1. **LEGAL SOURCES.**

   *What are the rules governing commercial franchising (if any) in your country?*

   There is no specific law in Morocco governing Franchising agreements except from certain rules provided for in the General Instructions of the Moroccan Foreign Exchange Office which contains provisions specific to franchise agreements that must be respected in order to allow payments and transfer abroad of the sums owed to the foreign franchisor.

   In Morocco, franchising agreements are *sui generis* contracts governed by general contract law and essentially by the principle of autonomy of will and contractual freedom as it derives from the provision of Article 230 of the Moroccan Civil Code (*Dahir des Obligations et des Contrats of 1913*).

   However, even though there is no specific regulation applicable to franchising agreements, there are specific rules that need to be complied with since they apply to each of the contracts which are part of the Franchise contract (i.e. Contract of license of Know-How and trademark, contract of purchase of products and/or service). As a result, it is very important to make sure that the franchise agreement respects for example the relevant provisions of the Moroccan Commercial Code, the law on competition, the law on intellectual Property, the Labor law, the insurance law and/or any other relevant specific regulation(s).

2. **NOTION OF FRANCHISING CONTRACT.**

2.1 **General notion of franchise contracts.**

   *Which agreements are normally qualified as franchising agreements in your country?*

   There is no legal definition of franchising agreements in Morocco.

   However, the General Instruction on Foreign Exchange established by the Foreign Exchange Office in Morocco provides in its Article 281 that Moroccan legal entities
registered in the trade register and cooperatives may enter into franchise agreements with foreign entities and transfer the royalty fee due to the foreign franchisor under the conditions of this instruction. This Article 281 also defines the franchise agreement as follow:

“Within the meaning of the present instruction, franchise or franchising is a system of marketing products, services or technologies based on ongoing collaboration between legally and financially separate and independent companies, the franchisor and its franchisees. Under this system, the franchisor holding the concept of production and / or marketing of a product or service grants his franchisees the right to use and exploit the concept under a specific brand or trademark.

In return, the franchisee pays a remuneration to the franchisor who, for his part, is obliged to grant the franchisee the continuing transfer of commercial or technical assistance under a franchise agreement concluded for this purpose.

The remuneration can be either flat or calculated on the basis of the turnover realized by the franchisee excluding taxes.

The franchise agreement can be concluded either with a franchisor or with a foreign master franchisee. It shall specify the rights and obligations of the franchisor and the franchisee, the method of calculating remuneration or royalties and, where applicable, the entry fees corresponding to the amounts payable prior to the use of the sign or the brand” (free translation).

It derives from the foregoing that in order to comply with the general instructions of the Moroccan Exchange Office, the franchise agreement should explicitly indicate the rights and obligations of the franchisor and franchisee, the method of calculation of the remunerations or royalties and, where applicable, the entry fee.

It should be noted that such instruction cannot be construed as a reference law but rather as a governmental regulatory provision aiming at protecting the Moroccan foreign currency exchange system.

2.2 Agreements which are covered by special rules on pre-contractual disclosure.

Which are the agreements to which special rules on pre-contractual disclosure (if any) apply?

There are no special rules on pre-contractual disclosure in Morocco provided by the law.

2.3 Distinctive criteria with respect to employment contracts.

According to the law of your country, in what situations could a franchisee be considered as an employee of the franchisor?

In Morocco and according to the provision of Article 6 of the Moroccan labour code a person can be considered as an employee subject to the provisions of the Moroccan labour law if he or she has committed to exercise his or her professional activity under the direction of one or several persons in exchange of a salary whatever its nature and method of payment.

The lack of independence which materialises into a relationship of subordination “lien de subordination” is the main criteria that Moroccan courts take into consideration in order to characterize an employment contract and differentiate it from any other contracts.