

Obligations of the Franchisor (Licensor) in the Franchise Agreement: A Comparative Study of Iraqi, Iranian, and Egyptian Laws

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Abstract

This research examines the obligations of the franchisor (licensor) in a franchise agreement, clarifying their nature and content under Iraqi, Iranian, and Egyptian law. It focuses on the obligation to transfer technical knowledge and training, provide technical and marketing support, and maintain and protect the confidentiality of technical knowledge. The research also explores the relationship between these obligations and trademark licensing. The importance of this research lies in clarifying the legal position of the franchisor and the limits of their responsibility for fulfilling the obligations inherent in a franchise agreement, particularly given the varying legal frameworks governing this type of contract in the systems under comparison. The research employs a descriptive-analytical approach and a comparative methodology, analyzing and comparing relevant legal texts in Iraq, Iran, and Egypt, and drawing upon relevant jurisprudential and judicial trends. The research concluded that the grantor's obligations are not limited to granting the right to use the trademark, but extend to the transfer of technical knowledge, the provision of technical and marketing support, and the protection of confidential information. The determination of these obligations in Iraq and Iran depends more on the agreement and general rules, while in Egypt there are more detailed provisions in some aspects related to trademarks, technology transfer, and the protection of undisclosed information. It also showed that the grantor's liability for breach does not arise merely from the lack of profits or commercial success, but rather requires proof of the obligation, its breach, the occurrence of damage, and the establishment of a causal relationship.

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1. Introduction

The rapid development of commercial activity and the increasing need for modern methods of business expansion have led to the emergence of franchise agreements, which have become an important instrument for market penetration and for

benefiting from the technical and managerial expertise and established reputation of successful businesses. A franchise agreement is based on a contractual relationship between the franchisor (or licensor) and the franchisee, whereby the franchisor undertakes to enable the franchisee to use a range of rights and assets associated with the business, particularly the trademark, trade name, technical know-how, and operational system. The franchisor also provides the necessary training and technical or commercial assistance, as agreed upon by the parties, in exchange for financial and other obligations borne by the franchisee. The distinctive nature of this contract lies in its multiple components and extensive legal and commercial implications. Consequently, defining the franchisor's obligations constitutes a fundamental aspect of the successful implementation of the contractual relationship and the achievement of its intended purpose. This is particularly important given the franchisor's essential role in transferring the business resources and expertise necessary for continuity and for maintaining a specified level of quality.

Therefore, the research problem arises from the fact that the franchise agreement is a relatively modern contractual arrangement whose legal framework continues to raise numerous issues concerning the nature and scope of the franchisor's obligations and the consequences of breaching them, particularly in the absence of a comprehensive and independent legislative framework governing franchise agreements in the legal systems under comparison. This raises the question of the extent to which general rules of contract law and specific provisions governing trademarks, technology transfer, commercial agency, and other related areas can be relied upon to determine the franchisor's obligations, and whether such rules are sufficient to address the obligations arising from the particular nature of the franchise agreement.

The importance of this research stems from the significance of franchise agreements in commercial activity and their potential to facilitate business expansion and the transfer of expertise, technical know-how, and trademarks into new markets. Moreover, the success of these agreements is closely linked to the franchisor's fulfillment of its contractual obligations. The research also has legal significance because it seeks to clarify the legal framework governing these obligations in light of the disparity among relevant rules and legislative provisions. The study acquires additional importance from its comparative perspective, as it examines the approaches adopted under Iraqi, Iranian, and Egyptian law with respect to the franchisor's obligations.

The research aims to clarify the meaning of the franchisor or licensor, determine the franchisor's legal status under the franchise agreement, and identify the legal basis of the obligations imposed upon the franchisor under Iraqi, Iranian, and Egyptian law. It also seeks to identify the principal obligations imposed on the franchisor and analyze their content and scope, whether these obligations relate to enabling the franchisee to use the trademark, technical know-how, and business system, or to providing training, technical and commercial assistance, and other obligations arising from the nature of the contract or the agreement between the parties.

The research adopts both the descriptive-analytical and comparative approaches in order to identify points of convergence and divergence among the three legal systems concerning the determination of the franchisor's obligations and the legal consequences of breaching them. This approach is intended to assess the adequacy of the existing legal treatment and to propose measures capable of promoting greater clarity and stability in legal relationships arising from franchise agreements.

2. The Obligation to Transfer Technical Know-How and Provide Training

Under a franchise agreement, the franchisor's obligation to transfer technical know-how and provide training constitutes one of the fundamental obligations arising from the contract. The success of the commercial relationship between the franchisor and the franchisee depends substantially on the level of technical knowledge transferred and the quality of the training received by the franchisee. The franchisor is the primary source of such technical know-how and is therefore required to transfer the expertise and techniques necessary to ensure the successful operation of the business and the standardization of practices throughout the franchise network.

2.1. Conditions Governing the Transfer of Technical Know-How and Training

The franchisor undertakes to transfer the technical know-how relating to the business system implemented within the franchise framework, including production techniques, operating procedures, and managerial methods. This obligation constitutes one of the principal features distinguishing a franchise agreement from other commercial contracts. The technical

know-how transferred by the franchisor enables the franchisee to manage the business effectively and in a manner consistent with the operations of other units within the franchise network (Al-Mawla, 2003).

Training is likewise a fundamental obligation that the franchisor must fulfill. Such training encompasses all aspects of business management, ranging from daily operational procedures to specialized skills in customer service, human resource management, inventory management, and financial evaluation. It also includes instruction concerning the use of any new technologies or systems introduced into the business (El Rouby, 2013).

This training is intended to ensure that the franchisee possesses the skills and knowledge necessary to carry out business operations effectively, thereby improving the overall performance of the franchise unit and reducing operational errors arising from insufficient experience or knowledge.

Training generally includes an initial stage associated with the commencement of business operations and may also involve periodic training sessions designed to accommodate developments or modifications in the business system. The franchisor should provide detailed training materials, workshops, and in-person or remote training courses, depending on the needs of the franchisee.

El-Hadidi addressed the legal framework governing franchise agreements. In light of the competing approaches, the researcher adopts the third approach because it is more comprehensive and encompasses the essential characteristics required of technical know-how. These include that the know-how must be identifiable and consistent with the contractual terms, original and of appropriate quality, transferable, substantial, confidential, and tested or proven. Furthermore, an important aspect of the obligation to transfer technical know-how concerns the provision to the franchisee of any subsequent improvements. Regardless of the nature of the breach, contractual liability does not arise unless the breach causes substantial harm, particularly where it deprives the franchisee of the benefit and objective sought through the agreement (El-Hadidi, 2000).

First – Breach of the Franchisor’s Obligation to Provide Conforming Technical Know-How: The franchisor must provide the franchisee with technical know-how that fully conforms to what was agreed upon in the contract, whether such knowledge is technical, commercial, financial, or economic in nature. Accordingly, the franchisor is obligated to provide complete and consistent information.

This obligation on the part of the franchisor is an obligation to achieve a specified result rather than merely an obligation to exercise due care. The required result is the provision of a complete explanation and clear description through all agreed means, whether written, oral, or provided through electronic media, visual materials, or audio materials. Consequently, failure to provide conforming technical know-how gives rise to the franchisor’s contractual liability. For example, substituting instructional manuals for agreed worker-training courses, or replacing instructional videos with illustrated booklets, may constitute non-conforming performance. With respect to content, any alteration in the technical know-how may affect the quality of the product and consequently harm the franchisee because the knowledge supplied does not conform to the contractual agreement. Thus, failure to provide conforming technical know-how, whether in form or substance, may adversely affect product quality and cause damage to the franchisee. Accordingly, the franchisor bears contractual liability for breaching the obligation to provide technical know-how in conformity with the contract. Egyptian commercial legislation recognizes this principle by requiring the supplier to guarantee that the technology and accompanying documentation conform to the conditions specified in the contract unless otherwise agreed in writing (Al-Najjar, 2007).

Such conduct constitutes a breach of the obligation of conformity, thereby entitling the franchisee to seek termination of the contract where the breach is sufficiently serious. In this context, the reasoning of a decision issued by the Lyon Court of Appeal in France on February 26, 1993, indicated that the advice provided had frequently been inappropriate and had failed to result in any effective transfer of technical know-how, particularly concerning the acquisition of capital, selection of a suitable business location, and avoidance of competition.

With respect to Iraqi law, which does not regulate franchise agreements through a clear and specific legislative framework, reliance is generally placed on the Iraqi Civil Code No. 40 of 1951. Articles 910 and 911 address non-compete obligations, particularly Article 911, which deals with certain consequences of breach and permits claims for compensation and the removal of violations in specified circumstances. The provisions also provide protection to the other party where a restrictive condition is arbitrary, absolute, or disproportionate to the purpose for which it was imposed. Iranian law likewise lacks a specific and detailed statutory framework governing this matter. Franchise agreements are generally subject to the general rules of contract

law, especially the principle of freedom of contract embodied in Article 10 of the Iranian Civil Code. Accordingly, the parties may agree, before concluding the contract, upon a non-compete clause applicable in the event of termination or in other circumstances, provided that the agreement does not violate public order or mandatory legal rules. Iranian rules concerning commercial agency further clarify that restrictive clauses should be limited in terms of the type of goods, geographical area, and services involved; otherwise, they may be considered invalid (Al-Otaibi, 2008). The Egyptian legislature has moved more explicitly toward recognizing non-compete clauses in the context of proposed legislation regulating commercial franchises, including obligations imposed on franchisees not to compete during the term of the agreement and to preserve the confidentiality of technical secrets.

2.2. Breach of the Obligation to Ensure the Transferability of Technical Know-How

The franchisor is obligated to transfer the constituent elements of technical know-how to the franchisee. Because such know-how constitutes an intangible asset, it must be capable of being transferred. Transferability exists where the knowledge can be conveyed through documents, papers, maps, technical procedures, instructions, guidelines, installations, and specifications enabling the franchisee to understand and apply the transferred knowledge.

This characteristic distinguishes technical know-how from personal abilities such as manual dexterity or individual talent, which cannot be transferred from one undertaking to another independently of the individual possessing them. Technical know-how may be conveyed orally or in writing through detailed documents describing the relevant knowledge. Such documents may take the form of manuals containing instructions, advice, recommendations, explanations, and illustrations and are sometimes referred to in franchise practice as the “Bible” or operating manual (El-Hadidi, 2000).

As stated in a ruling issued by the Orléans Court in France on September 8, 1997, the document delivered to the franchisee was regarded as a practical instrument for transferring technical information.

Accordingly, technical know-how should be capable of transfer and preferably be recorded in writing to facilitate access and consultation whenever necessary. It should also be clear, comprehensible, and, where appropriate, supported by drawings, illustrations, or instructional films.

The language used should be understandable to the franchisee, particularly where the franchise operates in a multilingual jurisdiction. Moreover, the instructions, advice, and warnings derived from the franchisor’s previous experience should be communicated to the franchisee; otherwise, the franchisor may fail to fulfill its contractual obligations and may consequently incur liability (El-Hadidi, 2000).

Third – Breach of the Franchisor’s Fundamental Obligation Concerning the Substantial Nature of Technical Know-How: The substantial nature of technical know-how requires that it provide the franchisee with additional value by conferring a competitive advantage over other businesses operating in the same field. Such an advantage may otherwise be obtainable only through considerable expenditure of time, effort, and financial resources. The requirement need not be absolute and may instead be relative, as is also the case with confidentiality.

Several judicial decisions have emphasized the necessity of a substantive understanding of know-how. One example is a decision of the Paris Court of Appeal dated June 7, 1990, concerning a franchise agreement under which the franchisee sought termination on the ground that the franchisor had failed to fulfill its obligations or provide original and specific know-how. The court accepted the franchisee’s claim, reasoning that a franchise agreement presupposes the franchisor’s possession of specific, original, and distinctive know-how from which the franchisee derives a benefit, and that an agreement lacking such knowledge cannot properly be characterized as a franchise agreement (Jalloul, 2001).

This decision demonstrates that the franchisor had breached an obligation to achieve a specific result, namely, the provision of substantial technical know-how. The information supplied in the commercial, accounting, and informational fields did not satisfy the standard of substantial know-how and therefore constituted a breach of contract. The franchisee was consequently entitled to seek termination of the contract and compensation. Judicial determinations of this type frequently rely on experts possessing practical judicial experience and knowledge of intellectual property rights because judges may be unable to verify highly technical matters directly. Procedural legislation generally permits courts to seek assistance from such experts. Expert reports may also be subject to challenge before the competent court. In such cases, failure to establish that the technical know-

how provides meaningful added value and a competitive advantage may support a finding that the franchisor has breached its contractual obligation and incurred contractual liability.

With respect to the franchisor's breach of the guarantee concerning technical know-how, such a guarantee means that the transferred knowledge should enable the undertaking to produce goods or provide services that are distinguishable from those of competing businesses operating in the same sector. This should not be confused with the originality requirement applicable to patents, which concerns the existence of an inventive concept involving an advancement over existing technology. Patent novelty is assessed against knowledge already publicly available before the patent application date, whether disclosed in writing, orally, or through other means (Falah, 2015).

One judicial decision concerning an appeal before the Dijon Court on October 10, 1990, held that the franchisor should not necessarily be considered in breach of the obligation concerning the originality of technical know-how where one of the constituent elements of the know-how possesses sufficient originality and quality to influence the overall character of the know-how, provided that this element is effective in achieving the intended objective and confers the required degree of originality and quality upon the system.

An American court likewise held that a technical know-how agreement may be invalid where a defect affects the subject matter of the contract, including where the purported know-how completely lacks novelty.

The Paris Court of Appeal also held that a franchise agreement requires the franchisor to provide the franchisee with means and services that are new to the franchisee and that are specific and identifiable. Failure to satisfy this obligation by providing superficial statements that add nothing new to the franchisee may result in the legal recharacterization of the agreement as a commercial agency arrangement rather than a franchise agreement (Al-Suleis, 2020).

The French Court of Cassation likewise held on May 30, 1989, that failure by the franchisee to receive any new or innovative knowledge during performance of the contract could result in the agreement being regarded as ineffective from the outset where the agreement lacked serious and substantive know-how capable of providing the franchisee with a competitive advantage.

The French Court of Cassation has also considered the relationship between tested know-how and contractual validity. A franchisee cannot necessarily seek annulment merely because the commercial model is not absolutely unprecedented. Nevertheless, the franchisor is generally expected to provide a model that has been sufficiently tested and proven where successful replication of the franchisor's business concept forms a central element of the contractual undertaking. If the franchisor undertakes an obligation to reproduce an established business system, the effectiveness of the transferred model must therefore be supported by adequate prior experience (Al-Najjar, 2007).

However, if the franchisee knowingly undertakes a pilot project that has not yet been sufficiently tested by the franchisor and has not had adequate time to demonstrate its commercial viability, liability must be assessed in light of the parties' knowledge of the experimental nature of the project. In one case, a contract was concluded in 1985 between a franchisor operating in the restaurant sector and a franchisee that agreed to operate the first unit of a new restaurant concept. Approximately one year after opening, the restaurant sustained substantial losses, and the franchisee sought compensation on the basis of contractual liability.

A court in Rouen, France, rejected the franchisee's claim after finding that the franchisor had demonstrated genuine technical expertise in the restaurant sector and that the franchisee had knowingly agreed to participate in a pilot project designed to test a new concept. The court reasoned that technical know-how need not be absolutely unknown to other undertakings. Thus, absolute novelty is not necessarily a prerequisite to validity. Know-how possessed by more than one business may still constitute the subject matter of a valid agreement where its transfer enables the contractual objective to be achieved and provides the franchisee with the intended benefit (Al-Bashtawi, 2008).

Courts frequently associate originality with the overall quality of technical know-how and its various components. Where sufficient originality is absent, the know-how may be considered defective or incapable of justifying the contractual consideration. The assessment of originality is generally left to the trial judge, who must determine whether the relevant know-how possesses distinctive characteristics and whether it is already generally known within the relevant commercial or industrial sector.

If technical know-how lacks the degree of innovation required under the agreement, this may constitute a fundamental breach of the obligation to transfer original technical know-how. In this context, a French judicial decision issued in 1989 found

that the franchisor had failed to establish the originality and innovative character of a particular business method, thereby affecting the validity of the franchise arrangement.

The requirement of confidentiality should likewise be understood relatively rather than absolutely. Confidentiality may arise from a new combination of previously known elements, and several undertakings may participate in developing particular knowledge without necessarily destroying its confidential character (Inoujal, 2006).

A decision of the French Court of Cassation dated April 28, 1978, clarified the relative character of confidentiality. In a case where the plaintiff sought annulment of a contract on the ground that technical know-how was not confidential because some professionals were already familiar with it, the court reasoned that it was immaterial whether several businesses possessed the same technical knowledge, provided that the knowledge was beneficial to the franchisee. For technical know-how to qualify as confidential, it is sufficient that it is not generally known to persons to whom it has not been communicated and is not readily available in the public domain.

This decision indicates that the franchisor's obligation is to achieve a result, namely, the transfer of confidential technical know-how. The franchisor does not breach this obligation merely because the knowledge is known to certain other businesses, provided that it remains unavailable to the franchisee without substantial effort or expense. Confidentiality is therefore interpreted in a relative sense, based partly on whether the particular franchisee could ordinarily obtain the information independently.

Sixth – Breach of the Obligation That Technical Know-How Be Tried and Tested: The requirement that technical know-how be “tried and tested” reflects the principle that such knowledge should derive from the franchisor's practical experience and should have been subjected to actual application and testing (Kokaz, 2004).

3. The Obligation to Provide Technical and Marketing Support

Technical and marketing support constitutes a vital obligation of the franchisor and contributes directly to the success and continuity of the franchise relationship. The franchisor must provide such support throughout the term of the franchise agreement to facilitate smooth business operations and the effective achievement of commercial objectives. This includes technical support relating to technology and operational processes, as well as marketing support aimed at promoting the brand and increasing demand for the relevant goods or services.

3.1. Conditions Governing Technical and Marketing Support

Technical support constitutes a fundamental element of the franchise agreement because the franchisor undertakes to provide assistance when technical or operational problems arise. Such support may include maintenance and repair services in relation to equipment or technological systems that malfunction, including inventory-management or accounting systems, as well as assistance in resolving problems encountered by the franchisee while using these systems.

Technical support may also include technical consultation where the franchisee seeks to improve operational processes or introduce new technologies in response to market developments. The franchisor may further be expected to provide updates to the technical systems used in daily operations where significant technological developments materially affect the efficiency of business activities.

Marketing Support: Marketing support constitutes another important aspect of the franchise relationship. The franchisor is expected to provide marketing tools and resources that assist the franchisee in developing brand awareness and increasing demand for the products or services offered. Such support may include ready-made advertising campaigns, promotional materials, and marketing initiatives designed for specific occasions or seasons.

Marketing support may also involve guidance concerning the implementation of local marketing strategies, including social-media campaigns, search-engine optimization, and the selection of appropriate channels for brand promotion. Such support may further include training the franchisee's marketing personnel to ensure that marketing activities remain consistent with brand standards.

In addition, the marketing support provided by the franchisor may involve contributing to the costs of major advertising campaigns or assisting in coordinating relationships with media outlets and businesses involved in brand promotion. The

franchisor may be expected to provide such support on a continuing basis in order to strengthen the brand's market presence and facilitate the achievement of its commercial objectives.

The issue may be summarized in the following principles. First, the creator of a proprietary industrial process possesses legally protected rights in that process and may therefore seek protection against unauthorized use or disclosure of confidential technical information obtained within a relationship of trust. Second, the owner may transfer or assign rights relating to the industrial secret, in which case the rights necessary to protect the secret may also pass to the transferee (Issa, 1993).

This principle demonstrates that legal protection of technical know-how may recognize proprietary interests in such knowledge and permit its holder to transfer the know-how while also seeking legal protection against persons who acquire or disclose it in breach of a relationship of trust.

One legal application involved a case in which an employee provided geological maps, regarded as technical know-how concerning potential oil-exploration sites, to a competing business in exchange for payment. In another case, an employee who had learned the confidential process for developing a new product left his employment and joined a competitor. Although he did not directly disclose the secret, he assisted the competitor in identifying errors in its attempts to analyze the product, thereby facilitating successful replication (Al-Tayyar, 1999).

When compensation is awarded for breach of confidentiality, courts generally assess the damage sustained by the injured party in accordance with general principles of civil liability. Compensation may also be accompanied by preventive or injunctive measures designed to restrain further unfair competition or unauthorized disclosure.

Iraqi law does not independently regulate franchise agreements, and Iraqi Commercial Law No. 30 of 1984 does not establish a comprehensive framework governing franchising. Nevertheless, rules relating to the protection of undisclosed commercial information recognize the commercial value and confidential character of such information and require appropriate measures to safeguard it.

Under Egyptian law, undisclosed information is protected within the intellectual property regime, which recognizes confidentiality, commercial value, and the obligation to adopt necessary protective measures. Unauthorized disclosure may therefore constitute an unlawful act and, depending on the circumstances, an act of unfair competition.

Under Iranian law, rules governing industrial property likewise recognize the concept of trade secrets and regulate unauthorized acquisition and disclosure. Such rules also permit the transfer of trade secrets and the conclusion of confidentiality agreements with persons to whom such information is disclosed (Misqawi, 2012).

3.2. Disclosure of Confidential Technical Know-How in Breach of a Legal Obligation

In the United States, intellectual property, including trade secrets, may receive protection as a form of private property. Legal rules governing property and confidential information therefore support the principle that unauthorized interference with protected technical information may give rise to compensation where the required elements of liability are satisfied (Misqawi, 2012).

Principles concerning liability for unauthorized disclosure or use of trade secrets recognize that a person who improperly discloses or uses another person's confidential information may incur liability where the information was acquired by unlawful means or where its use or disclosure violates a legally protected relationship. Several principles may be derived from this approach:

First – the unlawful acquisition or use of secrets.

Second – breach of a relationship of trust.

Third – the possible liability of a third party who acquires confidential information in good faith but subsequently uses or discloses it unlawfully.

First – Unlawful Use of Secrets: Obtaining another person's confidential information by unlawful means may give rise to liability for breach of confidentiality, whether the information is obtained through coercion, deception, fraud, or other improper means, with the purpose of gaining access to confidential knowledge belonging to its owner, producer, or authorized user. Liability for breach of confidentiality does not necessarily require injury beyond that resulting directly from the unauthorized acquisition or disclosure itself. Nor are improper means necessarily confined to a closed list. Conversely, trade-secret protection

generally does not prohibit third parties from independently discovering information through lawful means, including independent innovation or legitimate reverse engineering (Al-Otaibi, 2008).

Second – Breach of Trust: Disclosure of confidential information may constitute a breach of the trust placed in another person by the owner of the information. Such relationships include employer–employee relationships and franchisor–franchisee relationships, in which one party is reasonably expected to preserve confidentiality. Confidential information disclosed during pre-contractual negotiations may similarly be protected where one party receives the information within a relationship of trust and subsequently discloses or uses it improperly (Misqawi, 2012).

Third – Liability of a Third Party Who Obtained Secrets in Good Faith: A third party who initially obtains confidential information in good faith as a result of accidental disclosure may nevertheless incur liability if, after becoming aware of its confidential nature, the third party improperly uses or discloses the information. However, the owner of confidential information does not necessarily possess an exclusive right against persons who independently obtain the same information through lawful means.

Several decisions in American jurisprudence illustrate this principle, including cases in which courts have rejected the argument that the absence of an express contractual clause prohibiting an employee from joining a competing business automatically prevents liability. Liability may instead arise where a relationship of trust can reasonably be inferred from the circumstances. Such cases have involved former employees who possessed confidential knowledge acquired during previous employment and subsequently joined competing businesses, thereby threatening the former employer’s competitive advantage in technologically sensitive industries (Issa, 1993).

In a similar context, judicial reasoning has relied on two fundamental concepts: trust and property. This approach demonstrates that technical know-how may be protected both through proprietary concepts and through obligations arising from confidential relationships. Accordingly, a party seeking to use another person’s technical knowledge may require authorization or a license, whereas unauthorized exploitation may be restricted through principles of ownership and breach of confidence.

American judicial decisions have similarly treated trademarks and trade secrets as legally protectable interests and have recognized an obligation to refrain from fraudulent or abusive exploitation of confidence placed in a person by another (Al-Jubouri, 2009).

4. The Obligation to Provide Technical and Marketing Support and Preserve Brand Reputation

Maintaining a strong brand reputation constitutes an important obligation within a franchise relationship and affects both the franchisor and the franchisee. Brand reputation is a valuable commercial asset because it reflects the level of trust customers and consumers place in the products and services associated with the brand. In this context, the franchisor is responsible for establishing the standards with which the franchisee must comply in order to preserve the brand’s reputation throughout the franchise network. The franchisee, in turn, is required to comply with such standards because any deterioration in brand reputation may adversely affect all parties to the franchise system.

4.1. Conditions Governing the Obligation to Preserve Technical and Marketing Standards

The Franchisor’s Obligation to Preserve Brand Reputation: Under a franchise agreement, the franchisor must establish fundamental standards concerning the quality of products and services and take reasonable measures to ensure that the franchisee consistently applies those standards throughout the franchise network. Any significant deviation from such standards or deterioration in service quality may damage the reputation of the brand as a whole. Accordingly, the franchisor should provide the support necessary to ensure that each franchise unit complies with the specifications established to preserve the market image of the brand.

Furthermore, the franchisor may periodically monitor the franchisee’s activities to ensure that each franchise unit complies with the brand’s standards, including standards concerning product presentation, business operations, and customer treatment. Such monitoring may include site visits, periodic reporting obligations, or assessments designed to verify compliance with service and quality requirements.

The Franchisee's Obligation to Preserve Brand Reputation: The franchisee must comply fully with the standards established by the franchisor to ensure that the products or services offered meet the required quality level. Breach of these standards may damage the brand's reputation in the market and potentially result in substantial financial losses. The franchisee is also required to take corrective measures where complaints or problems arise concerning the products or services provided.

For example, where customers repeatedly complain about product quality or poor customer service, the franchisee must take appropriate measures to address such complaints promptly and effectively, including improving product quality or providing additional staff training concerning professional customer relations.

Brand Reputation in the Market: Preserving brand reputation may occasionally require prompt and effective decisions, such as withdrawing a product from the market where a serious quality defect is identified or compensating customers adversely affected by such defects. Moreover, the franchisee must avoid conduct capable of damaging the brand image, including unlawful or unethical advertising practices.

On the basis of these obligations, maintaining a strong brand reputation requires continuous cooperation between the franchisor and the franchisee to ensure commercial continuity, preserve consumer confidence, and establish an environment conducive to the sustainable growth of the brand.

The Iraqi legislature has recognized the possibility of licensing the use of trademarks under the relevant legislation. The trademark owner may authorize one or more natural or legal persons to use the trademark in connection with all or some of the goods for which it is registered, without necessarily preventing the trademark owner from continuing to use the mark unless otherwise agreed (Al-Jubouri, 2009).

The Egyptian legislature regulates trademark licensing in greater detail. Its intellectual property legislation recognizes the right of the trademark owner to authorize one or more natural or legal persons to use the trademark in relation to all or some of the goods for which it is registered, while preserving the owner's right to use the mark unless otherwise agreed (Al-Jubouri, 2009).

Under Iranian law, no independent and comprehensive legislation specifically regulates the franchise agreement. Consequently, the agreement is generally treated as an unnamed contract governed primarily by the principle of contractual freedom and the general rules of contract law (Falah, 2015).

Trademark licensing is more specifically recognized under industrial-property rules, which permit the trademark owner to grant another party the right to exploit the mark while establishing conditions governing licensing and supervision. Legal doctrine further distinguishes a trademark license from a franchise agreement. A license ordinarily permits the use of an intellectual property right without transferring ownership, whereas franchising generally combines such permission with additional elements, including technical know-how, training, operational assistance, and transfer of the franchisor's business model. Thus, if an Iranian company owns a particular trademark, a straightforward trademark license might authorize another party to use that mark in Iran for a specified period in exchange for agreed consideration. Such an arrangement, however, does not necessarily constitute a franchise unless the additional characteristics of franchising are also present (Al-Jubouri, 2009).

4.2. The Obligation to Provide Technical Assistance in the Absence of an Express Contractual Provision

Legal scholarship has differed concerning the situation in which the franchise agreement contains no express provision requiring the franchisor to provide technical assistance. Three principal approaches may be identified.

The first approach considers the franchisor's obligation to provide technical assistance to be a legal obligation arising from the inherent requirements of the franchise agreement. Some proponents of this approach even consider such an obligation binding notwithstanding an express attempt to exclude it (Al-Bashtawi, 2008).

The second approach distinguishes between cases in which technical assistance is necessary for the performance of the franchise agreement and cases in which it is not. Where technical assistance is inherent in or required by the contract, its provision is obligatory; where it is not required by the nature of the contract, no such obligation necessarily arises.

The third approach requires technical assistance to be expressly stipulated in the contract and considers that it cannot be demanded in the absence of an explicit contractual provision (Al-Najjar, 2007).

The researcher considers technical assistance to be an essential factor in the successful operation of the franchisee's undertaking and an important means of enhancing the reputation of the brand. This provides a strong incentive for the franchisee to include an express clause concerning technical assistance in the agreement and to specify its mechanisms, forms, and content clearly. It would be commercially unreasonable for a franchisee to invest substantial financial resources without adequately defining such an important obligation. From this perspective, technical assistance is binding on the franchisor where it forms part of the contractual obligations and must be performed in accordance with the contract and the principle of good faith.

However, even where the contract does not contain an explicit clause concerning technical assistance, the franchisor may remain obligated to provide it where such assistance arises from the implied intention of the contracting parties or constitutes a necessary requirement of the agreement. General principles of contract interpretation provide that a contract is not limited exclusively to what is expressly stated but may also encompass obligations arising from law, custom, equity, good faith, and the nature of the contractual relationship. Conversely, where the agreement expressly provides that the franchisee does not require technical assistance, such a clause may amount to a waiver of that right, subject to applicable mandatory rules. Where the franchisee subsequently requests additional technical assistance in return for agreed compensation, the franchisor may become obligated to provide it in accordance with the subsequent agreement. In the circumstances in which technical assistance is contractually required, refusal to provide it may constitute a breach of the franchisor's contractual obligations ([Abdel-Hadi, 2014](#)).

French judicial practice has reflected a mixed approach. In one decision, a Paris court held that a franchisor was responsible for providing technical assistance derived from its practical experience and technical expertise without requiring an express request from the franchisee. By contrast, another decision held that the franchisor was not liable for the franchisee's failure to select a suitable business location where no such obligation had been included in the franchise agreement.

Accordingly, technical assistance may constitute an inherent requirement of the franchise relationship where it is necessary for the proper implementation of the business model. Nevertheless, the circumstances of each agreement remain important, and the franchisee may be required to notify the franchisor of the need for specific assistance. Refusal to provide required assistance after such notification may constitute a breach of contractual obligation.

If the franchisor's refusal to provide technical assistance constitutes a breach of its contractual obligation, unjustified delay in providing such assistance may likewise constitute a separate form of breach. Delay may produce different consequences depending on whether the project has already commenced operations.

First – Cessation of Project Activity: The project may cease operating after commercial activity has already commenced, or the franchisee may be unable to commence operations where essential technical assistance was required before the start of the project.

Second – Continuation of the Project Without Technical Assistance: This situation may arise where the project commences without the franchisor providing the necessary technical assistance or where the franchisee continues operating despite the absence of such assistance ([Qaidi, 2005](#)).

In either case, whether the project ceases operations or continues without the required technical expertise, the franchisee may incur substantial losses. Losses resulting from the cessation of the project may include wages payable to workers, engineers, supervisors, administrators, and other employees; rent for leased premises; utility charges and governmental fees; deterioration or depreciation of raw materials; and delays in entering the market. Such delays may also result in the technology becoming outdated and thereby weaken the franchisee's competitive position.

Potential damage resulting from continuation of the project without technical assistance may include reduced employee efficiency, deterioration in product or service quality, weakening of administrative, financial, accounting, and marketing systems, reduced consumer confidence, and financial losses capable of ultimately causing closure of the undertaking ([Al-Jamal, 2002](#)).

The ultimate consequence of these forms of damage may be a substantial weakening of the franchisee's competitive position in the market, potentially resulting in termination of the franchise agreement and exposure of the franchisor to contractual liability.

Accordingly, the franchisor's unjustified delay in providing required technical assistance may constitute a fundamental breach of contractual obligations. Merely training the franchisee to use the operating manual does not necessarily absolve the

franchisor from responsibility where the franchisor was also obligated to warn the franchisee of inherent technical defects in the system or risks associated with implementing its instructions. Established principles of contractual liability generally assess professional conduct by reference to the precautions reasonably expected within the relevant profession. Accordingly, a franchisor may be considered negligent where it fails to adopt customary professional precautions or additional measures reasonably required by the circumstances to prevent foreseeable harm. Failure to take such precautions may give rise to contractual liability (Al-Mahdi, 1982).

5. Conclusion

Based on the foregoing analysis, it is evident that the franchisor's obligations under a franchise agreement are not limited to granting the franchisee the right to use a trademark. Rather, they extend to the transfer of technical know-how, the provision of technical and marketing support, and the preservation of the confidentiality of technical information. These obligations are intended to enable the franchisee to implement the commercial system effectively and to preserve the value and reputation of the brand. The comparative analysis of Iraqi, Iranian, and Egyptian law reveals significant differences in the extent to which franchise agreements are directly regulated by legislation. Consequently, defining the franchisor's obligations depends to a considerable extent on the agreement itself, the requirements arising from the nature of the contract, and the general principles of contract law. These findings indicate the need for greater legislative attention to the regulation of franchise agreements in order to clarify the parties' obligations and establish an appropriate balance between their respective interests.

1. The comparison demonstrates that the Iraqi, Egyptian, and Iranian legal systems do not regulate franchise agreements to the same extent. Iraqi and Iranian law do not provide a comprehensive and independent legislative framework governing franchise agreements, with the result that the franchisor's obligations are largely determined by general principles of contract law and the terms agreed upon by the parties. Egyptian law, by contrast, provides more detailed regulation of certain elements relevant to franchising, particularly trademark licensing and the protection of intellectual property rights.
2. The analysis demonstrates that the transfer of technical know-how constitutes an essential obligation in franchise agreements under the legal systems examined. Nevertheless, the scope of this obligation depends on the nature of the technical know-how, the contractual provisions, and the purpose of the transfer. In Iraq and Iran, the determination of this obligation depends primarily on contractual agreement, the requirements arising from the nature of the contract, and general legal principles. Egyptian legislation provides a comparatively clearer framework for the protection of technical and commercial information and the transfer of technology, which may assist in defining the content of the obligation in franchise agreements.
3. The franchisor's obligation to provide technical support is not necessarily limited to initial training. Depending on the agreement and the nature of the franchise system, it may extend to guidance, consultations, operational assistance, and the resolution of technical problems where such support is necessary for implementing the business system covered by the agreement. In Iraq and Iran, this obligation is generally derived from general legal rules and contractual requirements, whereas the Egyptian legal framework permits reliance on a broader range of rules concerning technology transfer and intellectual property when determining particular aspects of this obligation.
4. Maintaining the confidentiality of technical know-how constitutes a fundamental obligation associated with the franchisor's legitimate interest in protecting the competitive advantage embodied in the information transferred to the franchisee. The legal basis for this protection differs among the three jurisdictions. In Iraq, protection is derived from rules concerning undisclosed information and general principles of contract law. Egyptian law provides more specific protection for undisclosed information within the intellectual-property framework, whereas Iranian law relies on rules concerning trade secrets together with the general rules governing contractual relationships.
5. Trademark use and preservation of brand reputation constitute common elements across all three legal systems, although the degree of legislative regulation differs. Iraqi law recognizes trademark licensing, while Egyptian legislation regulates trademark licensing in greater detail. In Iran, this matter is governed principally by industrial-property legislation and general contract law. Nevertheless, the mere licensing of a trademark is insufficient, by itself,

to establish a franchise agreement because franchising typically includes additional elements such as the transfer of technical know-how, training, business support, and adherence to the franchisor's operational model.

6. The research concludes that the franchisor's liability for breach of obligations under the three legal systems does not arise merely because the franchisee fails to achieve the expected level of commercial success. Rather, liability generally requires the identification of a legally binding obligation, proof of its breach, the existence of compensable damage, and a causal relationship between the breach and the damage. This principle is particularly relevant to cases involving delay or refusal to provide technical assistance or failure to protect technical know-how, in which the legal consequences depend on the nature of the obligation, the seriousness of the breach, and the applicable rules of contractual liability in each legal system.

1. Recommendations

2. The researcher recommends that the Iraqi and Iranian legislatures develop a clear legislative framework governing franchise agreements and expressly identify the principal obligations of the franchisor, particularly the obligations to transfer technical know-how, provide training, and offer technical and marketing support. Such legislation should also specify the legal consequences arising from breach of these obligations.
3. The researcher recommends that the Iraqi, Egyptian, and Iranian legislatures adopt more specific provisions governing the protection of confidential technical know-how and commercial information transferred in connection with franchise agreements. Such provisions should define the scope and duration of confidentiality obligations, prohibit unauthorized use or disclosure of information where such conduct harms the other party, and establish appropriate legal remedies for preventing infringement and compensating resulting damage.
4. The researcher recommends that the Iraqi, Egyptian, and Iranian legislatures clarify the relationship between franchise agreements and trademark licenses by specifying the limits of the franchisee's right to use the trademark and the franchisor's obligations concerning quality control and commercial reputation. The legislation should also make clear that a mere trademark license is insufficient to establish a franchise agreement where the other essential elements of franchising are absent.
5. The researcher recommends that Iraqi, Egyptian, and Iranian legislation clarify the legal consequences of the franchisor's breach of contractual obligations, particularly in cases involving delay in providing technical support, failure to transfer technical know-how, or unlawful disclosure of confidential information. Liability should be linked to proof of breach, damage, and causation, and the law should specify the circumstances in which compensation, termination of the agreement, or other remedies may be available depending on the seriousness of the breach.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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