

Franchising in Tunisia

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I. Tunisia: essential data

Located in northern Africa, Tunisia is a state, which sits in the north east of Maghreb; 162,155 km² of its territory are limited on the west by Algeria, on the southeast by Libya and on the north by the Mediterranean Sea. The country has a 1,300 km long coastline and is separated from Sicily by 140 km. 99% of the Tunisian population is Muslim, and the country is also populated by small Jewish and Christian communities. Tunisia appears as one of the most westernized countries of this region, and the practice of Islam is moderate. The country enjoys a dual culture thanks to a widespread use of the French language and an easy access to the western media, whose impact tends however to diminish. In 2009, Tunisia counted 10.4 million inhabitants. The position of women in the society is an exception in this region. Women's rights are almost the same as men's.

Independent since 1956, Tunisia is a Republic with a presidential regime. It pursues an economic and social policy characterized by the articulation of progressive liberalization and economic planning. This system has a strong political and social stability and the country enjoys economic performance, which make Tunisia one of the most developed countries in Africa and the Mediterranean region.

II. Economy in Tunisia and the retail trade

In spite of the difficult international situation, Tunisia registered in 2009 an economic growth of 3.1%, compared to 4.6% in 2008. This rate is expected to reach 4% in 2010 and 4.5% in 2011. However, in the next years the country might have to face the consequences of the fall of the European demand, which could have a damaging impact on the production and exports of automobile components and clothing goods. The main challenge for the Tunisian economy is to reach a sufficient growth level in order to provide jobs for young graduates, whose unemployment rate stood at 19% in 2008.

On the international level, Tunisia has signed the founding agreements of the World Trade Organization such as the GATT and the General Agreement on Trade in Services. On a European level, Tunisia joined in 1985 the Barcelona Euromed process through a partnership agreement with the European Union. This process aims to create a free trade area by the year 2010 between the EU and all Mediterranean countries parties to this agreement. On the regional level, Tunisia signed in 2004 with Egypt, Jordan and Morocco the agreement of Agadir, which plans to abolish tariffs on industrial, agricultural produce and grocery.

In Tunisia, the concept of franchising emerged in the Eighties during the important movement of liberalization of the economy and the opening-up to international trade.

However, franchising, which was only governed by contract law, did not enjoy a specific legal regime before the recent promulgation of act n° 2009-69 on 08/12/2009 (August 12th, 2009). Indeed, franchising had no official recognition and only existed under various forms and names (trademark licences, partnership agreements, technical support agreement...). This is mainly due to the fact that franchisees located in Tunisia were not legally authorized to pay royalties to foreign franchisors, as such payments were deemed as capital evasion, and were thus considered as a breach of the currency change regulation. Besides, access to distribution, wholesale, retail and non-tourist catering activities, is limited to foreigners because they have to obtain a special authorization (so called "business card") card from the Trade Ministry, which, is rarely issued. Such regulations could explain why

McDonald's never managed to enter the Tunisian market.

III. The new regulation of franchising in Tunisia

Act n°2009-69, passed on August 12th, 2009, relating to retailing, grants franchising an official recognition and status. Chapter V of the Act is dedicated to franchising and only contains four articles, which set out general principles and refer to application decrees. The only legally restrictive obligations are those who require the execution of a written contract and state that a disclosure document must be provided to prospective franchisees 20 days before the execution of any agreement. However, the law does not set out the contents of said disclosure document. Furthermore, the new act does not address the issue pertaining to exclusivity undertakings, although such provisions are one of the cornerstones of franchising. Besides, it has to be noted that although the act deals with franchising, it only governs retail franchising as the law concerns the distribution trade.

Another question concerns the scope of the new law, especially in respect of foreign franchising businesses. Indeed, the law remains silent about the nationality of the parties to a franchise agreement. This may be interpreted as meaning that foreigners are not exempted from the obligation to obtain a business card as required by decree n°61-14 of August 30th 1961. According to that rule, every non Tunisian person, corporation, company or entity, must seek and obtain from the Trade Ministry an authorization, commonly called "business card", prior to the beginning of any business activity. The same rule applies to any every person of Tunisian nationality wishing to represent a foreign trademark in Tunisia.

Therefore, it is necessary to await the implementation of the corresponding decrees to enforce the new act in order to ascertain the existence of a real legal system of franchising in Tunisia. Such decrees are expected to be issued very shortly.

In any case, this new act must be highly welcomed as its represents the outcome of a process which started as early as the Nineties. This new law states the new approach of the Tunisian authorities towards franchising, and does undoubtedly aim at encouraging this kind of trade practice that has considerably developed elsewhere in the world.

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