

Franchising in Algeria, disclosure Law

Imed Eddine BEKHOUCHE

School of Law, UUM College of Law, Governance, and International Studies (COLGIS), University Utara - Malaysia

imed.bekhouche@gmail.com

Abstract

The first step to starting a franchise business is to provide disclosure documents. What are the main legal issues relating to disclosure in Algeria and is the current practice of the stakeholders in the aspects of disclosure under the franchise business in Algeria. The main objective is to examine the legal framework issues relating to disclosure and to analyse the current practice of the stakeholders in the aspects of disclosure under the franchise business in Algeria. The doctrinal legal method complemented with qualitative interview was used. The armchair library approach was employed to collect data. The findings show that: there are significant benefits of disclosure documents in the franchise to protect the interests of the franchisee. However, Algeria does not cover the obligation of providing the disclosure documents by franchisor to prospective franchisee. The results also show that the practice of franchise activities related to disclosure currently is carried out by the parties without disclosure documents.

Keywords

Franchising, Disclosure Documents, Disclosure Law, Pre-contractual Disclosure, Algeria.

Introduction

Franchising is not just an ordinary industry, but it is a way of doing business expansion due to evaluation in franchising, globalisation, mixed cultures and consumers' habit. Franchising is a method for expanding business and distributing goods and services through a licensed relationship. Over the decades, people have travelled long distances to seek

the same famous brand and quality products and services¹. In franchising business, the franchisor is allowed to have financial leverage, leveraging human resources, allowing companies to compete with much larger franchise competitors in the market, speeding up their growth and expanding their business and brands. Apart from that, the franchise business provides job opportunities for franchise owners and workers in developed and emerging markets².

The origin of the word franchise came from the French “*franchise*”, which was derived from “*frank*”³. The meaning of this word is a free man or free to work for something. However, in English, the word franchise is used to express liberation from any prohibition, permission, or privilege where a company is allowed to do or not to do something for which it would typically not have rights⁴. Jurisprudentially, franchising is a business deal between two parties where one party (the franchisor) grants the other party (the franchisee) the right to operate its business system in exchange for the payment of fees and royalties⁵.

The franchise occurs when someone develops a business model and then sells the right to do the business according to that model to another entrepreneur, the franchisee. The entrepreneur who sells the rights is the franchisor. The franchisee usually gets the right to a business model for a certain period and within a specific type of business⁶. In 2022, there were over 775,000 franchise establishments in the United States. Franchising employed 8.2 million people, generated an economic output of \$787.7 billion, and offered products and

1- Monika Kavaliauske and Erika Vaiginiené, ‘Franchise Business Development Model – Theoretical Considerations’, *Business: Theory and Practise* 12, no. 4 (2011): 324.

2- U.S. Department of Commerce, ‘2016 Top Markets Report Franchising Overview and Key Findings’. U.S. Department of Commerce, 2016 ITA Franchising Top Markets Report (2016): 5.

3- Ilan Alon, Mirela Alpeza, and Aleksandar Erceg, ‘Opportunities and Threats Regarding the Development of the Franchising Business Model in Croatia’ 7995, no. September 2002 (2003): 2.

4- *Ibid.*

5- Tamara Milenkovic Kerkovic, ‘The Main Directions in Comparative Franchising Regulation – Unidroit Initiative and Its Influence’, *European Research Studies* XIII, no. 1 (2010): 104.

6- Alon, Alpeza, and Erceg, ‘Opportunities and Threats Regarding the Development of the Franchising Business Model in Croatia’. (2003), 2.

services in more than 300 business categories⁷. A disclosure document is a document containing the information required under the law⁸. The document contains information on the franchisor, the proposed franchise and the terms and conditions of legal relationships that the franchisee will enter⁹. Disclosure documents provide sufficient information to enable the franchisee to assess the adequacy of the business format and the support provided by the franchisor to its franchisees¹⁰. The disclosure ensures that the prospective franchisees are informed about the advance investment by giving the necessary information to make an informed investment decision for purchasing a franchise¹¹.

The disclosure documents are one of the most important parts of running a franchise business. Disclosure documents are not only important for the franchisor as an introduction to his franchise business, but it is also important for franchisees to get important information about whether the franchise will run or not¹². The information contained in the franchise disclosure documents will later be used by the franchisor and franchisee as material for consideration whether the franchise is feasible or not to run, so that the franchisee does not make the wrong choice in running a franchise business. It is through this disclosure documents that prospective franchisees will understand about the business they will manage and the benefits and rights he has to exercise if he wants to participate in the running and developing of the franchise business¹³. Franchisors will agree that providing prospective franchisees with detailed information on key aspects of the franchise system is a good thing both for the prospective franchisee

7- Christina Niu. 2022 Franchising Economic Outlook. International Franchise Association, FRANDATA 2022, 1.

8- Unidroit International Institute for the Unification of Private Law, model franchise disclosure law. Rome, September 2002, 2.

9- International Franchise Association, Educated Franchisee, Kenneth S. Kaplan and Lee Plave, A Glossary of Terms, Franchise, 2011, 14.

10- Mark Abell, B. Bird, Legal Perspective of the Regulatory Framework and Challenges for Franchising in the EU, 2016, 14.

11- Alan R. Greenfield, Theresa Leets and Karen B. Satterlee, 'Franchise Disclosure Challenges for Large, Sophisticated or Multi-brand Franchise Companies', American Bar Association 37th Annual Forum on Franchising, 2014, 1.

12- Ginting, Rika Githamala. «Legal Comparisons Regarding the Content of Franchise Prospectus in Legal System of United States of America, Australia, Indonesia for Legal Protection of Franchise Recipients in Indonesia.» Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences 4, no. 2 (2021): 2779-2790. 2780.

13 Ibid.

and the franchise system as a whole. Educated potential franchisees are able to make sound business decisions and ensuring that they enter into the business relationship with an “eyes wide open” approach means these franchisees generally are better suited to proactively address the challenges associated with any new business, thereby increasing the likelihood that they achieve success¹⁴. The disclosure documents are likened to a bridge to connect franchisors and franchisees. Without disclosure documents in franchising the franchisee could be victim of fraud and abuse by franchisor. Without disclosure documents franchisee cannot make an informed investment decision. Without disclosure documents there will be imbalance of power between the franchisors and franchisees; while prospective franchisees are often unfamiliar with the business in which they plan to invest, the franchisors generally have a monopoly of the essential and necessary information that a prospective franchisee would need in planning to invest.

There are only few international brands involved in franchise such as Lacoste, Timberland and Swatch are survived in Algeria¹⁵. The closing of giant companies like Carrefour in February 2009, European fast-food franchisors the brand Quick in November 2011, Etam, Naf Naf and Celio also terminated their franchise business in Algeria¹⁶. In the case of Carrefour, the business was closed after two years of operation in Algeria even though the franchising agreement was planned to open 18 hypermarkets by the end of 2012. This was such a great loss to Algeria’s economy¹⁷. The successful development and competition of franchising business requires a comprehensive legal framework and regulatory environment¹⁸. Currently the legal framework on franchising business in Algeria is worsened and lacks a comprehensive regulatory framework. The reliance on the commercial Code, Civil Code, and Consumer Protection Act not covering the issues related to disclosure obligation in franchising. However, regarding the

14- International Franchise Association 50th Annual Legal Symposium, basics track: registration & disclosure. May 7 – 9, 2017,2.

15- E. Hachemi Aliouche, Dominique Bonet Fernandez, Odile Chanut, Nadjoua Gharbi. Institutional Environments and The Internationalization of Franchise Chains: The Contrasting Cases of Three North African Countries. Journal of Applied Business Research, Clute Institute, 2015, 31 (2), 418.

16- Ibid.

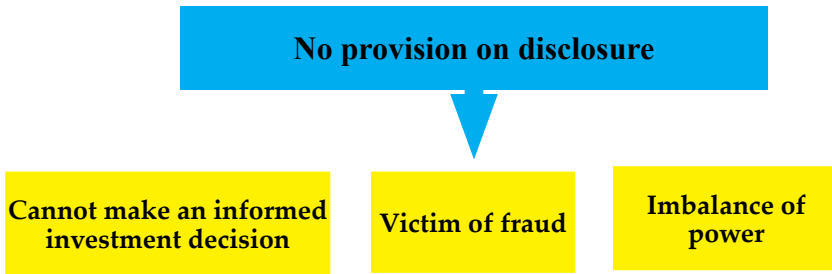
17- Ibid.

18- Ibid.

pre-contractual obligation, there is no obligation to disclose information at the pre-contractual stage under Algerian law¹⁹.

Figure 1.1

The Consequences of The Absence of Disclosure Law



Sources: Researcher

Literature review

There is a notable lack of research dedicated to franchise in Algeria owing to the non-existent legal framework that regulates the sector. The first franchise in Algeria was in 2003, but the studies related to franchise began almost after ten years. The studies were few and focusing on general matter in franchising, and it did not address the problems that prevent this type of business to develop in Algeria. Currently there are about 30 countries with specific laws in franchise business in the world. In addition to the 30 countries that have franchise-specific laws, Tajikistan is also currently contemplating enacting one.²⁰ The first disclosure law was in the US in 1971 in California. In 1970, the Attorney General of New York said that,

“Thousands of people been deceived of hundreds of thousands of dollars by fluent sellers who gave them misleading information, for selling unprofitable franchises. Moreover, in some cases the franchise-offering information was either insufficient, misleading, lack of

19- EY Consumer Products & Retail sector global legal team. EY Global Legal Commercial Terms Handbook. EYGM Limited December 2017, 130.

20- Bird & Bird LLP. The Franchise Law Review: The Regulation of Franchising around the World. The Franchise Law Review 2022,1.

honesty or frankness in relation to the necessary facts to make an informed investment decision. ”²¹

To solve those problems, full disclosure laws have been passed in 1975 by the legislatures of Illinois, Hawaii, Michigan, Minnesota, Oregon, Rhode Island, South Dakota, Washington, Wisconsin, and the Province of Alberta, Canada.²²

Disclosure laws require franchisor to provide the prospective franchisee with information. The information should be on the issues that will make the franchisee able to decide whether to make an agreement or not. The information that must be presented or prepared may include: the franchisor and the directors of the enterprise; company history; the legal constitution of the enterprise; the intellectual property concerned; financial status and financial statements audited for a period of last two or three years; other franchisees in the network; information on franchise agreements; such as contract term; terms of renewal; termination and assignment of the agreement; and/or information about any exclusivities.²³ The missing of these information's might lead to a disputes.

The essential areas of franchise disputes, especially in the United States, Canada and Australian are relating to the information and power imbalance, including lack of pre-contractual disclosure.²⁴ Thus, prior disclosure is the best tool for dealing with the information imbalance that occurs in regular franchise relationships. The discloser provides the franchisee complete and reliable information that is useful and necessary to make an informed decision, to enter in franchising business.²⁵ Prior disclosure law is widely adopted in almost all countries which have franchising regulation. In the countries requiring a prescribed disclosure document, there is generally a requirement of an annual update. For example, in South Korea; franchisor shall renew its information in disclosure document within 90 days after the

21- “Hunt, Shelby D., and John R. Nevin. “Full Disclosure Laws in Franchising: An Empirical Investigation.” *Journal of Marketing* 40, no. 2 (1976) : 54. doi :10.2307/1251006. ”

22- *Ibid.*

23- Unidroit. 2007. *International Institute for the Unification of Private Law Guide to International Master Franchise*. Unidroit F. Via Panisperna, 28 - 00184 Rome – Italy ISBN, 281.

24- Tamara Milenkovic, ‘The Main Directions in Comparative Franchising Regulation – Unidroit Initiative and Its Influence’ XIII, no. 1 (2010), 109.

25- Binh, ‘The Role and Influence of Vietnam’s Franchise Law on the Development of Franchising: A Multiple Case Study’. 2012, 56.

end of its fiscal year.²⁶ In terms of the scope and content of disclosure, there is some symmetry in the disclosure moulds.²⁷ The North American Securities Administrators Association (NASAA) has adopted a Uniform Franchise Offering Circular (UFOC) that indicates what information should be furnished to prospective franchisees.²⁸ The UFOC format is extremely detailed, requiring over 200 separate pieces of information to be provided.²⁹ On the other extreme, there are minimalist disclosure regimes that use a general formula or impose few specific disclosure duties. The disclosure information is required in Romania in order for the franchisee to participate in a franchise agreement adequately informed.³⁰

Furthermore, there is diversity in the period of providing disclosure document to prospective franchisees prior to the signing of franchise agreement. The period is important because it gives the prospective franchisee time to review the document in detail and consult his attorney or expert in franchising about any questions or concerns. The schedule below illustrates the diversity in the period of providing disclosure documents to prospective franchisees prior to the signing of franchise agreement;

26- Joseph W. Sheyka, Richard G. Greenstein, "Executive Summary of Franchise Laws Around the World". DLA Piper 2009, 32.

27- Andrew Terry, 'Global Trends in Franchise Regulation and the Australian Experience: Lessons for New Zealand' (Paper presented at the Franchise Law Reform Symposium, New Zealand Governance Conference, University of Auckland, Auckland, New Zealand, 2009), 34.

28- Unidroit. 2007. International Institute for the Unification of Private Law Guide to International Master Franchise. Unidroit F. Via Panisperna, 28 - 00184 Rome – Italy ISBN, 300.

29- Andrew Terry, 'Global Trends in Franchise Regulation and the Australian Experience: Lessons for New Zealand' (Paper presented at the Franchise Law Reform Symposium, New Zealand Governance Conference, University of Auckland, Auckland, New Zealand, 2009), 38.

30- Binh, 'The Role and Influence of Vietnam's Franchise Law on the Development of Franchising: A Multiple Case Study'. 2012, 57.

Table 1.1

The diversity in the period of providing disclosure document to prospective franchisees prior to the signing of franchise agreement.

Countries	The period of providing disclosure document to prospective franchisees prior to the signing of franchise agreement
Korea	days 5
Brazil, Taiwan and Malaysia	days 10
Australia, Indonesia, South Korea and South Africa	days 14
Vietnam	days 15
France, Spain and Tunisia	days 20
Belgium, China, Italy and Mexico	days 30

Source: from Executive Summary of Franchise Laws Around the World.³¹

The table shows that the period ranges of providing disclosure document to prospective franchisees prior to the signing of franchise agreement start from five days and it can reach thirty days. In Korea, the disclosure documents should have submitted to prospective franchisees five days prior to the franchise agreement being signed. Whilst, in Brazil, Taiwan and Malaysia the requirement of submission of disclosure documents to prospective franchisees is ten days before the franchise agreement was signed. Australia, Indonesia, and South Korea before fourteen days. Vietnam's requirement regarding the submission of disclosure documents to prospective franchisees is fifteen business days prior the signing of the franchise contract. Spain is one of the countries which required to submit the disclosure documents to prospective franchisees twenty days before the franchise agreement was signed. Belgium, China, Italy and Mexico requirement are thirty business days prior the signing of the

31- Joseph W. Sheyka, Richard G. Greenstein, "Executive Summary of Franchise Laws Around the World". DLA piper 2009, 4 - 42.

franchise contract.³² It is worth to mention that few African countries require franchisors to provide pre-contractual disclosure for franchisees. Tunisia and South Africa for example, requiring a minimum amount of information to be provided to prospective franchisees a set number of days prior to signing franchise agreement; twenty days in Tunisia, and fourteen days in South Africa.³³ Franchisees are included within the definition of consumer under Consumer Protection Act in South Africa; Specifically, the definition refers to franchisees as consumers where there is "solicitation of offers to enter into a franchise agreement and where a franchisor supplies "any goods or services to a franchisee in terms of a franchise agreement." Thus, as consumers franchisees are given a bundle of rights designed to promote and advance the social and economic welfare of consumers in South Africa" including honest dealing, fair value, good quality, safety, privacy, choice, information, fair and responsible marketing, supplier accountability, and equality.³⁴ In South Africa, the right of consumer to be informed play the role of pre-contractual disclosure documents which they lead to the same result; make informed decision to buy (goods) or enter in investment (franchise). While, in Tunisia the law was clearly the franchisor shall communicate the draft and a document indicating the information relating to the franchisor and his activity within twenty days minimum before signing the contract.³⁵ Algeria is one of the African countries who do not require franchisors to provide pre-sale disclosure.³⁶

Franchisees in Algeria cannot rely on Consumer Protection Act which protect consumers from certain unfair practices, for example the right of consumer to be informed. Franchisee cannot rely on consumer protection because franchisee was not treated as consumer in Africa, only South Africa and Kenya consider the franchisee as a consumer in the continent.³⁷ Without a franchise disclosure law in Algeria, the franchisor

32- Ibid.

33- Abell, Mark. *The franchise law review*. London, UK: Law Business Research Ltd, 2017, 158.

34- Robert W. Emerson. *South African Franchisees as Consumers: The South African example*. *Fordham International Law Journal*, Volume 37, Issue 2 2014, 462.

35- Tunisia Act No 2009-69, August 12, 2009. Chapter V Franchise contracts. Art 15.

36- "Franchising in Africa." *Franchising in Africa | International Franchise Association*. Accessed January 20, 2018. <https://www.franchise.org/franchising-in-africa-0>.

37- Marzheuser-Wood, Babette. 2013. "Franchising in Africa." : 137.

is not required to provide the franchisee with disclosure information prior to the signing of the agreement.

Past research about Algeria

In contrast to emerging countries, where much research has been conducted on the concept of franchising and its contribution to economic and social development, there are few works that focus on franchising in Algeria.³⁸ The legal perspective of the franchise contract is the first thesis that illustrate the meaning of franchising and differentiate it from other types of business. The thesis was requirement of master's degree in University of Setif Algeria in 2015. The author is Arosi Sasia under supervision of the Dr Balmami Omer. The thesis focusses on the characteristics of franchise contract. The researcher adopted the analytical and comparative research method.³⁹ The second thesis is also requirement for obtaining master's degree in University of Bwira Algeria in 2016. The title of the thesis is the legal system of franchise contract under Algerian law, written by Akajtal Farida and the supervisor was Dr Kamal Elddine kari. The thesis focusses also on the characteristics of franchise contract, and franchise contract provisions.⁴⁰ The researcher applied descriptive method to draw a clear picture of the franchise contract and show it characteristics as well as relying on the comparative method to compare the Algerian legal system with other laws which are concerned with this contract, especially French and European law.

The studies above are regarding the legal aspect, and it was written by Arabic language, there is one article consider the economic side and it was written in two version French and English in 2014. The title of the article is institutional environments and the internationalization of franchise chains: the contrasting cases of North African countries. Three authors are cooperated to write this article: Odile Chanut, Nadjoua Gharbi and Dominique Bonet Fernandez. The paper was an attempt to explain the significant differences in the development of franchise between Morocco, Algeria, and

38- Boumansour rym, Lahlou cherif. La Franchise En Algerie : Un Etat Des Lieux The Franchise In Algeria: An Inventory. *Revue Algérienne d'Economie et gestion* Vol. 14 N° : 02 (2020), 317.

39- Arosi Sasia. The legal perspective of the franchise contract, University of Setif , 2015. Accessed January 1, 2019. <http://dspace.univ-setif2.dz/xmlui/bitstream/handle/setif2/543/MD52.pdf?sequence=1&isAllowed=y>.

40- Akajtal Farida. legal system of franchise contract under Algerian law, University of Bwira, 2016.

Tunisia. In 2017, Aliouche and Fernandez Bonet, carried out a study, concerning the practical application of a combination of social entrepreneurship and franchising, which aims to illustrate the importance of franchising to creates new jobs opportunities in Algeria which suffering from high unemployment rate. The first franchise in Algeria was in 2003, but the studies related to franchise began almost after ten years. The studies were few and focusing on general matter in franchising, and it did not address the problems that prevent this type of business to develop in Algeria.

Method

The doctrinal methodology aims at examining and analysing in a systematic way how the laws and legal institutions work.⁴¹ The current article is conducted through the employment of combined method of doctrinal legal method complimented with qualitative interview. The choice of the design of the research was motivated by the recommendation of scientists such as Wortley, who supported the idea of taking legal research from the libraries or textual material to the field of research. The aim is to get the perception and views of the stakeholder such as expert or government official on the field of law.⁴² The purpose of combining different approaches is to make the finding of the article more reliable and acceptable.⁴³ The doctrinal method enables the researcher to view law from inside, while the qualitative approach helps the researcher to view the law from outside.⁴⁴ The combination of the two approaches further enhances the originality of the findings of this research. The aim of combining different approaches is to provide full visualization and strengthen the knowledge in the field of the research.⁴⁵

The objectives of this article were achieved by using the doctrinal approach and semi-structured interviews, which are appropriate to supply quick responses to the article objectives. Qualitative research provides insight into various aspects of social life and generates words as data to

41- Anwarul yaqin, 'Legal Research and Writing', (Malaysia: Lexis Nexis, 2007), 10.

42- Wortley, B. A. "Some reflections on legal research after thirty years." *J. Soc'y Pub. Tchrs. L.* ns 8 (1964), 254.

43- Volokh, Alexander. "Choosing interpretive methods: A positive theory of judges and everyone else." *NYUL Rev.* 83 (2008), 774.

44- Roger Cotterrell, the Sociological Concept of Law, *Journal of Law & Society.* Volume 10, no. 2 winter, 1983, 242.

45- Tracy-Anne De Silva, 2010. Benefits of Mixed Methods in Environmental Reporting Research, 3.

be analysed. Qualitatively research, the focus on people's feelings, perceptions and experiences in order to explore and understand "the meaning that individuals or groups attach to social or human problems".⁴⁶ In this article the interviews involved twelve (12) consisting of franchisees, franchisors, lawyers, academicians, representative of the Algerian Central Bank, representative of the Algerian Registry Commerce, representative of the Ministry of Commerce, and the director of the Algerian Franchise Association. The respondents were chosen for their experience and the knowledge they have about franchises in Algeria to reach data saturation in this article. The interviews provide the necessary data about the perspective of franchisors, franchisees, lawyers, the director of the Algerian Franchise Association, academics, the representative of the Algerian Central Bank, the representative of Algerian Registry Commerce and the representative of Ministry of Commerce in the aspects of disclosure under franchise in Algeria.

The results of the study were analyzed thematically. Thematic analysis was chosen because of its flexibility and ability to focus on identifying and representing implicit and explicit ideas in the data. The two main reasons for using thematic analysis are its accessibility and flexibility. For people new to qualitative research, Thematic analysis provides and draws on ways of doing research that would otherwise seem vague, confusing, conceptually challenging, and excessively complex. It offers a way for qualitative research that teaches the mechanisms of coding and systematic analysis of qualitative data, which can then be linked to broader theoretical or conceptual problems.⁴⁷ Thematic analysis is a method of identifying, organizing, and providing a systematic view of patterns of meaning (themes) in a data set. By focusing on the meaning of datasets, thematic analysis allows researchers to see and understand collective or shared meanings and experiences. Identifying unique and idiosyncratic meanings and experiences found in a single piece of data is not the purpose of thematic analysis. This method is therefore a way to identify what is common to the

46- Simion, Kristina. "Practitioner's Guide: Qualitative and Quantitative Approaches to Rule of Law Research." United States: INPROL (2016), 7.

47- Braun, V. & Clarke, V. (2012) Thematic analysis. In H. Cooper, P. M. Camic, D. L. Long, A. T. Panter, D. Rindskopf, & K. J. Sher (Eds), *APA handbook of research methods in psychology*, Vol. 2: Research designs: Quantitative, qualitative, neuropsychological, and biological (pp. 57-71). Washington, DC: American Psychological Association. (16) (PDF) Thematic analysis. Available from: https://www.researchgate.net/publication/269930410_Thematic_analysis [accessed Aug 22 2022].

way the subject is talked or written about, and to understand these commonalities.⁴⁸

The respondents of the interview were twelve. The respondents are the director of the Algerian Franchising Association, two practicing lawyers from Algiers, two franchisees, two franchisors, two academics, and the representatives of the Algerian Central Bank, the Algerian Registry Commerce, and the Ministry of Commerce. The data used in this article is primary and secondary. The primary data are relevant materials like statutes relating to franchising in Algeria. Likewise, the data which obtained from the interviews being direct information from experts in the area of franchising in Algeria is also considered as primary data. The secondary data include textbooks, articles, academic journal, newspaper, dictionaries, and information on the internet, government publications, thesis, online data base and guidelines which are relevant to the area.

The armchair library approach employed for the collection of the primary legal materials except interview. For this purpose, the Sultanah Bahiyah Library used to source the primary legal material. The secondary data equally sourced through the library approach. Data collection also involve interview because it assists and enhance the researcher's understanding. Furthermore, this method enables the researcher to obtain information about person's views, opinions, beliefs, and ideas on any particular matter.⁴⁹ In preparing for the interview, the researcher adopted eight principles based on McNamara's eight principles to the preparation stage of interviewing⁵⁰ suggestions, as follows: choose a scene with the least distraction; explain the reasons for the interview; ensure confidentiality; explain the interview format; indicate the duration; explain the means of follow up; ask if they have any questions before starting the interview; and use recording device. McNamara suggests the importance of the preparation stage in order to maintain an unambiguous focus as to how the interviews will be erected in order to provide maximum benefit to the proposed research study.⁵¹ The process of interview is conducted via WhatsApp with two franchisees,

48- Ibid.

49- Anwarul Yaqin, 'Legal Research and Writing', (Malaysia: Lexis Nexis, 2007), 169.

50- Campbell, Anne, Olwen McNamara, and Peter Gilroy. Practitioner research and professional development in education. Sage, 2003.

51- Turner III, Daniel W., and Nicole Hagstrom-Schmidt. "Qualitative interview design." Howdy or Hello Technical and Professional Communication (2022).

two franchisors, two lawyers, and two academicians due to pandemic of Covid-19. However, the researcher could not manage to secure appointment through WhatsApp interview with the representative of the Algerian Central Bank, the representative of the Algerian Registry Commerce, the representative of the Ministry of Commerce and the director of the Algerian Franchise Association due to their busy schedules. To counter this setback, the researcher dropped the interview questions for them to fill in, from which all of them had responded. The interviews were conducted between November 2021 and February 2022, each lasted around 30 to 40 minutes. Each session was recorded by Smart Phone. The Arabic language was used during the interview.

In this article, the semi-structured interview adopted to get relevant information from the participants. The semi-structured interview used because it is very flexible and affords researcher the opportunity to prepare some questions beforehand that would guide the interviews.⁵² Semi-structured interview also allows respondents to express their point of view freely and provide reliable data.⁵³ The sampling technique employed is purposive. A purposive sampling technique is used in qualitative research.⁵⁴ This means in this article the researcher chooses the respondents who can provide the required answers to the research. Therefore, only participants with useful experience and information in the area of franchising in Algeria were selected. For this purpose, twelve respondents were selected. Harry Wolcott one of the pioneering qualitative researchers who provided a short answer to how many qualitative interviews is enough. The answer was one interviewee is enough if he or she will provide the information capable of explaining the research phenomenon.⁵⁵ Saturation occurs when no additional data are discovered from which the researcher can develop category properties. When a researcher sees similar instances over and

52- Gillham, Bill. *Research Interviewing: The range of techniques: A practical guide*. McGraw-Hill Education (UK), 2005, 70.

53- Cohen D, Crabtree B. "Qualitative Research Guidelines Project." July 2006. <http://www.qualres.org/HomeSemi-3629.html>

54- Anwarul Yaqin, 'Legal Research and Writing', (Malaysia: Lexis Nexis, 2007), 234.

55- Sarah Elsie Baker, Rosalind Edwards, and Mark Doidge, "How Many Qualitative Interviews Is Enough; Expert Voices and Early Career Reflections on Sampling and Cases in Qualitative Research" (2012), 3.

over, he gains empirical confidence that a category is saturated.⁵⁶ The purpose of the interview was to source for data from the stakeholders in the field of franchising in Algeria to explore and provide improvement of the franchising businesses in Algeria, the twelve respondents saturated this purpose. The thematic data analysis technique used to analyse the interview data. The researcher followed Creswell⁵⁷ guidelines in carrying out data analysis. The data were manually managed.

Findings and discussion

No Obligation for Disclosure by Franchisor in Algeria

The franchisor obligation to disclose information comes before concluding the franchise contract. This obligation means that the franchisor submits an introductory document about the project, provided that this document includes full and accurate details of the franchisor activity. In one of the interviews, respondent 8 mentioned, "Disclosure documents must be submitted by franchisor: where the obligations of the franchisor are obligation to inform in the period prior to the contract (the franchisor is obligated to give the franchisee, in the period preceding the conclusion of the contract), a document containing information about the project subject of the franchise contract, related to the commercial value of the company name. The trademark information includes information about the franchisor address, the value of his company's capital, his experience, the main stages of his development and his commercial activity, the franchise network, the content of the contract, the area of activity given, the obligations incurred by the franchisor, the expenses, and investments to be achieved, the places of bank payment and entry in the commercial registry.

Whole of this come in one written document, in order to avoid any risks resulting from breaching this commitment by persisting in giving sporadic information at different times, and expressly on the obligation placed on the franchisor to inform the franchisee by means of documents containing twenty types of information, the most important informations are:

56- Saunders, Benjamin, Julius Sim, Tom Kingstone, Shula Baker, Jackie Waterfield, Bernadette Bartlam, Heather Burroughs, and Clare Jinks. "Saturation in qualitative research: exploring its conceptualization and operationalization." *Quality & quantity* 52 (2018): 1893-1907.

57- Creswell, John W, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Thousand Oaks, California: SAGE Publications, 2014, 247.

1- Information related to the company the information to be provided is related to the head office of the company and the nature of its activity, with reference to the legal form the name and identity of the owner of a company if he is a natural person, and the identity of the managers if he is a legal person, in addition to the amount of its capital, as well as full information about the network to be contracted with.

2- Registration in the Commercial Register: The information related to the registration in the Commercial Register, or the registration number of the used brand must be submitted if the used brand has been acquired by assignment or if he has a license to use this brand.

3- Banks to deal with: The banks he deals with must be mentioned. If they are multiple, it is sufficient to specify the five major banks among them.

4- The date of the establishment of the company: the date of the establishment of the company must be mentioned with a summary of the main stages of development, including the invested network.

5- Information related to the judicial disputes' history of the company. In addition to granting a set of commitments: such as granting technical knowledge, providing technical assistance. The franchisee also offers a set of obligations such as paying the fees, preserving the mark, maintaining the quality of the product, maintaining the confidentiality of information... all of this within a defined and specific legal framework."⁵⁸

Respondent 8 added,

"If the Algerian law stipulates such laws, the franchisee will have the choice to choose between the projects in which he will invest and choose the best among them through the information he will obtain through disclosure documents, thus ensuring the achievement of the highest percentage of the possibility of project success and thus protecting the Algerian investor from losing and contribution in reviving the national economy. However, there is no Algerian law obligating the franchisor to provide disclosure documents to Algerian franchisees."⁵⁹

58- R 8 (Lecturer at University Professor), interviewed by researcher, WhatsApp, December 12, 2021.

59- Ibid.

Respondent 2 mentioned,

“There is no legal or regulatory text obligating the franchisor to submit disclosure documents in Algeria.”⁶⁰

Respondent 4 added,

“The franchisors in Algeria are not obligated at all to provide disclosure documents to franchisees.”⁶¹

Moreover, respondent 3 highlighted,

“The franchise contract is not stipulated in Algerian law, and therefore there is no obligation to submit disclosure documents.”⁶²

Respondent 6 added,

“There is no law obligate us (franchisors) to provide disclosure documents.”⁶³

The big problem in franchising related to disclosure documents in Algeria is the absence of provision that obligated the franchisor to disclose information to prospective franchisee. Respondent 9 observed the following:

“In the absence of practice and the legal framework, it is not possible to talk about the obligation of submitting disclosure documents in Algeria, I am not sure if there is obligation to submit disclosure documents in Algeria.”⁶⁴

The respondent 1 said,

“There is no explicit provision in Algerian law that obliges the foreign franchisor to submit disclosure documents, which inevitably leads to the exposure of Algerian franchisees to fraud and deception.”⁶⁵

As discussed above, the majority of the respondents stated that the law in Algeria does not cover the obligation of providing the disclosure documents by franchisor to prospective franchisee. The major problem with the current law on the disclosure

60- R 2 (Lawyer), interviewed by researcher, WhatsApp, December 18, 2021.

61- R 4 (Franchisee), interviewed by researcher, WhatsApp, January 29, 2022.

62- R 3 (Lawyer), interviewed by researcher, WhatsApp, February 22, 2022.

63- R 6 (Franchisor), interviewed by researcher, WhatsApp, February 23, 2022.

64- R 9 (Lecturer at University Professor), interviewed by researcher, WhatsApp, November 10, 2021.

65- R 1 (Director of the Algerian Franchise Association), interviewed by researcher, November 17, 2021.

documents in franchising is the law itself which there is no obligation in Algerian law to provide disclosure documents to prospective franchisees. The disclosure documents have been developed to curb the tide of illegal and fraudulent activities on the part of many franchisors. The disclosure documents designed to benefit prospective franchisees by providing them with sufficient unbiased information to enable them to make sound investment decisions.

Disclosure is the most important issue in the franchising sector to the extent that in some countries franchise laws are essentially disclosure laws. Many countries require that specific information be disclosed to potential franchisees prior to agreement execution or the payment of money by the franchisee. The scope and type of information varies from country to country. The purpose of most disclosure laws is to ensure that franchisees receive the information they need to make informed investment decisions.⁶⁶ Since there is no disclosure law related to franchising in Algeria, is there any law that obligates the franchisors to provide disclosure documents to the prospective franchisees?

Good Faith is generally required by people to set a standard for good relationships. In principle, good faith is recognized by contractual law in Albania and is required at the pre-contractual phase. It is justified by the importance of this phase and by the uncertainty that accompanies it. Art. 674 Albanian Civil Code: "Parties during the course of negotiations for the drafting of the contract must act in good faith towards each other". The behaviour of the parties must be in good faith, to avoid possible damages. In the case of a franchise contract, the principle of good faith is expressly required during negotiations path in Albania. It is justified by the important information that the parties exchange.⁶⁷

However, in African countries which derive their legal system from the French law (Tunisia, Morocco, and Algeria), a general duty of good faith may exist which can require voluntary disclosure of essential facts. However, due to the absence of any relevant case law, no specific guidance is available.⁶⁸ In fact, the Algerian legislature has addressed and restricted the principle of good faith to only the contract

66- International Franchise Association. Basics Track: International Growth. 50th Annual Legal Symposium JW Marriott Washington, DC, 2017,10.

67- IKONOMI, Ergysa. "Franchise contract and good faith." *Mediterranean Journal of Social Sciences* 5, no. 22 (2014): 313-319, 316.

68- Babette Marzheuser-Wood. *Franchising in Africa* 2013, 134.

implementation stage and excluded it from the pre-contract stage (the negotiation stage). The first paragraph of section 107 of the Algerian Civil Code states that: the contract must be executed according to what is included in it and in good faith.⁶⁹ According to section 107 of the Algerian Civil Code the good faith principle is only applicable to the implementation stage of the contract, any discussion prior to the contract would not incorporate the principle of good faith including pre-contractual disclosure in franchising. Hence, there is no obligation on a franchisor to provide disclosure documents to an Algerian prospective franchisee under the Algerian Civil Code.

Consumer Protection what is the relationship between consumer protection and disclosure in franchising? This relationship is embodied in one of the internationally recognized basic consumer rights. In 1985, the United Nations Assembly adopted eight basic consumer rights that led consumers to strengthen consumer protection policies around the world. The original basic consumer rights are the right to choose; the right to safety; the right to be informed; the right to be heard; the right to redress or remedy; the right to environmental health; the right to service; and the right to consumer education.⁷⁰ The basic right which directly impacts the franchise agreement is the right to be informed. The right to be informed requires businesses to always provide sufficient and appropriate information to consumers to enable them to make smart and informed product choices. Product information provided by businesses must always be complete and honest. This right was instituted as a safeguard against misleading information in the fields of financing, advertising, labelling, and packaging.⁷¹ Dropping this on the franchise, the aim of the disclosure documents is almost similar to the basic goal of being informed on consumer protection rights. The intent of the disclosure documents is for prospective franchisees to fully understand the investment they are making as well as the rights and obligations of each party under the agreement. Additionally, it is also to ensure that prospective franchisees have what they need to make informed

69- Algerian Civil Code 2007. Part 3 the effects of the contract section 107, 19.

70- Bekhouche, Imed Eddine. "Copyright and Trademark Offences Which Might Infringe the Consumer's Rights." *ATHENS LJ* 4 (2018): 243, 245.

71- United Nations. United Nations Conference on Trade and Development, *Manual on Consumer Protection*, 2018, 72,73.

investment decisions.⁷² The goals are almost similar, and the underlying purpose is to protect the weaker party (franchisee and consumer). However, the question that arises is can the franchisee rely on the consumer protection law against the franchisor to force him to provide disclosure documents? Is the franchisee considered a consumer under the consumer protection laws?

In most countries, it is clear that consumer protection regimes are designed to protect parties who are the end users of a product or services by purchasing them for their own personal consumption. Another criterion that some countries follow is to identify consumers who are natural (i.e. physical) persons. Therefore, if the buyer is a corporation, it will not be able to get any benefit from the consumer protection regime. This principle also generally complies with the definition of end user. South Africa is an interesting case in that it simply chooses to force franchisees into the common consumer definition. In this sense, its regulation defines a consumer and then adds that a consumer also includes a “franchisee in terms of a franchise agreement”. Therefore, in this regard there is no doubt that franchisees are consumers.⁷³ In Algeria, the Consumer Protection Act of 2009 defines consumers as,

“Every person or legal entity (syndicates and associations) who buys goods or services as an end user to meet his personal needs or meet the needs of someone else or animal which he takes care of.”⁷⁴

Through Article 3 of the Algerian Consumer Protection Act, it is clear that Algeria has followed the example of countries that do not consider a franchisee as a consumer. According to this article a consumer is person or a legal entity who buys goods or services as an end user; therefore, a consumer is an end user of a product or services for personal consumption to meet his own personal needs. However, it is clear that a franchisee does not act as a consumer but is actually an investor. A franchisee uses goods or services to make a profit and not for his personal needs. However, there is no obligation on a franchisor to provide disclosure documents to an Algerian

72- International Franchise Association. Basics Track: Registration & Disclosure. 52nd Annual Legal Symposium JW Marriott Washington, DC, 2019,1.

73- Grondona Benites Arntsen, P. and De Hoz, M., 2019. Consumer Protection | Lexology. [online] Lexology.com. Available at: <https://www.lexology.com/library/detail.aspx?g=273d1195-278d-4cdf-b2ec-6cd8524a4d35> [Accessed 28 August 2022].

74- Algerian Consumer Protection and Fraud Suppression Act No 09-03 of 2009, Article 3.

prospective franchisee under the Consumer Protection Act 2009.

In the practical concerns it difficult for franchisees to enforce their rights means that, without legislative intervention (non-disclosures) misrepresentation will appear to plague franchising in Algeria. Franchising has powerful economic potential and therefore legislative intervention is important to ensure that franchise-specific issues are adequately dealt with. . The current law in Algeria is insufficient to protect the interest of Algerian franchisees.

Current Practice of Franchise Business Related to Disclosure

There is no explicit provision in Algerian law that obliges the foreign franchisor to submit disclosure documents.⁷⁵ Respondent 4 added,

“The franchisor is not obligated to submit disclosure documents in Algeria, and I did not obtain them before signing the contract with the French company.”⁷⁶

Respondent 3 highlighted,

“There is no obligation to submit disclosure documents in Algeria.”⁷⁷

Respondent 10 argued that,

“Since there are no laws regulating franchising in Algeria, the franchisor is currently not obligated to submit disclosure documents.”⁷⁸

Respondent 11 added,

“There is no legal or regulatory text that obliges the franchisor to submit disclosure documents, except the contract that must be submitted to the interests of the Algerian Ministry of Trade.”⁷⁹

75- R 1 (Director of the Algerian Franchise Association), interviewed by researcher, November 17, 2021.

76- R 4 (Franchisee), interviewed by researcher, WhatsApp, January 29, 2022.

77- R 3 (Lawyer), interviewed by researcher, WhatsApp, February 22, 2022.

78- R 10 (Representative of the Algerian Central Bank), interviewed by researcher, January 05, 2022.

79- R 11 (Representative of the Algerian Registry Commerce), interviewed by researcher, December 11, 2021.

Respondent 6 highlighted that,

“As franchisor there is no law obligate me to provide disclosure documents to prospective franchisee, usually I did not provide any documents to franchisees.”⁸⁰

It is apparent from the discussion above that all the respondents believed that the franchisors are not obligated to submit disclosure documents to prospective franchisees in Algeria. So, the practice of franchising business related to disclosure is done by the parties without disclosure documents (franchisor do not provide disclosure documents, franchisee do not receive disclosure documents before the signing of contract). Hence, there is a need to establish a specific law to regulate franchise in Algeria. This law stipulates the obligation of submitting disclosure documents by franchisor to franchisee to protect the interest of the Algerian franchisee.

The Importance of Disclosure Documents in Franchising

Franchising is considered a highly regulated industry. There are many laws that require disclosures to be made to a prospective franchisee. The following provides an overview of the rationale behind the requirement for disclosure documents to be presented to a prospective franchisee.

1- The Prevention of Fraud and Abuse

The prevention of fraud and abuse were the primary drive behind the creation of the franchise disclosure system in the United States.⁸¹ The first objective of the disclosure documents is to protect a prospective franchisee from fraud. The most important step to prevent franchisee fraud is to check the disclosure form thoroughly. A prospective franchisee should receive a detailed disclosure document which contains important information about the franchise. If the franchisor does not provide the prospective franchisee with this information or if he refrains from providing the information, this should raise a red flag. A prospective franchisee should not enter into a franchise agreement without obtaining a full disclosure. Early days of franchising in U.S, many franchisors felt that laws were unnecessary to protect franchisees and they were opposed to the disclosure process. However, the legitimate franchise community in

80- R 6 (Franchisor), interviewed by researcher, WhatsApp, February 23, 2022.

81- Karp, Eric H., and Ari N. Stern. “A Proposal for a Mandatory Summary Franchise Disclosure Document.” *Franchise Law Journal* 35, no. 4 (2016), 541.

America has accepted that a pre-sale disclosure process is necessary. The Franchise Rules was amended in March 2007 after an extensive review process. The purpose of this review is to determine whether the Regulation is still needed and, if so, how it can be improved in the light of changes in the sector since the Rule was first introduced. The FTC concludes that pre-sale disclosure continues to be an important way to prevent fraud. Disclosure before sale requirements is retained in the amended Franchise Rule.⁸² For example, in 2022 the FTC has filed a complaint against Burgerim, a fast-food chain, alleging that the chain and its owner used false promises to entice more than 1,500 consumers to purchase franchises of the chain while withholding information required by the FTC's Disclosure Requirements and Prohibitions Concerning Franchising ("Franchise Rule"). According to the FTC, some of the false promises include recruiting potential franchisees, including veterans, by pitching the franchise opportunity as a "business in a box" requiring little to no business experience. According to the complaint, many customers paid Burgerim \$50,000 to \$70,000 in franchise fees, and Burgerim pocketed tens of millions of dollars in such fees despite the fact that the vast majority of those who paid them were never able to open restaurants. Even after months of requesting refunds, some franchisees were unable to obtain them, leaving them with losses or debts in the tens of thousands of dollars. The complaint also alleges violations of the "Franchise Rule," which requires franchisors to provide prospective franchisees with material information they need when weighing the risks and benefits of purchasing a franchise, such as a Franchise Disclosure Document, which includes specified information about the franchisor, the franchise business, and the franchise agreement terms. According to the complaint, Burgerim and its owner failed to provide accurate information about franchise fee refundability and required information about current and former franchisees. Burgerim and its owner face both monetary and non-monetary penalties.⁸³

2- To Make an Informed Decision

In France, Article L330-3 of the Commercial Code requires disclosure to a prospective franchisee, to enable him to make

82- Woker, Tanya Ann. "Regulating franchise operations in South Africa: a study of the existing legal framework with suggestions for reform." (2009), 137.

83- Aguiar, Tiffany, Kari Ferwer, and Holly A. Melton. "FTC Updates (February 7-13, 2022)." Lexology. Crowell & Moring LLP, February 8, 2022. <https://www.lexology.com/library/detail.aspx?g=7e9ff986-bab2-401c-9ea1-5044443b9524>.

an informed decision with “full knowledge of the relevant facts.”⁸⁴ In Australia, one of the aims of the franchising code of conduct compliance manual is to ensure that prospective franchisees have enough information to make a reasonably informed decision about whether to enter into a franchise agreement.⁸⁵ The International Institute for the Unification of Private Law (UNIDROIT) have model for franchise disclosure law. The Model Law ensures that the prospective franchisees who intend to invest in franchising receive material information about franchise offerings, prospective franchisees are more likely to protect themselves against fraud if they have access to truthful, important information in advance of their assent to any franchise agreement.⁸⁶ The second objective of disclosure documents is to make an informed decision. An informed decision can only be made by a prospective franchisee upon getting information about the franchisor, the franchise system and the agreements they need to sign. The disclosure documents are designed to give the prospective franchisee the information that he needs in order to make an informed decision about investing in a particular franchise. Significantly, 90% of disputes between franchisors and franchisees worldwide involve allegations of disclosing incorrect information, or failure to disclose material information.⁸⁷

3- Franchisee’s Confidence, Marketing Integrity and Marketing Efficiency

The antecedent disclosure documents can facilitate private negotiations, provide equal access to information, promote trust, and build confidence in the market through better transparency.⁸⁸ The third objective of disclosure documents is the benefits it can bring to a prospective franchisee’s confidence, marketing integrity, marketing efficiency and even government operations by ensuring that accurate information is available to a prospective franchisee.

84- Emmanuel Schulte. Franchise in 32 jurisdictions worldwide. *Getting the Deal Through* 2011, 49.

85- Australian Competition and Consumer Commission. *Franchising code of conduct compliance manual for franchisors and master franchisees*, 2013.

86- UNIDROIT International Institute for the Unification of Private Law, *model franchise disclosure law*. 2022.

87- Peters, L. *Franchising: Recent Legislation and the UNIDROIT Model Franchise Disclosure Law*. *Business Law International*, 5, 33-66. 2004, 34.

88- Elizabeth Spencer, ‘Effective Disclosure in the Regulation of Franchising’, *Proceedings of the 22nd Annual International Society of Franchising Conference*, Saint-Malo, France, June 2008,5.

4- To Reduce the Imbalance of Power Between the Franchisors and Franchisees

While prospective franchisees are often unfamiliar with the business in which they plan to invest, the franchisors generally have a monopoly of the essential and necessary information that a prospective franchisee would need in making a decision to invest. Therefore, the supply of information by the franchisor is very important to the franchisee. The lack of which will not only hinder the franchisee's ability to contribute to the success of negotiations before the franchise start-up, but will also mask the potential risk of future problems and conflicts of interest if the franchise system is not as sophisticated as envisioned by the prospective franchisee.⁸⁹ In the absence of a mandatory disclosure requirement, the prospective franchisees are not always aware of the relevant information to make an informed decision when purchasing a franchise. The weaker party (prospective franchisee) needs to be protected by providing sufficient and appropriate disclosure of information to enable a proper assessment of the risks associated with the investment. Therefore, the existence of a law that explicitly clarifies what information must be disclosed, its quantity, in addition to how and when, was necessary to effectively regulate the franchising sector in Algeria. The prior disclosure is widely accepted as the key to franchise regulation. It is the most appropriate tool to address the information imbalance inherent in a typical franchise relationship.

In Algeria, the franchisee is not protected due to the absence of disclosure law, unlike the franchisee in France and Malaysia for example which is protected with disclosure law. The franchisee in Algeria unable to rely on consumer law, unlike the franchisee in South Africa, which is protected by the Consumer Protection Act. The Algerian franchisee will suffer from inadequate franchise-offering or misleading, wholly lacking or blatantly false as to material facts necessary to make an intelligent investment decision. As a result, some franchisees could make losses and could be bound into contracts that could not commercially be successful, because of misrepresentation or overselling by the franchisors.

89- Zhang, Yun. "The Information Imbalance in the Franchising Relationship: a Best Practice Model for Prior Disclosure and an Evaluation of China's Regulatory Regime." PhD diss., University of New South Wales (2011),41.

Conclusion

Disclosure is the first step in starting a franchise. The first step should be to ensure the success of franchising. The first objective of the disclosure documents is to protect a prospective franchisee from fraud and abuse. The second objective of disclosure documents is to make an informed decision. An informed decision can only be made by a prospective franchisee upon getting information about the franchisor, the franchise system and the agreements they need to sign. The disclosure documents are designed to give the prospective franchisee the information that he needs in order to make an informed decision about investing in a particular franchise. The third objective of disclosure documents is the benefits it can bring to a prospective franchisee's confidence, marketing integrity, marketing efficiency and even government operations by ensuring that accurate information is available to a prospective franchisee. The fourth objective is to reduce the imbalance of power between the franchisors and franchisees.

However, Algeria does not cover the obligation of providing the disclosure documents by franchisor to prospective franchisee. The practice of franchise activities related to disclosure currently is carried out by the parties without disclosure documents. The Algerian franchisee is not protected due to the absence of disclosure law, and the franchisee in Algeria unable to rely on consumer law because Algeria has followed the example of countries that do not consider a franchisee as a consumer. As a result of the franchisors' misrepresentation or overselling, some Algerian franchisees may incur losses and be bound into contracts that are not commercially viable.

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