MIDDLE EAST

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Franchising in the Middle East

By Joycia Young

Franchising continues to be the preferred model by which international businesses can quickly expand into the rapidly developing economies in the Middle East, without the risk and significant capital investment traditionally associated with directly establishing company-owned stores. Similarly, the franchise model is also appealing for newer regional businesses that are based in only one or two countries in the Middle East and that wish to extend their footprint either across the six states of the Gulf Co-operation Council (GCC) – the United Arab Emirates, Bahrain, Qatar, Kuwait, Oman and Saudi Arabia – or worldwide.

With a 300 million strong consumer base in the Middle East and North Africa, the region continues to present remarkable opportunities in the retail sector. This is clear in the Kingdom of Saudi Arabia, for instance, where nearly 40 percent of the country's 27 million people are below fourteen years of age. Dubai in the United Arab Emirates (UAE) remains the preferred base for franchised operations in the region, given its tax status, the comparative stability of its legal and regulatory systems and it openness to foreign investment. The franchise market in the UAE is dominated by US brands. In recent times there have also been entries from Asian franchised brands such as Jollibee and Chow King from the Philippines and Malaysia's MarryBrown, but there remains enormous potential for more Asian brands to gain traction in the market.

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Given the popularity of franchising in the Middle East region, the franchisee market is dominated by a small number of players. For example, the Kuwait-based Alshaya Group has successfully brought more than 55 international retail concepts to the Middle East and currently operates more than 1,800 franchise stores in fifteen countries. While the experience of leading retailers such as the Alshaya Group facilitates the franchisor's search, their dominance can easily shift bargaining power.

Most countries in the Middle East region do not have franchise-specific legislation. However, franchise arrangements may be captured by commercial agency laws which essentially provide significant statutory protection to franchisees and local agents and may displace the terms of a written agreement between the parties. The GCC states are Islamic nations and many of the principles of Shari'a law apply to commercial transactions. In addition, the enforcement of legal rights is difficult as there is no concept of binding legal precedent and a limited ability to obtain injunctions. As a result, it is absolutely crucial for franchisors to conduct legal and commercial due diligence on prospective business partners and to ensure that the agreements are reviewed by lawyers familiar with local laws and their implementation.

For franchisors, trade marks and trade names are at the forefront of brand protection. Commercial expediency is often the reason why franchisors might forget the fundamentals of franchising and allow a franchisee to register trade marks and trade names before the agreements are signed. This practice is risky, even assuming the franchise relationship is later formalised and documented. In many GCC states, trade marks cannot be assigned until they are registered and international brand owners often struggle to wrest control of a registered trade name away from a former business partner based on their contractual rights, even if they are able to rely on famous trade mark rights elsewhere in the world.

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