

## TUNISIA

In Tunisia, franchising is regulated in Chapter 5 of Law n° 2009-69 of 12 August 2009, relating to the distribution trade (*Loi n° 2009-69 du 12 août 2009, relative au commerce de distribution*).

Chapter 1, Article 1 of the General Provisions states that “The law herein sets the rules governing the practice of the distribution trade according to which freedom is the principle and authorization is the exception. It aims at modernising and developing the commercial sector and at guarantying the equilibrium between the different sector interveners”.

Article 2, which further specifies who is covered by the law, states that any professional activity which is related to the purchase of products with a view to their wholesale or retail resale, is deemed to be a distribution trade, that any profit-seeking activity exercised habitually and related to the purchase of products with a view to their resale, is subject to the provisions of the law. Any trader buying products or goods in bulk from national producers or by means of import with a view to their resale in bulk, is deemed to be a wholesale dealer, and any trader selling products and goods bought from a wholesale dealer, a producer or by means of import, is deemed to be a retail dealer.

Chapter V (Articles 14 – 17) deals specifically with franchise agreements.

Article 14 states that the franchise agreement is an agreement by which the trademark owner grants the right to use its trademark to a natural person or legal entity called a franchisee, with a view to distributing the products or providing services against fees. The right to exploit the franchise includes the transfer of the knowledge acquired, the know-how acquired and the use of its intellectual property rights. All independent businesses which operate under the same trademark and conform to standard business methods, such as the layout of the premises, the management methods, the display, the marketing and the sources of supply, are deemed to be a franchise system.

Under Article 15, the franchise contract must be in writing. At least twenty days before the contract is signed, the franchisor must make available to the prospective franchisee the draft agreement and a document containing information relating to the franchisor and the franchisor’s activity. The compulsory minimum terms of the contract and the minimum information to be included in the document will be fixed by decree. Any contract that does not observe the provisions of the law is null and void.

Article 16 provides that the franchisor must be the holder of the trademark or commercial brand, and must, during the contractual relationship, provide the franchisee with commercial and technical assistance and all the true information on the franchise system.

Under Article 17, the franchisee must provide the franchisor with information relating to its sales and financial status and must authorise access by the franchisor or the franchisor’s representatives to its premises during usual opening hours or working hours.

Other provisions contained in the law may be relevant also to franchise agreements, such as Chapter VI on purchasing groups, or Chapter 8 (Articles 22 – 35) on infringements and sanctions.

On 21 June 2010, the Ministry of Commerce and Handicraft issued Decree no. 2010-1501 fixing the minimum mandatory provisions of franchise agreements and the minimum data to include in the information document accompanying the agreement.

Article 2 of the Decree states that franchise agreements must include the rights and obligations of the franchisor and franchisee, in particular:

- services rendered by the franchisor to the franchisee, in particular as regards the transfer of the experience acquired, of the know-how and the use of the intellectual property rights;
- the royalties the franchisee must pay;
- the duration of the agreement and conditions for renewal;
- the conditions for the exploitation of the trademark or commercial brand;
- conditions for termination of the contract;
- exclusivity clauses for provisions;
- non-competition clauses;
- the geographical area for exclusive exploitation of the trademark or commercial brand;
- the obligation of confidentiality of the franchisee as regards the data divulged by the franchisor;
- the plan for investments to be carried out by the franchisee;
- conditions for the sharing of the expenses for the publicity;
- communication to the franchisor of data relating to the sales and financial status of the franchisee;
- authorisation procedures to permit access to the premises of the franchisee by the franchisor or the franchisor's representatives;
- the possibility for the beneficiary of an exclusive representation agreement covering the whole territory of the Tunisian Republic to conclude exploitation agreement with franchisees covering limited geographical areas.

Under Article 3 of the Decree, the information document to accompany the agreement should include data on the franchisor and the franchisor's activity, in particular:

- the legal form of the business and the nature of its activity;
- the identity of the franchisor and the franchisor's address when a physical person;
- the identity of the legal representative, the address of the head office, the list of the directors and the capital when legal persons;
- the history of the enterprise;
- registration number in the commercial registry or all equivalent data;
- proof of property rights to the trademark or commercial brand;
- data relating to registration in the national trademark registry;
- data on the network of franchisees;
- lists of the network of franchisees in Tunisia, their addresses, the date of their adherence to the network and the list of franchisees excluded from the network;
- data on the sector of activity of the enterprise and opportunities for development of the sector in the areas in which the trademark is represented as well as in Tunisia;
- specification of the nature, the amount of the expenditure and of investments specific of the trademark or the commercial brand; and
- the financial status of the enterprise.

Article 4 of the Decree states that franchise agreements must not include provisions against competition relating to

- the imposition of the price for the resale of goods or of the providing of the service;
- the fixing of a minimum turnover.

In application of Articles 5 and 6 of the Law on Competition and of the above-mentioned prices, the franchise agreement activities that will systematically benefit from the authorisation provided for in Article 6 of that same law will be fixed by a ministerial order of the minister in charge of commerce.

Article 6 states that the Minister for Commerce and Handicraft is entrusted with the implementation of the Decree, which will be published in the Official Journal of the Tunisian Republic.