

Franchising in Lebanon

Lebanon has a fast-growing economy. Its private sector contributes to over 75% of the aggregate demand, with a large banking sector supporting it. The Lebanese economy is service-oriented (amounting to over 70% of its economy), the main growth sectors include construction, tourism and financial services. There are no restrictions on foreign exchange and capital movement. Lebanon is in fact largely oriented towards foreign exchanges: the limited size of the Lebanese market and poor natural resources endowment imposing a liberal commercial policy. The Lebanese economy is thus characterized by a high level of importations and a substantial trade deficit, these deficits being counterbalanced by foreign income earnings.

I. The Lebanese Economy

Lebanon has the highest GDP per inhabitant in the Middle-East after Israel, the Lebanese average income levels has been classified by the World Bank as "Upper-middle income".

After having attained an average GDP growth of 8% a year from 2006 to 2011, the Lebanese GDP fluctuates since 2011 between 1.5 and 2.5% a year: the geopolitical situation, and in particular the conflict between Israel and the Hezbollah in 2006, regional political instability such as the Syrian conflict which has led to a mass influx of Syrian refugees, and Lebanon's current political instability (Lebanon has no President of the Republic since May 2014) have affected directly Lebanon's economy. However, despite this situation, the Lebanese private sector remains resilient to these political crisis, and even though the Lebanese economy has slowed down, the number of unpaid debts remains very small.

Since 2007, foreign trade is in constant growth. Importations in Lebanon in 2013 have amounted to 21.2 billion USD, and exportation to 3.9 billion USD. The European Union is Lebanon's first trading partner, and France is Lebanon's second-ranked supplier after China, with a market share of 8.5%.

As for investments in Lebanon, foreign direct investments have amounted to over 2.8 billion USD in 2013, bringing the overall stock of foreign direct investments in Lebanon to over 56 billion USD. Aside from Arabic countries, France is one of the first investors in Lebanon, the total stock of French direct investments amounting in 2013 to 368 million euros.

Lebanon has signed an Association Agreement with the European Union in June 2002, which entered into force in April 2006, creating a free trade zone for industrial and agricultural products, services and investments.

II. Franchising in Lebanon

Most international retailers and restaurant chains can be found in Lebanon today. Lebanon constitutes a historical bridge between the occidental and the oriental worlds and cultures, and often constitutes an excellent access point in the Middle-East, and in particular for French companies. The particularities of Lebanon reside also in the existence of the Lebanese diaspora, with over 8 million Lebanese migrants who expect finding the brands and restaurants one has access to in their respective countries when returning to their country of origin.

It is also worth noting that Lebanon is the only country in the Middle-East which creates and exports franchised concepts throughout the Arabic world.

Franchising in Lebanon has known a significant development these last fifteen years. In 2006, the Lebanese Franchise Association was created. It counts today 138 members (which amounts to 20% of the sector professionals). A partnership agreement between the French Franchise Federation and the Lebanese Franchise Association was concluded on 7 February 2007, under which the French Franchise Federation committed to

bringing its support and its experience to the franchise sector in Lebanon

The number of franchisees has been multiplied by 4.5 since 2006. According to the Lebanese Franchise Association, the total number of professionals in the franchising sector as of March 2014 has been assessed to the number of 745, divided into 445 franchisee companies and 300 franchisors operating in the Near and Middle-East and in Africa.

Companies in this sector represent a total of 6% of the companies operating in Lebanon, with a total of 1,100 concepts and 5,500 points of sale. 44% of franchisors are European, 38% American and Canadian, 13% Lebanese, 9% Asian and 4% from the Gulf countries.

Most franchised concepts in Lebanon originate from Lebanese investors, and many Lebanese franchisors are also master franchisees or franchisees of European brands. 51% of the Lebanese franchisors are also franchisees for foreign brands and 38% of them export their own concepts in the Near and Middle-East. Franchises in Lebanon cover most sectors: restaurants (22%), hotels, the wellness sector and banking (13%), the jewelry sector (13%), retail (13%), fast-foods (11%), cafés (9%) and the sector of chocolates (9%).

The franchise sector represents a turnover of 1.5 billion USD, which amounts to 4% of the GDP. This sector generates over 100,000 jobs, which represents 9% of the total workers in Lebanon.

III. The law regarding franchising in Lebanon

A. Lebanon has no specific legislation regarding franchising

Lebanese law does not provide for specific regulations regarding franchising, and therefore does not provide with a specific definition of franchising and of franchise agreements.

Lebanon has however enacted specific regulations regarding commercial agencies and exclusive distribution, with the Decree-Law No. 34/67, and due to the broad definition given to commercial agencies and the common economic role they share with franchising, franchise agreements may be qualified by Lebanese Courts as commercial agency agreements.

The Decree-Law No. 34/67 provides for extensive protection and mandatory rules so as to safeguard local commercial agents. Under Article 1§1, a commercial agent is defined as:

“the mandatory who undertakes, within the framework of his usual and independent profession and without being bound by an employment contract, any necessary negotiations of sale and purchase, hire or provision of services, and if need be, carries on such activity in the name of producers or merchants and for their account.”

Article 1§2 provides for an extensive definition of commercial agents as follows:

“The merchant who, on his own account, sells what he purchases according to a contract which gives him the quality of sole and exclusive representative or distributor, shall be considered as a commercial agent.”

Exclusive distributors are therefore considered as commercial agents under this Decree-Law, and are subject in consequence to the following mandatory rules:

1- Right for compensation based on wrongful termination by the principal or by its refusal to renew the agreement upon its expiration;

2- The right to stop the import of products object of the local commercial agent's representation in the territory, or the right to request the seizure of such products until the principal executes any final judgments issued against him under the Decree-Law.

3- The mandatory application of Lebanese law and jurisdiction of Lebanese Courts, notwithstanding any contractual choice of law and of forum, which would be considered as void.

The main question for foreign franchisors is therefore whether or not the principles of freedom of trade and of contract would apply to their franchise agreements and whether or not a contractual choice of law and of forum would be enforceable in Lebanon. Local merchants may under such Decree-Law attempt to base any claim on the Decree-Law when their contractual relationship permits any likeness with commercial agencies and exclusive distributors.

However, the Beirut Court of Appeal, in a Decision No. 1106/2009 dated 30 July 2009, defined franchise agreements as follows:

- 1- The grant of a right to use a trademark and/or a trade name in connection with the manufacturing and/or the distribution of products and/or services;
- 2- The transfer of a certain know-how from the franchisor to the franchisee;
- 3- Cooperation between the parties.

Franchise agreements should therefore be excluded from the scope of the Decree-Law.

B. The Code of Ethics enacted by the Lebanese Franchise Association

The Lebanese Franchise Association has enacted a Code of Ethics under which it is provided that its members are subject, in particular, to a disclosure obligation as follows:

"In order to allow prospective Individual Franchisees to enter into a binding document with full knowledge, they shall be given a copy of the present Code of Ethics as well as full and accurate written disclosure of all information material to the franchisee relationship, within a reasonable time prior to the execution of these binding documents."

The Code of Ethics provides also with the essential minimum terms which must be stipulated in a franchise agreement as well as an obligation to draft or to have translated such agreements as well as all agreements in connection with the franchise agreement into *"the official language of the country of the Individual Franchisee is established in"*.

This Code applies to the Franchisor/Franchisee and to the Master Franchisee/Franchisee relationships but not to the Franchisor/Master Franchisee relationship.

C. As for Trademarks

Registration of Trademark in Lebanon is made in the Intellectual Property Bureau which depends on the Ministry of Economy.

Marc Berbérien, Avocat