



## The Law Relating to Disclosure Documents in Franchising

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### Abstract

The franchises have a great impact on the world economy, based on Fran Data in 2015 research franchising accumulates a turnover of 1.6 billion US dollars, representing 2.3% of world GDP, has 2.2 million companies involved and employs nineteen million people. Disclosure documents in franchising are very important, the first step to start franchise business is to provide disclosure documents to the prospective franchisee by the franchisor. How disclosure documents are regulated in different jurisdictions (common law system and civil law system), what are the information that should be included in disclosure document and the consequence of failure or no compliance with the requirement of disclosure and how this information protect the interest of franchisees. The main objective of this paper is to discuss/analysis the law relating to disclosure documents in franchising and which information should be in the disclosure documents. Also, to discuss how the providing of disclosure documents protects the interest of the franchisees and the consequence of failure or no compliance with the requirement of disclosure by the franchisors. In this paper, a doctrinal legal method complimented with comparative law research was used. The armchair library approach was employed for the collection of the primary legal materials (France Commercial Code Fold Regulatory part Articles R121-1 to R958-2, Malaysian Franchise Act 1998; Tunisia Decree No 2010-1501, June 21, 2010; Australia Franchise Code of Conduct 1998; South Africa Consumer Protection Act, 2008 (Act NO. 68 OF 2008) Regulations; and US Federal Trade Commission Franchise Rule, 2008). For this purpose, the Sultanah Bahiyah Library was used. The secondary data include textbooks, articles, academic journal, newspaper, dictionaries, and information on the internet, government publications, thesis, online database and guidelines which are relevant to the area. The paper adopts the exploratory analysis and comparative method. The findings show that the content of disclosure documents and timing of disclosure are very important elements to protect the interest of franchisees. The results shown also that the imposed penalties in the case of a failure to comply with disclosure requirements aims to prevent the franchisor from the breach of the disclosure requirement.

**Keywords:** Franchising, Disclosure Documents, Disclosure Law, Pre-contractual Disclosure, Franchisee's Protection.

## Introduction

Franchising is a business deal between two parties the franchisor grants to the franchisee the right to operate its business system in exchange for the payment of fees and royalties (Tamara, 2010). Franchise business involves many countries throughout the world. In United State of America (USA) for example, franchising business offers products and services in more than 300 business categories (Moskowitz and Sanford, 2017). The categories cover food and beverage, housing, healthcare, education, professional services, automotive maintenance, accounting and taxation, real estate, home services, information technology (IT) services and retail products (U.S. Department of Commerce, 2016). The French Franchise Federation refers to the European Code of Franchising Ethics to define the franchise. Franchising is a system of marketing goods and / or services and / or technologies, based on close and continuous collaboration between legally and financially separate and independent undertaking, franchisors and its individual franchisees, for which the franchisor assign rights to individual franchisees and imposes obligations, to run a business according to the concept of the franchisor. The right authorizes and obliges individual franchisees, in exchange for direct or indirect financial considerations, to use the trade names and / or registered trademark and / or service mark of the franchisor, its know-how, its commercial and technical methods, its procedural systems and other industrial and / or intellectual property rights, supported by the provision of continuous technical and commercial assistance, during the framework and during the term of the written franchise agreement created between the parties for this purpose. (Emmanuel Schulte, 2011).

In Australia, the Franchise Code of Conduct, adopted in 1998, defines a franchise as an agreement: in which a person (the franchisor) grants to another person (the franchisee) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor (Spencer E. C, 2013). Under the Tunisian Act No 2009-69 a franchise agreement is a contract through which the trademark owner grants the right of its use to a natural person or to a legal entity called franchisee, to distribute the products or provide services in return for consideration (Tunisia Act, 2009). The Franchise Association of South Africa defines "franchise" as giving an individual the right to something, the right in this case is to operate a business or licence according to specific conditions (Protulis and Alex, 2018). The Franchise Rule of the Federal Trade Commission of U.S defines "franchise" as an agreement under which the franchisor grants franchisees the right to a operate a business that: firstly, is identified with the franchisor trademark; secondly is subject to

significant control and / or assistance of the franchisor; and thirdly, in exchange for this, the franchisee pays a "franchise fee" to the franchisor or his affiliate (US Federal Trade Commission, 2008). Under Malaysian Franchise Act 1998 the franchise means a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons by which the franchisor grants to the franchisee the right to operate a business according to the franchise system as determined by the franchisor during a term to be determined by the franchisor; the franchisor grants to the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property, owned by the franchisor or relating to the franchisor, and includes a situation where the franchisor, who is the registered user of, or is licensed by another person to use, any intellectual property, grants such right that he possesses to permit the franchisee to use the intellectual property; the franchisor possesses the right to administer continuous control during the franchise term over the franchisee's business operations in accordance with the franchise system; and in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration. From above, the franchise means a method of business where the franchisor grants the franchisee the right to operate its business system in exchange for the payment of fees and royalties (Malaysia Franchise Act, 1998). However, these countries (Australia, Tunisia, United State, South Africa, France, and Malaysia) have laws regulated the sales of franchises which impose requirements to provide disclosure documents to prospective franchisees. Disclosure documents means a document containing the information required under the law and the aim of the disclosing this information is to protect the franchisees. So, how the chosen countries regulated franchise disclosure documents, which information should be in the disclosure documents and how this information protects the interest of franchisee and the consequence of failure or no compliance with the requirement of disclosure by the franchisor.

In this paper six countries were chosen for several reasons; first reason is to compare between different legal systems to make the findings of this paper more reliable and acceptable (Malaysia and Australia common law system, France, U.S and Tunisia civil law system, South Africa mixed law system). Second reason due to the important of these countries in the field of franchising; U.S most developed country in franchising the first disclosure law was introduced in the US in 1971 in California (Forgas B, Robert and Brenda, 2017); France because it was the first country outside the Americas to regulate franchising in 1989 (Zeidman, 2013); South Africa because it is the first developed country in Africa in the field of franchising (Sigué, 2012) and its law is unique by including the franchisee under the country's broad approach to consumer rights (Zeidman, 2013); Malaysia because it have the

most comprehensive disclosure provisions in the world (Zeidman, 2013); With the existence of protections for franchisees before entering the franchise agreement and during the course of the relationship, Australia have one of the most comprehensive franchising regulation in the world (Emerson R. W, 2013); and Tunisia because it have one of the most recent franchise laws in the world which enacted in 2009.

Discussions about disclosure in this paper contain an explanation of the time of disclosure, information required to be disclosed, how this information protects the interest of franchisee and remedies in case of a failure to comply with disclosure requirements.

### **Literature Review**

Research carried out by Tamara Milenkovic Kerkovic under the title The Main Directions in Comparative Franchising Regulation UNIDROIT Initiative and its Influence, the research dealt with general things like the concept and the types of franchising agreements and recent national legislation on franchising in the world. The research regarding the disclosure documents talk about the influence of the UNIDROIT Model Franchise Disclosure Law on the chosen method of franchise agreement legislation. however, the comparison did not specify the deferent between the countries in term of the information that should be disclosed and time of the disclosure (Kerkovic T. M, 2010).

In European Union, research carried out by Mark Abell (2016) show that only six member states have franchise-specific disclosure laws. Other member state takes a different approach regarding disclosure in franchising. This resulted a lack of any homogeneous approach. Mark Abell in his research did not explain about the approaches used in other EU countries which they have no franchise-specific disclosure laws (Mark Abell, 2016). In China, research conducted by Jinye Li and Hongsheng Xia indicated that research related to disclosure system in franchising in China focuses on foreign experience in the information disclosure system to improve China's information disclosure system. The researchers mentioned some research in this field, and they reached a necessity for China to learn from its own shortcomings, learn from advanced international experience, improve existing systems and introduce new good systems to promote further development to the Chinese franchise market (Li and Xia, 2019). Research carried out by Philip F. Zeidman and Tao Xu under the title regulation of franchising activities a brief history, the research in the term of disclosure conclude that there are 33 jurisdictions that have some form of franchise-specific law or regulation that requires the delivery of a disclosure document to a prospective franchisee before entering the agreement. the research divide

this country to groups; first group countries require pre-sale disclosure, but their disclosure requirements lack any specificity, second group countries with franchise disclosure laws are far narrower than what is typically required, third group countries require extensive disclosure from the franchisors to the franchisees before entering into the arrangement, but do not otherwise regulate the substantive terms of the parties contracts, and the last group countries regulating the pre-sale disclosure, in addition the franchise regulations should seek to regulate other aspects of the franchisor-franchisee arrangement. the good thing in the research is the table which provide list of franchise statutes and regulations around the world in aspects of disclosure, relationships, and registration (Philip F. Zeidman and Tao Xu, 2019).

The role and effectiveness of disclosure documents has been extensively addressed in the franchise literature; franchising laws have been developed to curb the tide of illegal and fraudulent activities on the part of many franchisors during the 1950s and 1960s in U. S (Chan P. S and Justis R. T, 1993). Research conducted by Shelby D. Hunt and John R. Nevin conclude that the disclosure laws are designed to benefit prospective franchisees by providing them with sufficient unbiased information to enable them to make sound investment decisions (Hunt S. D and Nevin J R, 1976). Lisa T. Greenlees, Debi Sutin and Kendal Tyre on the 50th Annual Legal Symposium of International Franchise Association in the term of Pre-Sale Disclosure conclude that the aim of disclosure laws is to ensure that franchisees receive information necessary to make an informed investment decision (Lisa T. Greenlees, Debi Sutin and Kendal Tyre, 2017).

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 (Australian Competition and Consumer Commission, 2013). Article L330-3 of the French Commercial Code requires the franchisors to provide disclosure document to the franchisees to allowing them to make an informed commitment (French Commercial Code, 2000).

The International Institute for the Unification of Private Law (UNIDROIT) has a model franchise disclosure law. The purpose of this law is to be a means of creating a safe legal environment between all the parties in a franchise agreement. To this end, the Model Law ensures that prospective franchisees wishing to invest in a franchise receive important information about the franchise offering, enabling them to make informed investment decisions. In addition, the Model Law provides security to the franchisor in their relationships with franchisees, administrative authorities and courts (UNIDROIT, 2002). There is no doubt that disclose information protect the

interest of franchisee by enable them to make informed decision. However, there is no discussion about how each information provided by the franchisor can help the franchisee to make an informed decision. In this research, discussion was about each information role to help the franchisee to make informed decision. to make the discussion clear the information was divided in groups; information relating to the franchisor and its brand; information about the history of the franchisor's business and financial details; information on the distribution network of the franchisor; information on the terms of engagement of the prospective franchisee; and market information. The discussion also covered the disclosure period, and the remedies in case of a failure to comply with disclosure requirements.

## Method

The doctrinal methodology aims at examining and analysing in a systematic way how the laws and legal institutions work (Anwarul Yaqin, 2007). In this research, doctrinal legal method complimented with comparative research was used. The aim of combining different approaches is to provide full visualization and strengthen the knowledge in the field of the research (De Silva. T, 2010). The scope of this research focuses on laws of France Commercial Code Fold Regulatory part Articles R121-1 to R958-2; Malaysian Franchise Act 1998; Tunisia Decree No 2010-1501, June 21, 2010; Australia Franchise Code of Conduct 1998; South Africa Consumer Protection Act, 2008 (Act NO. 68 OF 2008) Regulations; and US Federal Trade Commission Franchise Rule, 2008. The data used in this research is primary and secondary. The primary data are relevant materials like statutes and laws of France, Malaysia, Tunisia, Australia, South Africa, and US. The secondary data would 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 was employed for the collection of the primary legal materials. For this purpose, the Sultanah Bahiyah Library used to source the primary legal material. The secondary data will equally source through the library approach. The comparative method is adopted in this research to learn from the experience of the selected countries (France, Malaysia, Tunisia, Australia, South Africa, and US). This paper aimed to compare and analyse the existing franchising law in selected countries to explore and analysis the law relating to disclosure documents in franchising and which information should be in the disclosure documents. Also, this paper adopted the descriptive and exploratory analysis to analysing the data for this research. The descriptive and exploratory methods seek to finding out and explain unknown or partly known facts (Anwarul Yaqin, 2007). Since this

study aimed to identify how the providing of disclosure documents protects the interest of the franchisees and the consequence of failure or no compliance with the requirement of disclosure by the franchisors, thus, descriptive, and exploratory methods of analysis are most appropriate for this paper.

## Findings and Discussion

The Content of Disclosure Documents and How this Documents Protect the Interest of Franchisee

Laws in France, Malaysia, Tunisia, Australia, South Africa, and US require franchisor to provide the prospective franchisee with disclosure documents. The disclosure documents contain information which should be on the issues that will make the franchisee able to decide whether to enter into franchise agreement or not. The information that must be presented or prepared are different from one country to another. In South Africa, Regulation 3 of the Consumer Protection Act Regulations governs the information that must be contained in a disclosure document. In Tunisia, law No 2009-69 of 12 August 2009 relating to the distribution trade requires a franchisor to disclose certain information to prospective franchisee before the signing of contract. In addition, Decree No 2010-1501 dated 21 June 2010 identified the information that should appear in the franchise disclosure document. In France, article R.330-1 the France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2 detailed the information which should be contain at disclosure document. The US Federal Trade Commission have Franchise Rule 2008 called FTC Franchise Rule identified the information that should appear in the franchise disclosure document. In Australia, Competition and Consumer (Industry Codes—Franchising) Regulation 2014 contain disclosure requirements. In addition, the Australian Competition and Consumer Commission (ACCC) has developed a model disclosure document, to assist of the fulfil of disclosure obligations under the Code. The Malaysian Franchise Act 1998 covered pre-contractual disclosure.

The disclosure information is intended to enlighten the franchisee first on the past - history of the franchisor and his network - then on the present - current situation of this franchisor as of its network -, finally on the future - relationships that should be established and context economic possible. the objective is to compensate for the asymmetry of information by allowing the prospective franchisee to (know where he is coming in and where he is going) to express informed consent.

### 1. Information Relating to the Franchisor and its Brand

Country	Information Relating to the Franchisor and its Brand
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South Africa	- Contact details of the franchisor.
Tunisia	<ul style="list-style-type: none"> <li>- Legal form of the company and the nature of its business.</li> <li>- Identity of the franchisor and its address for natural persons.</li> <li>- Identity of the legal representative.</li> <li>- The address of the registered office.</li> <li>- The list of directors and the -capital for legal persons.</li> <li>- Registration number in the trade register or any equivalent data.</li> <li>- Proof of ownership of the trademark or the trade name.</li> <li>- Information relating to the registration of the trademark with the Tunisian register of trademarks.</li> </ul>
France	<ul style="list-style-type: none"> <li>- Company name, location, description of its activity, capital, registration number, bank accounts (this may be limited to the five main bank accounts).</li> <li>- Identity of the entrepreneur or of the managers, all indications regarding their professional references. date of the company's establishment, and principal stages of its evolution over the past 5 years.</li> <li>- Registration number, date of acquisition of the trademark or date and duration of the licence of the trademark, if applicable.</li> </ul>
US	- The franchisor and any parents, predecessors, and affiliates.
Australia	- Details of certain types of legal proceedings against the franchisor or its directors.
Malaysia	Description of the franchise business.

Table 1: Information Relating to the Franchisor and its Brand

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

Information relating to the franchisor and its brand, the aim of this information is to verify the existence of the company and certain related data, and a proof of ownership rights of the trademark. Regarding the table France and Tunisia are more comprehensive and detailed than south Africa, US, Australia, and Malaysia in the term of information relating to the franchisor



and its brand. France requires company name, location, description of its activity, capital, registration number, bank accounts (this may be limited to the five main bank accounts); identity of the entrepreneur or of the managers, all indications regarding their professional references; and registration number, date of acquisition of the trademark or date and duration of the licence of the trademark, if applicable. Tunisia require information about legal form of the company and the nature of its business; identity of the franchisor and its address for natural persons; identity of the legal representative; the address of the registered office; the list of directors and the -capital for legal persons; registration number in the trade register or any equivalent data; proof of ownership of the trademark or the trade name; and information relating to the registration of the trademark with the Tunisian register of trademarks. In the other hand, South Africa, US, Australia, and Malaysia require general description on the term of information relating to the franchisor and its brand without any specifications. For example, South Africa require the contact details of the franchisor, Malaysia require the description of the franchise business.

## 2. Information About the History of the Franchisor's Business and Financial Details

Country	Information About the History of the Franchisor's Business and Financial Details
South Africa	- A statement confirming whether there has been any significant change in the franchisor's financial situation.
Tunisia	- A summary of the history of the franchisor - The franchisor's financial statements
France	- Date of the company's establishment, and principal stages of its evolution over the past 5 years. - Annual financial statements of the two last financial years or the annual reports for the past two years, if the company's securities are publicly traded.
US	- Business experience. - Financial statements. - Financial performance representations.
Australia	- financial details.
Malaysia	- Audited accounts of the franchisor's business (at present, the Franchise Registry requires a minimum of three years' audited accounts).

Table 2: Information About the History of the Franchisor's Business and Financial Details.

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

Information about the history of the franchisor’s business contributes to inform the prospective franchisee about the professional experience of the franchisor and the evolution of its economic weight. While the financial statements are obviously an element to assess the financial strength of the supplier. Because the financial details are a key piece of information for prospective franchisees as they provide an insight into the immediate status of the franchise system, the six countries (South Africa, Tunisia, France, US, Australia and Malaysia) imposed requirements of financial details on the franchise disclosure documents. however, regarding the requirement to disclose information about the history of franchisor's business only Tunisia, France, and US imposed requirements about that. In Tunisia, the franchisor should provide the prospective franchisee with a summary of the history of the franchisor. Also, France requires the disclosing of date of the company’s establishment, and principal stages of its evolution over the past 5 years. While US require business experience of the franchisor to be disclosed.

### 3. Information on the Distribution Network of the Franchisor

Country	Information on the Distribution Network of the Franchisor
South Africa	- The number of franchise outlets. - A list of the current franchisees.
Tunisia	- Data on the network of franchisees. - The list of franchisees in Tunisia, their addresses, dates on which they joined the system and former franchisees and the list of franchisees excluded from the network.
France	- List of the member companies with indication of the operating mode, list of the companies (maximum 50) located in France with which the franchisor concluded the same agreement and the date of conclusion or renewal, or both, of such agreements, indication of the number of companies which have left the network during the previous year and of the reason why they left the network (termination, expiration, etc), indication of the presence within the business area of the franchisee of any commercial premises where the products or services concerned are sold.
US	- Outlets and franchisee information.

Australia	- Contact details of current as well as former franchisees (unless the former franchisee has requested in writing that their details not be disclosed).
Malaysia	/

Table 3: Information on the Distribution Network of the Franchisor.

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

Information on the distribution network of the franchisor contributes to provide the franchisee with information on the strength of the network, its scope and importance. The franchisor must provide to prospective franchisee the list of franchisee network, their addresses, and the date of their membership in the network, which will allow contact with the said franchisees to benefit from their experience or to verify a certain information provided by the franchisor. The Tunisian law requiring the providing of the list of franchisees excluded from the network aim to inform the prospective franchisee about cases of failure within the network and their number, which may help him to better perceive the viability of such a network. But the text by limiting itself to requiring the list of franchisees "excluded" from the network and not the list of franchisees who have left reduced considerably the effectiveness of such information.

This requirement is important: the prospective franchisee will know the weaknesses of the franchisor and may ask questions. when he reads, for example, that about twenty points of sale have been closed due to a cancellation of contract due to the franchisor's non-compliance with its obligations. However, the French law did well in this point where it requires indication of the number of companies which have left the network during the previous year and of the reason why they left the network (termination, expiration, etc). In other side, South Africa, US, and Australia ignore this important information (requirement of the indication of the number of franchisees which have left the network) that may change the opinion of the prospective franchisee to enter the franchise business. South Africa only require a list of the current franchisees and the number of franchise outlets. US also require outlets and franchisee information. Australia requires contact details of current as well as former franchisees. Malaysia, there is no requirement about the disclosure of information on the distribution network of the franchisor.

#### 4. Information on the Terms of Engagement of the Prospective Franchisee

Country	Information on the Terms of Engagement of the Prospective Franchisee
South Africa	/
Tunisia	- The nature and the amount of expenses and investment specific to the trademark or the trade name.
France	/
US	- Initial fees. - Other fees. - Estimated initial investment.
Australia	- The franchisee's costs to start operating the franchised business and other payments or fees they may be required to make.
Malaysia	- Details of intellectual property rights, fees and payments required from the franchisee.

Table 4: Information on the Terms of Engagement of the Prospective Franchisee.

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

Information on the terms of engagement of the prospective franchisee aims to help the franchisee to form an idea of the extent of his future commitment to the plan financial. Franchisor in US required to provide the prospective franchisee with the information about the initial fees, other fees, and estimated initial investment. while in Tunisia the law requires the nature and the amount of expenses and investment specific to the trademark or the trade name to be disclosed to prospective franchisee. The law in Malaysia required details of intellectual property rights, fees and payments required from the franchisee. The Australian law also requires the franchisee's costs to start operating the franchised business and other payments or fees they may be required to make. However, there is no requirement regarding disclosure of information on the terms of engagement of the prospective franchisee in South Africa and France. Franchisor usually provide the prospective franchisee with the information below: entrance fees, this is usually a fixed sum; and royalties payable periodically. The royalties can consist of a fixed or variable sum depending on the turnover achieved. The franchisor can also easily communicate to the franchisee the amount of certain expenses to be incurred by the latter before the operation, such as expenses related to the

development with the acquisition of equipment or decorative elements from the franchisor by communicating the related prices, the remuneration of the initial services of the franchisor, layout costs, initial stock, etc.

### 5. Market Information

Country	Market Information
South Africa	/
Tunisia	- Data on the sector of activity of the company and the opportunities for development of the sector in the areas where the brand is represented, as well as in Tunisia, specification of the nature, amount of expenditure and specific investments of the trademark or commercial brand.
France	- On the state and prospects of the market (general and local).
US	/
Australia	/
Malaysia	/

Table 5: Market Information

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

The aim of market information is to enlighten the prospective franchisee regarding to future data on the sector which will be invest in. The information must contain data on the sector of activity of the company. This information relates to the size of the market, its growth rate, demand characteristics and customer data, sector turnover considered, the market shares of competitors, the applicable legal rules, considering the influence of demographics, etc.

### The Disclosure Period

The prospective franchisee needs reasonable time to study the disclosure document, maybe he will consult with an expert, or he will contact the other franchisees in his same franchise network to benefit from their experience or to verify a certain information which provided by the franchisor.

There is diversity in the period of providing disclosure document to prospective franchisees prior to the signing of franchise agreement. The table below illustrates the diversity in the period of providing disclosure

documents to prospective franchisees prior to the signing of franchise agreement;

Country	Period of Providing Disclosure Document
South Africa	14 days
Tunisia	20 days
France	20 days
US	14 days
Australia	14 days
Malaysia	10 days

Table 6: Period of Providing Disclosure Document.

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

The table shows that the period ranges of providing disclosure document to prospective franchisees prior to the signing of franchise agreement starting from 10 days until 20 days. In Australia, US, and South Africa the requirement regarding the submission of disclosure documents to prospective franchisees is fourteen days before the signing of the franchise agreement. Malaysia’s requirement regarding the submission of disclosure documents to prospective franchisees is ten business days before the signing of the franchise agreement. Tunisia and France required to submit the disclosure documents to prospective franchisees twenty days before the franchise agreement was signed.

Having twenty days is more reasonable than ten or fourteen days. Twenty days before the signing the agreement is more reasonable time for the prospective franchisee to study the opportunity of the franchising investment. Twenty days are enough time to think about the decision to become a franchisee, enough time to reviewing and understanding what the disclosure documents include.

The Remedies in Case of a Failure to Comply with Disclosure Requirements:

Country	Remedies in Case of a Failure to Comply with Disclosure Requirements
South Africa	- If the required information is not included in the disclosure document or the contract, or if there is any information is incorrect, the franchisee may claim that he has been persuaded to enter into an agreement with a material

	<p>misstatement of facts. This will invalidate the contract at the franchisee's option.</p> <ul style="list-style-type: none"> <li>- This may give the franchisee the right to terminate the agreement and ask for compensation.</li> </ul>
Tunisia	<ul style="list-style-type: none"> <li>- Invalidate the contract.</li> </ul>
France	<ul style="list-style-type: none"> <li>-Cancellation of the contract</li> </ul>
US	<ul style="list-style-type: none"> <li>- Preliminary and permanent injunctive relief, including potentiality barring a franchisor from conducting business or engaging on certain conduct.</li> <li>- Civil penalties.</li> </ul>
Australia	<ul style="list-style-type: none"> <li>-The franchisee may be able to cancel the agreement.</li> <li>-Financial penalties imposed by ACCC</li> </ul>
Malaysia	<ul style="list-style-type: none"> <li>- If the information within the disclosure documents is false or misleading, the franchisor may be liable to both criminal and civil action.</li> <li>-Penalties.</li> </ul>

Table 7: Remedies in Case of a Failure to Comply with Disclosure Requirements.

Source: from South Africa Regulation 3 of the Consumer Protection Act Regulations; Tunisia Decree No 2010-1501 dated 21 June 2010; France Commercial Code Fold Regulatory Part Articles R121-1 to R958-2; US Federal Trade Commission. (Franchise Rule, 2008); Australian Competition and Consumer Commission (ACCC) The franchisor compliance manual 2019; And Malaysian Franchise Act 1998.

The table shows that the remedies in case of a failure to comply with disclosure requirements is the invalidate of the contract in South Africa, Tunisia, France, and Australia. Moreover, US, Australia and Malaysia imposed penalties, for example in US, administrative proceedings to revoke the franchisor’s registration to sell franchises in that state, civil actions to obtain damages and/or penalties from the franchisor, and criminal prosecution (Kathryn A. Rookes, Brenda Beerman Trickey and Tim Goodman, 2010). Civil or administrative fines can be imposed in most states of US. The maximum per violation fine varies by state, but in several states a fine can be up to \$10,000, and in some states, it can be as high as \$50,000 or \$100,000 (Martin Cordell and Beata Krakus, 2017). In Malaysia, if the information within the disclosure documents is false or misleading, the franchisor may be liable to both criminal and civil action under the Act. It is a criminal offence under the Act to make false statements or omissions that render the information within the disclosure documents misleading (Malaysia Franchise Act,1998). Section 39 of the Act sets out the applicable penalties if a person is found guilty of an offence under the Act where no express penalties have been specified. Upon conviction, a person will be liable: for the first offence under the Act, to pay a fine of not less than 5,000 ringgit and no more than 25,000

ringgit or to imprisonment of no more than six months; and for the second or any subsequent offences, a fine of not less than 10,000 ringgit and no more than 50,000 ringgit or imprisonment of no more than one year. If the alleged offender is a body corporate, it will, upon conviction, attract for the first offence under the Act, a fine of not less than 10,000 ringgit and no more than 50,000 ringgits; and for the second or any subsequent offence, a fine of not less than 20,000 ringgit and no more than 100,000 ringgit. Further, the court has the power to declare the franchise agreement null and void and may order the franchisor to refund any payments made by the franchisee, and the court may further prohibit the franchisor from entering into any new franchise agreements or from appointing any new franchisees (Malaysia Franchise Act,1998). The addition of the penalties is very important and more effective to prevent the franchisor from the breach of the disclosure requirement.

## **Conclusion**

Disclosure is the first steps to start a franchise business. To ensure the success of franchising; the first step should be completely regulated. The content of disclosure documents and timing of disclosure are important elements to protect the franchisees. The imposed penalties are very important way to prevent the franchisor from the breach of the pre-disclosure requirement. The aim of information relating to the franchisor and its brand is to verify the existence of the company and certain related data, and a proof of ownership rights of the trademark. Information about the history of the franchisor's business contributes to inform the prospective franchisee about the professional experience of the franchisor and the evolution of its economic weight. While the financial statements are obviously an element to assess the financial strength of the supplier. Because the financial details are a key piece of information for prospective franchisees as they provide an insight into the immediate status of the franchise system. Information on the distribution network of the franchisor contributes to provide the franchisee with information on the strength of the network, its scope and importance. Information on the terms of engagement of the prospective franchisee aims to help the franchisee to form an idea of the extent of his future commitment to the plan financial. The aim of market information is to enlighten the prospective franchisee regarding to future data on the sector which will be invest in.

The franchisee prior to the signing of franchise agreement need time to think about the decision to become a franchisee, enough time to reviewing and understanding what the disclosure documents include. The prospective franchisee needs reasonable time to study the disclosure document, maybe he will consult with an expert, or he will contact the other franchisees in his same



franchise network to benefit from their experience or to verify a certain information which provided by the franchisor. The remedies in the case of a failure to comply with disclosure requirements is the invalidate of the contract and penalties. The aim of the imposed penalties is to prevent the franchisor from the breach of the disclosure requirement.

## References

- Anwarul Yaqin, G. "Legal Research and Writing." Malaysia: Lexis Nexis, 2007.
- Australian Competition and Consumer Commission. "Franchising Code of Conduct Compliance Manual for Franchisors and Master Franchisees," 2013.
- Chan, P. S., & Justis, R. T. "To Franchise or Not to Franchise?" Management Decision, 1993.
- De Silva, T. "Benefits of Mixed Methods in Environmental Reporting Research." New Zealand: Lincoln University, 1-19, 2010.
- Emerson, R. W. "Franchisees as Consumers: The South African Example." Fordham International Law Journal, 37, 455, 2013.
- Schulte, Emmanuel. "Franchise in 32 Jurisdictions Worldwide: France. "Getting the Deal Through, 2011.
- Federal Trade Commission, US. "Franchise Rule 16 C.F.R. Part 436. Compliance Guide," May 2008.
- Forgas, B., Lauer, R. A., & Trickey, B. B. "Should International Disclosure Documents Be the Norm or Best Practice for International Franchise Transactions?" International Journal of Franchising Law, 15, 19, 2017.
- French Commercial Code. "Fold Legislative Part (Articles L110-1 to L958-1)." Fold Over Book III: Certain Forms of Sales and Exclusivity Clauses (Articles L310-1 to L330-3), 2000.
- Hunt, S. D., & Nevin, J. R. "Full Disclosure Laws in Franchising: An Empirical Investigation: What Effects Have the Full Disclosure Laws Had on the Franchise System of Distribution?" Journal of Marketing, 40(2), 53-62, 1976.
- Rookes, Kathryn A., Brenda Beerman Trickey, and Tim Goodman. "Disclosure Basics, When Discretion Is Not the Better Part of Valor." International Franchise Association 44th Annual Legal Symposium, 2010.
- Kerkovic, T. M. "The Main Directions in Comparative Franchising Regulation: Unidroit Initiative and Its Influence," 2010.
- Li, J. Y., & Xia, H. S. "Franchise: A Literature Review and Directions of Future Research." Open Journal of Business and Management, 7, 817-827, 2019. <https://doi.org/10.4236/ojbm.2019.72055>.
- Greenlees, Lisa T., Debi Sutin, & Kendal Tyre. "Basics Track: International Growth." International Franchise Association 50th Annual Legal Symposium, May 7-9, 2017, JW Marriott Washington, DC.
- Malaysia Franchise Act, 1998. Act 590.
- Abell, Mark, B. Bird. "Legal Perspective of the Regulatory Framework and Challenges for Franchising in the EU," 2016.
- Cordell, Martin, Beata Krakus. "We Broke the Law! Now What?" IFA Legal Symposium Washington D.C., 2017.

- Moskowitz, Sanford. "Cybercrime and Business: Strategies for Global Corporate Security." Butterworth Heinemann, 2017.
- Zeidman, Philip F. "Franchise in 32 Jurisdictions Worldwide." Getting the Deal Through, 2011.
- Zeidman, Philip F., & Xu, Tao. "Global Overview of Specific Franchise Statutes and Regulations." DLA Piper, 2019.
- Protulis, Alex. "International Comparative Legal Guides: Employment & Labour Law 2018 | Italy | ICLG." Accessed February 6, 2019. <https://iclg.com/practice-areas/franchise-laws-and-regulations/south-africa>.
- Sigué, S. P. "The Promises of Franchising in Africa: The Need for a Critical Examination," 2012.
- South Africa Consumer Protection Act No. 68, 2008.
- Spencer, E. C. "An Exploration of the Legal Meaning of Franchising." Journal of Marketing Channels, 20(1-2), 25-51, 2013.
- Milenkovic Kerkovic, Tamara. "The Main Directions in Comparative Franchising Regulation – Unidroit Initiative and Its Influence." European Research Studies XIII, no. 1, 2010.
- Tunisia Act No. 2009-69, August 12, 2009. Chapter V, Franchise Contracts.
- U.S. Department of Commerce. "2016 Top Markets Report: Franchising Overview and Key Findings." ITA Franchising Top Markets Report, 2016.
- US Federal Trade Commission. "Franchise Rule 16 C.F.R. Part 436. Compliance Guide," 2008.
- UNIDROIT International Institute for the Unification of Private Law. "Model Franchise Disclosure Law." Rome, September 2002.
- Zeidman, P. F. "With the Best Intentions: Observations on the International Regulation of Franchising." Stanford Journal of Law, Business & Finance, 19, 237, 2013.