contract and transparency, as expressly prescribed under Article 2 paragraph 1 of the Franchise Law, which reads: *"The Franchise Law aims to: 1. Promote franchise activities in KSA by establishing a legal framework that regulates the relationship between franchisor and franchisee, emphasizing the principles of freedom to contract and transparency"*.

However, due to the complexity and diversity of the legal relationships regulated under a franchise agreement, such as granting the license to use Franchisor's trademark, other intellectual property rights, trade secrets, selling goods and products, providing services, non-competition obligations, arbitration laws (if the franchisor and the franchisee agree to settle their disputes through arbitration), other legislation will also apply depending on the text of the franchise agreement, including, *inter alia*, the Trademarks Law, the Companies Law (if applicable and a company is being formed), Arbitration laws (if the franchisor and the franchisee agree to settle their disputes through arbitration), Law of Commercial Courts (if the franchisor and the franchisee agree to settle their disputes through Saudi courts), Copyright Law, Trade Secrets Law, Anti-Commercial Fraud Law, Labor Law for the employees of a franchisee that work in the operation of the franchise business, Anti-Concealment Law, the Competition Law, the general principles of *Shari'ah*.

It should be underlined that Article 3 of the Franchise Law provides that *"this Law shall apply to any franchise agreement executed in KSA"*. Therefore, according to the said Article, as long as a franchise agreement will be implemented in KSA, the said franchise agreement and the related FDD will be subject to the SFL, even if the applicable law prescribed in the franchise agreement is the law of a foreign country, at least in connection with the imperative mandatory provisions stated in the SFL that cannot be contractually waived, such as the registration of the franchise agreement, the preparation of the FDD, the registration of the FDD, the right to grant franchise rights as per Article 5 of the SFL.

It should be noted that, in accordance with the general principles of *Shari'ah* and Saudi Law, a franchise agreement must be clear and free from any ambiguity, uncertainty or aleatory.

For more details on the required terms in a franchise agreement, please see our responses to Questions 4 and 7, along with Paragraph 8 of the Introductory Chapter here above. These sections explain the key provisions that must be included in franchise agreements and FDDs in KSA.

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant

competition laws.

At the outset, it is worth mentioning that Article 11 paragraph 2.g of the Franchise Law, states the following *"in addition to other matters agreed to between the parties, the franchise agreement must include any restrictions imposed on the franchisor and franchisee regarding the exercise of any competing business during the franchise agreement, or after it is terminated or expires, without prejudice to the provisions of the Competition Law"*. This means that if a franchise agreement or an FDD in KSA is found to conflict with the Saudi Competition Law, the provisions of the Saudi Competition Law shall prevail. In addition to Article 11 paragraph 2/g of the Franchise Law, Article 3 of the Saudi Competition Law further in this regard provides that: *"Without prejudice to the provisions of other laws, the provisions of this Law shall apply to: a) all entities within the Kingdom."* Accordingly, the Competition Law applies to all franchise operations conducted within KSA and therefore, franchise agreements and FDDs must not contain conditions that violate the provisions of the Competition Law.

The Saudi Competition Law was originally issued by Royal Decree No. M/25 dated 04/05/1425 Hijri and subsequently amended by Royal Decree No. M/24 dated 11/04/1435 Hijri. A more comprehensive and updated framework was later introduced pursuant to Royal Decree No. M/75 dated 29/06/1440 Hijri (07/03/2019 Gregorian calendar), which came into effect on 20/07/1440 Hijri (27/03/2019 Gregorian calendar) (hereafter referred as "Competition Law").

The Competition Law has been issued to protect fair market practices, prevent anti-competitive behaviour, and restrict entities with dominant positions from engaging in practices that could distort the market or harm consumers. The oversight and enforcement of the law fall under the General Authority for Competition (herein referred to as "GAC"), which has been particularly active in monitoring the conduct of manufacturers and distributors in their dealings with retailers and consumers.

In practice, GAC has been highly active and rigorous in monitoring entities in KSA to prevent unfair competitive behaviour and monopoly to sustain fair market and enhance a healthy business environment in KSA.

While we are still yet to see the enforcement actions specifically directed at franchisors or franchisees, the Competition Law applies broadly to all commercial dealings in KSA. Accordingly, franchisors and franchisees alike must ensure that their agreements, business

structures, and commercial practices are carefully aligned with the Competition Law and its requirements.

One of the most important provisions of the Competition Law to be considered in franchise agreements is Article 4 that states *"The prices of goods and services shall be in accordance with market rules and free competition principles..."*.

Similarly, Article 6 prohibits entities that hold a dominant position in the market from abusing that position in ways that may harm or restrict competition. Such practices include selling products below total cost to eliminate competitors or discourage new entrants, imposing specific resale prices or terms, manipulating the supply of goods or services to distort market prices or create artificial shortages, and applying discriminatory pricing or conditions to similar customers. *Additional restrictions are also set out under the Competition Law.*

It should be underlined that as per the Implementing Rules one of the items to be included in the FDD is the specifics regarding the territories and exclusivity of the franchise. In other words, it may be inferred that the SFL permits the franchise rights to be exclusive, and thus the franchisee shall be entitled to reserve exclusive rights in the territory or the restricted area mentioned in the franchise agreement depending on the kind of the franchise agreement (master franchise, area developer, multi-unit or a single unit franchise agreement) and be protected from competing businesses being established by the franchisor directly or indirectly by third parties, within the territory or the restricted area mentioned in the franchise agreement.

Based on the above, it is permissible and acceptable in KSA to insert a clause in a franchise agreement that prohibits online sales by the franchise and insists on exclusive supply or fix retail prices. However, as mentioned above, in the event of any apparent conflict between a franchise agreement and the Competition Laws it will be left to the discretion of the competent authorities, including GAC, to determine whether a violation of the Competition Law has occurred or not.

11. Are in-term and post-term non-compete and non-solicitation clauses enforceable and are there any limitations on the franchisor's ability to impose and enforce them?

As previously mentioned, to reiterate, Article 8 paragraph F of the Implementing Rules expressly affirms the right of the franchisor and/or the franchisee to regulate the conduct of any competing business during the term of

the franchise agreement, or after its termination or expiry, without prejudice to the provisions of the Competition Law.

The courts in KSA recognize and uphold non-compete and non-solicitation clauses, provided they comply with the relevant Saudi laws, do not contradict with the general principles of *Shari'ah*, do not violate the provisions of the Competition Law and established business practices in KSA. However, courts are unlikely to enforce non-competition covenants that are considered excessive or overly restrictive. They may also amend or partially accept such provisions, for instance by shortening their duration if they exceed two years in labour contractual relationship. The courts in KSA have issued many precedents confirming that a non-competition clause is valid and enforceable if it meets certain criteria which may include:

1. The non-competition clause must be in writing; and
2. The non-competition clause must be specific in terms of time after the termination or expiration of the agreement (in labour relationships and employment contracts this period must not exceed 2 years after the termination or expiration of an employment agreement); and
3. The non-competition clause shall be specific in terms of geographical area or territory; for example, the franchisee is not allowed to conduct competing activities in the Eastern Province of KSA or in the city of Riyadh; and
4. The non-competition clause shall be specific in terms of type and kind of activities; for example, a Burger King franchisee may be prohibited from getting franchise rights for McDonald's or another burger restaurant, including a local Saudi brand; and
5. The non-competition clause shall be reasonable and limited to the extent needed to protect the legitimate interests of the other contracting party.

In all instances, the above conditions are subject to the discretionary authority of the competent Saudi court on a case-by-case basis depending on the particular facts and circumstances of each case and dispute.

Saudi courts may enforce foreign court injunctions after ensuring that certain requirements are fulfilled, including the existence of a reciprocity agreement between KSA and the issuing jurisdiction to enforce such injunctions.

Under the Saudi Labour Law, specifically Article 83, employers are allowed to include non-compete clause in employment contracts to protect their legitimate commercial interests and safeguard their business secrets. This clause is particularly relevant when an

employee's role involves access to confidential business information or direct dealings with the employer's clients.

According to the provisions of Article 83 of the Saudi Labour Law, to enforce the non-competition clause or agreement, it must be in writing; and clearly specify in terms of duration (with the restriction not exceeding two years from the end of the employment relationship), and geographic area of the restriction, and type of activity and work covered, and to the extent needed to protect the legitimate interests of the employers. This legal provision aims to prevent employees from immediately competing against their former employers by using sensitive information or client relationships gained during their employment.

It is legitimate and permitted under the prevailing Saudi Labour Law to include non-solicitation clause in employment contracts signed and implemented in KSA.

In practice, and subject to the above reservations, currently almost all the employment agreements signed and implemented in KSA contain a non-competition clause. However, non-solicitation clauses are incorporated in some employment contract in KSA, depending on the nature of the work of the employee. For example, if the employee is working as a franchise manager for an employer in KSA, then their employment contract will most likely contain non-solicitation clause, in addition to the non-competition clause.

It is worth noting that non-solicitation clauses are usually included in franchise agreements applied in KSA and it is stated in the model forms for the franchise agreements currently used by *Monsha'at*. However, in case of a dispute in connection with breaching a non-solicitation obligation, it is often difficult to prove such a breach before Saudi courts, and thus in practice, the implementation of such clauses may be challenging in KSA.

Further, recent amendments to the Saudi Labour Law grant employees the right to resign and terminate their employment contracts within a period of 90 days as from their resignation notices, and employers cannot prevent them or refuse such resignations after the lapse of the aforementioned 90 days.

Additionally, significant changes have been introduced in labour relationships between Saudi employers and non-Saudi workers. Specifically, the process of transferring sponsorship and work visas for non-Saudi employees has become more streamlined and flexible, subject to the fulfilment of certain conditions. As a result, many Saudi companies are experiencing increased difficulty in

enforcing non-solicitation clauses. In practice, several employees of commercial agents have been solicited by principal companies, and due to the mentioned recent regulatory changes, commercial agents have faced difficulties in preventing the transfer or hiring of their employees by principal companies. Franchisors and franchisees face similar challenges in enforcing non-solicitation obligations.

Conclusively, it can be inferred that although the Saudi courts do recognize non-competition and non-solicitation clauses, subject to the conditions detailed above. Nevertheless, if an employee violates a non-competition or non-solicitation clause, the courts tend to practice a more conservative approach when awarding damages or compensation to the employer.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships? If so, what practical effects does this have on the relationship between franchisor and franchisee?

Yes, such an obligation is imposed on both the franchisor and the franchisee under Article 10 of the Franchise Law, and according to the general principles of *Shari'ah* which requires the parties to perform their contractual obligations under the franchise agreement in good faith. For further details, please refer to our response to Question 6 above.

13. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?

The franchisee's employees (workers) working in the franchise business in KSA will be subject to the applicable Saudi Labour law governing their working relationship with the franchisee. This includes, but is not limited to, the provisions of the Labour Law in force at the relevant time, which may be updated or amended, relating to basic wages, actual wages, the protection of wages, rest periods, weekly rest days, Official holidays, vacations (specifically annual vacations), insurance, duration of labour contracts, non-Saudi employees, termination and expiration of labour contracts, compensations upon the termination or expiration of labour contracts, end of service awards, women employment, labour inspection, the percentage of Saudi Employees vs Non-Saudi Employees – commonly referred to as *Saudization* and

number of working hours etc.

It is worth mentioning that Article 98 of the Saudi Labour law establishes the basic rule for regulating working hours in KSA. According to the translation available on the Ministry of Human Resources and Social Development's website Article 98 provides that *"A worker may not actually work for more than eight hours a day if the employer uses the daily work criterion, or more than forty-eight hours a week if he uses the weekly criterion. During the month of Ramadan, the actual working hours for Muslim employees shall be reduced to a maximum of six hours a day or thirty-six hours a week"*.

As a general rule, the risk of the franchisee's employees being deemed employees of the franchisor is very low, particularly given that Article 1 paragraph 5 of the Franchise Law clearly defines a Franchise *"as a right granted by a franchisor to a franchisee to conduct a franchise business subject of the franchise agreement on its own account"*, therefore it can be inferred that a franchisee's employees remain under the franchisee's sponsorship, liability and control and shall be considered his workers, in accordance with the Saudi Labour Law.

Consequently, the franchisor is generally not considered a joint employer, and the franchisee remains liable for the actions of their employees. To further mitigate any potential risk, this can also be explicitly stated in the franchise agreement. Bearing in mind that in most franchise agreements (and in the model forms for the franchise agreements currently used by *Monsha'at*) there is a specific clause, commonly referred to as *"Independent Contractor"*, which states expressly that the franchisee is conducting the franchise business on their own account, risk and by using their own employees and workers, who, under no circumstances, shall be considered the employees of the franchisor.

For more details, please see our response to Question 11 above, which covers the Labour Law aspects of non-competition and non-solicitation clauses in franchise agreements.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

There is no such risk under the Franchise Law, as it expressly distinguishes franchise agreements from commercial agency arrangements.

Article 4 of the Franchise law clearly provides that *"For*

the purpose of applying this Law, the following agreements and arrangements shall not be deemed a franchise agreement: 2. An agreement or contract subject to the Law of Commercial Agencies applicable in the KSA. 3. An agreement or contract limited to the sale of goods or provision of services carrying certain trademarks, or to the use of a trademark or any copyrighted material of any good or service".

Also, as covered in of our Introduction Chapter a key reason for enacting a dedicated franchise law in KSA was to remove the uncertainty that previously arose when franchises were assessed under the Commercial Agency Law.

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged? Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

At the outset it is worth noting that according to the SFL the franchise agreement and the FDD must contain in detail provisions regulating the percentage of royalties, franchise fees and other payments to be made by the franchisee to the franchisor, in order to avoid any uncertainty or ambiguity in the franchise project.

In KSA any provisions with respect to charging interest on late payments is deemed inapplicable and unlawful, as it is considered *Riba* which is prohibited under Saudi law based on Islamic *Shari'ah*. As a result, Saudi commercial and civil courts have consistently in their judicial precedents refused to recognize or accept interest on late payments as it is prohibited under Islamic *Shari'ah* principles.

In practice, and based on our experience, the Ministry has on several occasions refused to register franchise agreements that include provisions for interest on late payments. Accordingly, any such stipulation would be deemed null and void and could also prevent the franchisor from successfully registering the agreement with the Ministry.

With respect to royalties, while franchise agreements in KSA usually stipulate payment in Saudi Riyals, there is no legal requirement mandating this. Parties are free to agree on payments in other major currencies, such as US Dollars, Euros, or Pounds, as Saudi law does not prohibit such arrangements.

16. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

In general, there is nothing in the SFA that prohibits inserting penalties in franchise agreements in KSA. In practice in many franchise agreements applied in KSA and in the model forms for the franchise agreements currently used by the Ministry and *Monsha'at*, there are contractual penalties that may be imposed on franchisees if they breach restrictive covenants or similar obligations. For example, if a franchisee, after the termination of a franchise agreement does not change the appearance of the franchised unit or store or does not remove any signage that identifies the business with the franchise system, or continues to use the franchisor's trademarks beyond the agreed time frame, contractual penalties may be stipulated and enforced on a per-day basis until compliance is achieved.

The conditions set out below shall be met to enforce the penalties in KSA and before Saudi courts:

1. The penalties shall be incorporated expressly in the franchise agreement in writing; and
2. The penalties shall be specific and not uncertain or ambiguous whether in its value or when to be due; and
3. The penalties shall be reasonable and limited to the extent required to protect the rights of the franchisor; and
4. Applying the penalties shall not constitute any provisions for unlawful interest *Riba* as detailed in our reply to question number 15 above.

In case of master franchise or area developer agreements, breaching restrictive covenants or other contractual obligations by the franchisee may also be placed to result in the loss of the rights to develop further franchises, particularly where the breach undermines the franchisor's existing rights or the integrity of the agreement.

It is worth mentioning that in practice in many franchise agreements applied in KSA and in the model forms for the franchise agreements currently used by the Ministry and *Monsha'at*, a guarantee clause is added to the franchise agreement in favour of the franchisor, where its rights are protected by guarantees. For example, promissory notes and/or personal guarantee(s). If the franchisee breaches its restrictive covenants or similar obligations, the franchisor is entitled to enforce the guarantee clause.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

Withholding tax in KSA is applicable at the rate of 15% on royalties and certain other services. Under Saudi Arabia's Income Tax Law (Royal Decree No. M/1 of 6 March 2004) (hereafter referred to as 'Income Tax Law') "Royalties" are defined broadly to include payments for the use of or right to use IP such as copyrights, patents, designs, industrial secrets, trademarks, trade names, know how, goodwill, or any payments tied to scientific, industrial or commercial expertise.

Withholding tax also applies to technical and management service fees, franchise and licensing fees, store opening fees, and other similar IP-related payments. It is generally understood that payments to non-residents for the use of intellectual property rights are subject to withholding tax. However, withholding tax does not apply to profits made from merely buying and selling goods.

Under the Saudi Income Tax Law, every resident, regardless of whether they are considered a taxpayer and any permanent establishment of a non-resident in KSA that makes a payment to a non-resident from a source within KSA is required to withhold tax from that payment. The applicable withholding tax rates are outlined in Article 68 of the Income Tax Law, which provides as follows:

1. *Rent: 5%.*
2. *Royalty or proceeds: 15%.*
3. *Management fees: 20%.*
4. *Payments for airline tickets, air or sea freight: 5%.*
5. *Payments for international telecommunication services: 5%.*
6. *Any other payments specified in the Regulations, provided that the tax rate does not exceed 15%.*
7. *In case of amounts paid by a natural person, the conditions for withholding stipulated under this Article shall apply to the payments pertaining to his activity".*

While it may be possible to restructure payments in alternative ways for example, by offering a royalty-free franchise and instead charging management or training fees, which may attract a lower withholding tax such structuring must be carefully assessed to ensure it does not contravene the Saudi Anti-Concealment Law. In practice, the Zakat, Tax and Customs Authority (ZATCA) have in certain instances reclassified management or training fees as royalties, thereby applying the 15% withholding tax rate. There have been cases where

licensing and service-related fees were viewed as falling within the scope of royalties and taxed accordingly.

18. How is e-commerce regulated and does this have any specific implications on the relationship between franchisor and franchisee? For example, can franchisees be prohibited or restricted in any way from using e-commerce in their franchise businesses?

Under the prevailing SFL, there is no specific provision regulating e-commerce activities.

In practice, franchisors often reserve the right to conduct e-commerce operations themselves or permit franchisees to do so, subject to the franchisor's policies and approval. The allocation of these rights typically depends on the nature of the franchise: for service-oriented franchise agreement, such as real estate consultancy or restaurants, e-commerce is generally not included due to the practical difficulties of online delivery, whereas product-oriented franchise agreement frequently see franchisors retaining exclusive control over e-commerce channels due to their strategic importance.

Therefore, the franchisor may lawfully restrict or prohibit franchisees from using e-commerce in accordance with the terms of the franchise agreement, making the allocation of e-commerce rights primarily a matter of contractual agreement rather than statutory regulation.

19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship?

Most recently, KSA enacted the Personal Data Protection Law issued by Royal Decree No. M/19 dated 09/02/1443 Hijri (16/09/2021 Gregorian calendar), as amended by Royal Decree No. M/147 dated 05/09/1444 Hijri (27/03/2023 Gregorian calendar) (herein referred to as the "PDPL"), which regulates the protection of personal data of individuals. The PDPL came into effect on 14/09/2023G and applies broadly to the collection, processing, storage, and transfer of personal data within the KSA.

Although there is no express provision on the PDPL addressing franchise, it is our understanding that in the franchising context, this means that both franchisors and franchisees must ensure compliance with the PDPL when handling customer data, employee information, or any other personal data processed in the course of operating

the franchise. Moreover, cross-border data transfers (e.g., from the Saudi franchisee to a foreign franchisor) may be subject to the relevant provisions under the PDPL.

In addition to the statutory framework, *Shari'ah* principles also safeguard an individual's right to privacy. As such, the disclosure of personal or confidential information generally requires the consent of the data subject, unless disclosure is mandated by overriding public interest.

It should be noted that as per the provisions of Articles 8 paragraph 6 of the Franchise Law the franchisor shall maintain the confidentiality of the accounting and financial information and any data relating to the franchisee's business, unless otherwise agreed in writing with the franchisee. Moreover, the franchise agreement must include and regulate the franchisor and franchisee's obligations in relation to confidential information and data protection pursuant Article 8 paragraph I of the Implementing Rules.

The Implementing Rules have also stated the FDD shall cover and include any rights the franchisor may have relating to confidential information or trade secrets, a general description thereof must be provided to the franchisee along with the mechanism and method on how to use and employ them.

It is also worth noting that the PDPL is undergoing a major refinement process, with several proposed amendments expected in 2025. These focus primarily on enhancing accountability for data controllers, including requirements for documenting data processing activities, ensuring users' rights to access their data, and conducting privacy impact assessments prior to launching new services. In parallel, the Saudi Data and Artificial Intelligence Authority (SDAIA) has also introduced the National AI Index, marking a key step toward the development of future AI regulations and ethical frameworks. Collectively, these developments reflect a broader move toward more rigorous compliance expectations for digital platforms operating in KSA.

In practice in most of the franchise agreements applied in KSA and in the model forms for the franchise agreements currently used by the Ministry and *Monsha'at*, there is a detailed clause (or a whole separate agreement attached to the franchise agreement), regulating the protection of data and confidential information and secrets of the franchisor and the franchisee.

20. Is the franchisor permitted to restrict the transfer of (a) the franchisee's rights and

obligations under the franchise agreement or (b) the ownership interests in the franchisee?

The franchisor is, subject to the provisions of SFL, entitled to impose restrictions within the franchise agreement to restrict the transfer of the franchisee's rights and obligations under the franchise agreement; and/or the ownership interests in the franchisee.

The SFL provides that unless otherwise stated in the franchise agreement, the franchisee must obtain the franchisor's prior written approval before assigning the franchise agreement or undergoing a change in control. This is regulated under Article 13 of the Franchise Law, which provides that once the franchisor has granted such approval, it shall be deemed irrevocable, and the franchisor may not later object to the assignment or change in control except in certain circumstances such as:

1. The proposed assignee is unlikely to have sufficient financial resources to fulfil the obligations imposed on the franchisee under the franchise agreement; or
2. The proposed assignee fails to meet the franchisor's reasonable conditions or requirements regarding the assignment and operation of the franchised business; or
3. The proposed assignee does not satisfy the franchisor's established criteria for selecting franchisees; or
4. The proposed assignee does not provide written confirmation agreeing to assume all of the franchisee's obligations under the franchise agreement as of the effective date of the assignment; or
5. The franchisee has not settled all outstanding amounts due to the franchisor.

Complementing this, Article 10 of the Implementing Rules reinforces that the franchisor may not object to an assignment or change in control, nor revoke its prior approval, except in specific situations. These include if the person expected to assume control of the franchisee has filed for bankruptcy; lacks the necessary licenses or legal eligibility to operate the franchised business, or where the franchisee is in material breach of the agreement and fails to remedy the breach within 14 days of receiving written notice.

Building on the above, Article 14 of the Franchise Law further states that subject to Article 13 and the Implementing Rules, if a franchisor does not respond in writing to a franchisee's request to assign the franchise agreement or transfer control of the franchisee, the franchisor is deemed to have approved the request by

default. In line with this, Article 11 of the Implementing Rules clarifies that if the franchisor intends to reject such a request, it must do so in writing within thirty (30) days, clearly stating the reasons for the refusal. Where additional information is requested from the franchisee, the 30 days period begins from the date the requested information is received.

21. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

Article 15 of the Franchise Law sets out the rules for renewing or extending the franchise agreement by the franchisee and provides that unless the franchise agreement states otherwise, the franchisee must notify the franchisor in writing at least 180 days before the agreement expires if the franchisee wishes to renew or extend it. The renewal or extension of the franchise agreement be for the same duration and under the same terms and conditions as the original agreement, unless one of the following exceptions applies:

1. The franchisor and franchisee mutually agree on new terms; or
2. One of the termination conditions listed in Article 18 occurs; or
3. The franchisee fails to pay amounts owed under the agreement; or
4. The franchisor agrees, before the agreement ends, to let the franchisee transfer the franchise and business to a third party who meets the franchisor's criteria; or
5. The franchisor decides to stop franchising or granting franchises in KSA; or
6. The franchisee does not finalize the renewal or extension agreement at least 60 days before the original agreement expires, even though the franchisor made reasonable efforts to move the process forward.

Pursuant to Article 18 of the Franchise Law a franchisor is not permitted to terminate the franchise agreement before its agreed expiry date without the franchisee's written consent, unless the termination is for a legitimate valid reason. The legitimate reasons as outlined in Article 18 of the Franchise Law are: the franchisee's failure to meet a material obligation and failure to remedy it within fourteen (14) days of receiving written notice; liquidation or dissolution of the franchisee, or assignment of the

business or its assets to creditors or third parties; abandonment or suspension of business operations for more than ninety (90) consecutive days without valid justification; repeated breaches of the agreement despite written warnings; operating the business in a manner that poses a risk to public health or safety; violation of Saudi laws in a way that damages the brand's reputation; engaging in fraudulent conduct in the operation of the franchised business; or infringes the franchisor's intellectual property rights during the validity of the franchise agreement; and any other reason the franchise agreement deems a legitimate valid reason for termination.

It should be noted that if the franchisor unlawfully terminates the agreement under Article 18 of the Franchise Law the franchisee will be entitled to implement the provisions of Article 20 paragraphs 1.a and 1.b of the Franchise Law. If the franchisor refuses to renew or extend the franchise agreement without a valid reason as specified in Article 15 (2, 3, 4, or 5) of the Franchise Law the franchisee will be entitled to implement the provisions of Article 20 paragraphs 1.a of the Franchise Law.

The Franchise Law imposes time limits, where a franchisor terminates the franchise agreement in violation of Article 18 of the Franchise Law, any claim for compensation must be filed within three years from the date of termination. After this period, the claim will no longer be heard (Article 21 paragraph 1).

Please also refer to our response to Question 3 for more details on the relevant provisions under the SFL concerning the franchisor's obligation to compensate the franchisee in cases of lawful termination or unjustified refusal to renew the franchise agreement.

Conversely, if the franchisee terminates the agreement in violation of the law and the franchisor suffers damage as a result, the franchisor may claim compensation, unless the franchise agreement states otherwise as per Article 20 paragraph 2 of the Franchise Law.

22. Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?

Further to the provisions of Article 18 of the Franchise Law stated in our response to question number 21, and Article 17 of the Franchise Law explained under question number 3 hereabove.

Termination conditions for a franchise agreement in KSA are governed by the Franchise Law. Article 16 addresses the expiry and termination of a franchise agreement, providing that it generally terminates upon the death, legal incapacity, or liquidation of a natural person franchisee, or upon the initiation of liquidation or dissolution of a corporate franchisee. Notably, the franchise agreement itself may stipulate alternative terms for termination or provide for the transfer of rights to heirs or third parties.

23. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

The Franchise Law does not expressly address e-commerce. The use of such rights depends on the terms of the franchise agreement. In practice, franchisors often seek to retain control over e-commerce channels, sometimes even in circumstances where practical implementation may be challenging, so as to centralize online sales to maintain brand consistency. There is no statutory right granted to the franchisee in this regard, and our response to Question 18 above contains further details. On the contrary, franchise agreements applied in KSA and in the model forms for the franchise agreements currently used by *Monsha'at* often prescribe the franchisor's right to reserve ownership of customer goodwill, client data, telephone numbers, websites, and other digital assets, thereby maintaining exclusive control over these aspects of the business, in particular, upon the termination or expiration of a franchise agreement. It should be noted that applying those rights in practice may not be easy, especially if the franchisor is a foreign company that does not have a legal entity established in KSA.

24. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

Since the early 2000s, multiple franchise committees have been formed in Jeddah, Riyadh, Makkah, and other cities of KSA. Additionally, a National Franchise Association was established a few years ago to regulate and support the development of the franchise industry in KSA, in particular, before the issuance of the SFL. However, from a practical perspective, these committees and associations have not been as active or effective as

expected, and their role in supporting the franchise industry and maintaining best practices in the Saudi market has not been notable.

It should be noted that joining franchise committees or the National Franchise Association in KSA is not mandatory under the SFL or required to conduct franchise business in KSA.

As mentioned in paragraph 5 of our Introductory Chapter above, *Monsha'at*, in cooperation with the Ministry, has established the Franchise Centre. The Franchise Centre has been active in organizing various activities, events, and policies aimed to develop the franchise environment and industry in KSA.

Furthermore, it is worth mentioning that the Franchise Centre has recently mandated that anyone wishing to provide franchise consultancy services in KSA must first obtain permission and a license from the Franchise Centre. Obtaining this license requires meeting several conditions, including completing exams and tests in franchising, such as a legal examination. This examination involves studying and completing a written test covering legal aspects of the SFL and franchising in general. We are honoured that our firm is handling the legal component of the syllabus for these examinations.

25. Are foreign franchisors treated differently to domestic franchisors? Does national law/regulation impose any debt/equity restrictions? Are there any restrictions on the capital structure of a company incorporated in your country with a foreign parent (thin capitalisation rules)?

In general, the restrictions applicable to all foreign companies and investors in KSA extend equally to franchising activities. Any company that is wholly or partially owned by a foreign investor in KSA is subject to the Saudi Foreign Investment Law (Regulations) issued pursuant to Royal Decree No. (M/1), dated 5-1-1421 *Hijri* corresponding to 10-4-2000 Gregorian calendar and its amendments (hereafter referred to as "Saudi Foreign Investment Law"). The competent regulatory authority in this regard is primarily the Ministry of Investment of KSA (MISA). Generally, the most stringent conditions on foreign ownership and control apply to trading and wholesale activities, while service-related activities tend to have fewer regulatory burdens and requirements.

In general, after a careful review of the SFL, it does not set out a specific chapter or conditions for international or

non-local franchises that differs from Saudi or local franchises.

A particularly debated issue concerns whether foreign entities are permitted to act as franchisees. In practice, this remains a complex and unsettled area, with differing interpretations on the permissibility of foreign companies operating as franchisees in the KSA. Notwithstanding this uncertainty, all other regulatory requirements applicable to foreign franchisors, including those relating to foreign investment, taxation (including Income tax, withholding tax and value added tax), and commercial activity apply equally within the franchising context. It is also worth noting that this area of law continues to evolve.

While the Franchise Law does not impose a requirement for the franchisor to be fully Saudi-owned, it does set certain conditions for franchising activities within the KSA. For instance, as per Article 5 paragraph 2 of the Franchise Law if a franchisor does not practice in KSA the franchised business on its own account, the master franchisee appointed by the franchisor, who has the right to sub-franchise, may not sub-franchise or offer the same until it (master franchise) or any other franchisee practices the franchised business in KSA for a period not less than one year.

It is important to highlight that under the SFL and the Saudi Foreign Investment Law, it is not a requirement for the franchisor to obtain an investment license from MISA in order to conduct franchise business within KSA.

Furthermore, if the franchisor is non-Saudi the Ministry for registration purposes requires the franchise agreement to be signed before a Notary Public, legalized and attested together with the FDD by the competent authorities ending with the Saudi Embassy (or apostilled) in the franchisor's home country.

26. Must the franchise agreement be governed by local law?

There is no provision in the SFL that prohibits a franchise agreement to be governed by a foreign law. Further the Ministry and Saudi Courts accept that the applicable law prescribed in a franchise agreement to be a foreign law.

Please review our detailed response to Question 9 above, which indicates that any franchise agreement implemented in KSA falls within the scope of the SFL, and accordingly, key mandatory provisions such as the registration of the franchise agreement, preparation and registration of the FDD, and the right to grant franchise rights under Article 5 of the Franchise Law will apply,

even if the agreement is governed by foreign law.

27. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

According to Article 25 of the Franchise Law, disputes arising from the franchise agreement or the application of the Franchise Law may be settled by alternative means, such as arbitration, mediation, and conciliation. The said Article does not restrict or prohibit parties from agreeing to refer disputes to Saudi courts, foreign courts, or arbitration seated inside or outside KSA. Accordingly, disputes arising from franchise relationships may be resolved either before the competent courts in KSA (Commercial Court), or through alternative means, such as arbitration, mediation or conciliation, whether conducted domestically or internationally, depending on the agreement between the parties. Therefore, it is acceptable before the Ministry and the Saudi courts for a franchise agreement to include a clause stating that disputes will be settled by foreign courts or through arbitration conducted outside KSA.

It is common practice in franchise agreements for franchisors to choose settling disputes related to a franchise agreement through courts or arbitration panels in their country, to safeguard their rights and guarantee judicial objectivity and neutrality. However, due to the difficulties in enforcing foreign judgments and arbitral awards in KSA as per the current prevailing Saudi laws, from our practical experience, it is essential to carefully peruse and consider choosing the dispute resolution mechanism related to or arising from a franchise agreement through foreign courts or arbitration to be conducted outside KSA.

Further, it is important to highlight that now as per Article 19 of the Commercial Courts Law, a claimant is required to serve a pre-action notice to the defendant outlining the subject matter of the dispute. Failure to do so may affect the claimant's ability to initiate proceedings before the Commercial Court. It is important to note that, in adjudicating such disputes, the court will apply the SFL, the relevant provisions of the franchise agreement, and, where the agreement or SFL is silent, the principles of *Shari'ah* and Saudi Commercial law will apply.

As mentioned in our Introductory Chapter above, the enactment of the new SFL reflects a clear legislative intent to support and protect the franchise sector overall.

To further this aim, a dedicated circuit within the Commercial Court has also been recently established to handle franchise disputes exclusively. This ensures that such matters are adjudicated by professionals, judges and members with specialized expertise in franchise law, reinforcing KSA's commitment to fostering and safeguarding the franchise industry.

28. Must the franchise agreement and disclosure documents be in the local language?

Please refer to our response to Question 3 above for further details. As noted, a signed franchise agreement must be submitted in Arabic or, if originally drafted in another language, accompanied by a certified Arabic translation prepared by a translator licensed in KSA. Similarly, the FDD relating to the agreement must also be submitted in Arabic or include a certified Arabic translation by a licensed translator, in accordance with the requirements of the SFL.

29. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

There is no specific requirement set out under the Franchise Law regarding electronic signature or a wet ink signature of a franchise agreement, merely, Article 11 paragraph 1 of the Franchise Law stated that a franchise agreement must in writing and signed by the parties.

Electronic signatures are generally acceptable in KSA. The legal framework governing electronic signatures is established under the Electronic Transactions Law, promulgated by Royal Decree No. M/18 dated 08/03/1428 *Hijri* corresponding to 26/03/2007 Gregorian calendar. This law regulates the use of electronic transactions and signatures, and provides the necessary

legal recognition and enforceability for electronically signed documents. Article 14 of the Electronic Transactions Law says that the electronic signature must be attributable to the person identified in the relevant digital certificate and the signature must have been provided by that person for the specific purpose outlined in the certificate. Additionally, the electronic transaction must remain unaltered after the signature has been applied. Therefore, in general, electronically signed documents are legally enforceable when these conditions are met and if an agreement that has been duly executed with a compliant electronic signature is treated as an original and does not require a corresponding wet-ink version.

As stated beforehand, if a franchise agreement is signed by a foreign franchisor, the Ministry requires the franchise agreement to be signed before a Notary Public, legalized and attested together with the FDD by the competent authorities ending with the Saudi Embassy (or apostilled) in the franchisor's home country. Thus, in the latter case, it is assumed that the franchise agreement shall be signed in wet ink.

30. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

In line with the objectives of Saudi Vision 2030, we anticipate that regulatory and commercial developments over the next year are likely to make the franchise environment more favourable for foreign investors and in general more organized and regulated in KSA to encourage potential franchisors to franchise their businesses and potential franchisees to invest in franchise projects, and ultimately improve and support the franchise sector and industry overall. It is expected that the rules governing franchising will become more inclusive and streamlined, facilitating easier entry and operation for foreign franchisors and franchisees in KSA.

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