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**Articoli**

# FRANCHISING IN ALGERIA, FINANCIAL ISSUES

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## Abstract

A key factor in franchising relating to franchisors is the possibility to cash in and repatriate fees and royalties (financial issues). What are the main legal issues relating to financial aspects in Algeria and what is the current practice of the stakeholders in the aspects of financial under the franchise business in Algeria. The main objectives are to examine the legal framework issues relating to financial and to analyse the current practice of the stakeholders in the aspects of financial 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: the current banking system and legislations relating to the payment of royalties and fees discourage the development of the franchising sector in Algeria. Current franchising practices focus on the financial aspects (payment of royalties and fees) by franchisee who manage the royalty and fees payments by circumventing the law. Franchisee pay royalties without declaring them in Algeria or including them in the sale price of goods imported into Algeria. The results also show that: there is a need to establish a specific law to regulate franchising businesses in Algeria.

**Keywords:** Franchising; Financial Aspects; Financial Issues; Algeria.

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## 1. 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 services.[1]

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 markets.[2]

The origin of the word franchise came from the French "fraunchise", 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 rights.[4]

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 royalties.[5]

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 business.[6]

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

[1] M-K. Vaiginiené, *Franchise Business Development Model – Theoretical Considerations', Business,* in *Theory and Practise Journal*, 2011, vol. 4, p. 311-324

[2] U.S. Department of Commerce, *Top Markets Report Franchising Overview and Key Findings*. U.S. Department of Commerce, ITA Franchising Top Markets Report, 2016

[3] A-I, Alpeza , Erceg, *Opportunities and threats regarding the development of the franchising business model in Croatia*, in *Proceedings of the 7th International Conference Enterprise in Transition*, 2007 p. 131-134

[4] Ibid.

[5] T-k. Milenkovic, *The Main Directions in Comparative Franchising Regulation – Unidroit Initiative and Its Influence*, in *European Research Studies XIII*, 2010 vol. 1, p. 104-112

[6] A-I, Alpeza , Erceg, *Opportunities and threats regarding the development of the franchising business model in Croatia*, in *Proceedings of the 7th International Conference Enterprise in Transition*, 2007 p. 131-134

billion, and offered products and services in more than 300 business categories.[7]

The important issues in any business are those related to finance (costs, profits, and transactions). Franchising consists of a contractual agreement between two parties: the franchisor and the franchisee in which the franchisee acquires the right to market goods or services under the franchisor's brand name, in return for the acquisition the franchisee required to pay a fee or other form of consideration. In addition to the normal operating costs, the franchisee usually must pay a continuous franchise fee and contributing to marketing funds.[8]

More importantly for the franchisor is the payment of the fees and royalty. A key factor in franchising related to the foreigner franchisor is the ability to collect and repatriate fees and royalties, which is only possible in countries that allow capital outflows.[9] The foreigner franchisor will not enter market which have restriction on the transfer of fees and royalty.

The major obstacle to the development of franchise in Algeria is the absence of a specific law to regulate this area. A comprehensive legal framework on franchise business especially on financial aspects are very crucial in order to attract especially foreign investors. Exchange controls are rules or regulations that restrict or prohibit payments from one country to another. Although most developed countries currently do not restrict or limit cross-border payments of royalties and similar payments, these types of rules are still common in many developing countries.[10]

For franchisors, it is important to understand how these exchange controls will affect franchisee pay-outs before spending a lot of time negotiating with potential franchisee.[11]

The restriction of the payment of royalties and continuous fees play huge role in delaying the development of franchising in any country, because the foreigner franchisor will not enter countries have restriction in the payment of royalties and fees.

7 C- Niu, *Franchising Economic Outlook* in *International Franchise Association, FRANDATA* 2022, vol 1, p. 1-15

8 F T I Consulting. *The Future of Franchising and the Franchising Model*, in *FTI Consulting Inc,* 2022, p 2-13.

9 O-C. Gharbi, Bonet, *Institutional Environments and the Internationalization of Franchise Chains: The Contrasting Cases of Three North African Countries*, in *Journal of Applied Business Research*, 2014, vol. 2, p. 10-23

10 Z-C. E. Krakus, *Avoiding Common Mistakes in International Franchising*, in *Int'l J. Franchising L. 14*, 2016, vol. 1 p. 43-66

11 Ibid.

There are only few international brands involved in franchise such as Lacoste, Timberland and Swatch are survived in Algeria.[12]

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 Algeria.[13]

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 economy.[14]

The successful development and competition of franchising business requires a comprehensive legal framework and regulatory environment.[15]

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, registration, and financial aspects in franchising. However, the current banking system does not allow the transfer of money abroad… This makes the transfer of royalties very complicated.[16]

## 2. LITERATURE REVIEW

Finance means that aspect of business relating to management of money, credit, banking, and investments.[17] While, "Financial" is defined as "something related to finance or money".[18]

In franchising there are two types of payments of the fees by the franchisee to the franchisor. First, the initial fee is the amount of money paid to the franchisor when the franchise agreement is signed. The fee may cover a variety of expenses, such as training costs, on-site start-up costs, and promotional charges. Second, the franchisee pays a royalty fee on a consistent, ongoing basis to the franchisor; this

12 E.H, Fernandez, Chanut, Gharbi, *Institutional Environments and The Internationalization of Franchise Chains: The Contrasting Cases of Three North African Countries*, in *Journal of Applied Business Research*, 2015, vol. 2, p. 418-430
13 Ibid.
14 Ibid.
15 Ibid.
16 A. Fernandez, Guechtouli, *Franchising in Emerging Markets the Case of Algeria*, in *IRM BAM*, 2018, vol.1, p.13-21
17 B. Garner, *Black's law dictionary*, St Paul Minnessota: West Publishing Co. 2004
18 Financial, *Financial dictionary definition* Financial definition, in financial defined 15-01-2021

amount is frequently paid on a weekly or monthly basis. A fixed recurring fee, a percentage of sales, or a combination of both may constitute the royalty fee.[19]

Royalties are commonly used to cover a trademark and trade name and serve as a fee for services provided by the franchisor, such as training and assistance, marketing, advertising, and accounting.[20] In this article, the term financial means any payments made by the franchisee to the franchisor as required under the franchise agreement.

A key factor in franchising relating to franchisors is the possibility to cash in and repatriate fees and royalties, which is possible only in the countries authorizing capital outflow.[21]

A report carried out by the African Development Bank Group to enhance development in Africa stated that; one of the factors which constraining the development of franchising in Africa is the restrict in foreign exchange, and the struggle in the process of making payments to international franchisors.[22]

Foreign exchange control exists in Africa, namely Nigeria, South Africa, Tunisia, Ethiopia, Mozambique and Cape Verde Islands. In Nigeria, the royalty fees in franchising may not exceed five per cent of the net sales value.[23]

In South Africa the retail limit in franchising is four per cent. While in Mozambique there is control in currency inflow and outflow, and any foreign currency transactions is subject to prior authorization.[24]

In Tunisia, franchising which was only governed by contract law, did not enjoy a specific legal regime before the recent promulgation of act No 2009-69 on August 12th, 2009. Indeed, franchising had no official recognition and only existed under various forms and names (trademark licences, partnership agreements, technical support agreement…). "This is mainly due to the fact that franchisees located in Tunisia were not legally authorized to pay royalties to foreign franchisors, as such payments were deemed as capital evasion, and were thus considered as a breach of

19 K-S. Kaplan, *The Educated Franchisee*, in *A Glossary of Terms Franchise*, 2011, p. 19-33
20 Ibid.
21 O-C. Gharbi, Bonet, *Institutional Environments and the Internationalization of Franchise Chains: The Contrasting Cases of Three North African Countries*, *in Journal of Applied Business Research*, 2014, vol. 2, p. 10-23
22 M. Tijms, *Enhancing Development in Africa Franchising Report*, The African Development Bank Group, 2002
23 M-W. Babette, *Franchising in Africa*, 2013
24 Ibid.

the currency change regulation. Besides, access to distribution, wholesale, retail and non-tourist catering activities, is limited to foreigners because they have to obtain a special authorization (so called "business card") card from the Trade Ministry, which, is rarely issued". Such regulations could explain why McDonald's never managed to enter the Tunisian market.[25]

In Algeria, franchisors encounter difficulty with payment of franchise fees because franchising is not recognised as a form of doing business in Algerian law.[26]

Moreover, the Central Bank of Algeria does not authorize the transfer of royalties.[27]

Algeria needs its central bank to repatriate royalties to franchisor that's what Bachir Mihoubi said during his passage in Algerian national TV channel.[28]

Moreover, John Sotos and Sam Hall in their article that published on International Franchise Association website, were discussed the discouraging franchise development and argued that: Algeria is another country that has historically-restricted capital flows to the detriment of prospective franchise companies looking to operate business in the area.[29]

The Algerian government restricts letters of credit to 60 days or less, and Algerian businesses that import more than $40,000 worth of goods annually are required to pay foreign suppliers via letter of credit. With the exception of food items, strategic products, and other items of "emergency character," Algerian importers of the majority of goods are required to pay within 30 days of the goods' shipment date. The requirement to make payment 30 days after shipment exposes importers to substantial exchange rate risk because importers must request import approvals well in advance of shipment. Ninety percent of the commercial market is controlled by six state-owned banks. Other French and Arab banks, including Société Générale, BNP Paribas, HSBC, and Citibank, are also present in Algeria. Western Union and other international money transfer services are also available in the nation. Investors face difficulties due to outdated domestic transfer laws and restrictions on outbound transfers. Even though the central bank has developed a system that allows credit card and cheque payments, it is still relatively new and has not been widely used by

25 G. Menguy, *Franchising in Tunisia*, Avocat & Solicitor, GM Avocats, 2010

26 M-W. Chatwood, *Will Algeria Finally Open up ?* Franchise News, 2014

27 F. Group, *The Export Guide*, Fares Group Law Firm 2017

28 Bachir Mihoubi has more than 20 years of experience in *international franchising and is the founder and managing director of the FranCounsel Group LLC*.

29 A-f, Cross-Continent Momentum, Franchise in Africa, in *International Franchise Association,* January 27.01.2018

vendors. There are very few ATMs, even in five-star hotels, and neither checks nor credit cards are widely used. The Algerian government outlawed commercial loans made after July 2009 from foreign shareholders in late 2010.[30]

For Algerian businesses, the government strictly regulates foreign exchange. Only up to 50% of export revenue may be paid to Algerian businesses in US dollars, with the exception of those in the hydrocarbons industry. All export earnings from Algerian hydrocarbon companies must be paid in dinars, the local currency. The Algerian government forbids Algerians from owning financial assets overseas, with very few exceptions. As long as Algerians have the dinar equivalent of the hard currency cost of the imports, it does allow them to use foreign exchange for goods. Businesses can use the Algerian dinar to fund their current accounts.[31]

The inability to pay royalties and entry fees overseas continues to hinder the entry of foreign franchisors, who are still necessary to spur competition and modernise Algerian trade. The Central Bank of Algeria only recognises transfers or commercial transactions that result in a flow of goods or services that can be measured and quantified for every import operation. These are referred to as "real" transactions. Because Algerian regulations confuse a trademark licence fee, which only includes the right to use a brand, with a franchise fee, which includes actual training services, transfer of know-how, and assistance, an invoice that merely mentions the term royalty is not regarded as being quantifiable and quantified.

## 3. METHOD

The doctrinal methodology aims at examining and analyzing in a systematic way how the laws and legal institutions work.[32]

The current article is conducted through the employment of combined method of doctrinal legal method complimented with qualitative interview. The purpose of combining different approaches is to make the finding of the article more reliable and acceptable.[33]

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30 I-T, *Algeria - Country Commercial Guide*, International Trade Administration U.S. Department of Commerce, 2023

31 Ibid.

32 A. yaqin, *Legal Research and Writing*, in *Malaysia: Lexis Nexis*, 2007, p. 10-66

33 V. Alexander, *Choosing interpretive methods: A positive theory of judges and everyone else,* In *NYUL Rev.* 83, 2008,vol. 2, p. 774-786

The doctrinal method enables the researcher to view law from inside, while the qualitative approach helps the researcher to view the law from outside.[34]

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 be analyzed. 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".[35]

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 results of the study were analyzed thematically. The respondents of the interview were twelve. The data used in this article is primary and secondary. 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.[36]

In this article, the semi-structed 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.[37]

[34] R. Cotterrell, *the Sociological Concept of Law*, in *Journal of Law & Society*. Volume 10, 1983, p. 242-261

[35] S. Kristina, *Practitioner's Guide: Qualitative and Quantitative Approaches to Rule of Law Research,* In *United States: INPROL*, 2016, p. 7-19

[36] A. yaqin, *Legal Research and Writing*, in *Malaysia: Lexis Nexis*, 2007, p. 10-66

[37] G. Bill, *Research Interviewing: The range of techniques: A practical guide*, In *McGraw-Hill Education (UK)*, 2005, p. 70-88

Semi-structured interview also allows respondents to express their point of view freely and provide reliable data.[38]

The sampling technique employed is purposive. A purposive sampling technique is used in qualitative research.[39]

The thematic data analysis technique used to analyze the interview data. The researcher followed Creswell[40] guidelines in carrying out data analysis. The data were manually managed.

# 4. FINDINGS AND DISCUSSION

## 4.1. Financial Aspects of Franchising in Algeria

Franchising is a form of business. The important issues in any business are those related to finance (costs, profits, and transactions). Franchising consists of a contractual agreement between two parties: the franchisor and the franchisee in which the franchisee acquires the right to market goods or services under the franchisor's brand name. The business format of a franchise is the most studied form in franchising. In this setup, franchisees receive different types of support, such as operation manuals, training, and on-site advice. The franchisees are required to pay for this support system and are obligated to run the business as determined by the franchisor.[41]

Franchisee pay royalties for the services that the franchisor provides to him during the term of the contract because it's cost franchisor money (create a collection, have it made, logistics, shop window design, marketing assistance, network facilitator visits, working with franchisee to help him get the best results…). It has several kinds; take a margin on the products or services that franchisee buys from franchisor or sell its products and services to franchisee at the best price and collect the costs it incurred to assist franchisee in charging a fee. Usually, the franchisor

[38] C. Crabtree, Qualitative Research, in *Qualitative Research Guidelines Project*, 1.7. 2006.
[39] A. yaqin, Legal Research and Writing, in Malaysia: Lexis Nexis, 2007, p. 10-66
[40] C. John W, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, in *Thousand Oaks, California : SAGE Publications*, 2014, p 247-259
[41] N. Karlijn, *Making franchising work: A framework based on a systematic review,* in *International Journal of Management Reviews, 2014, vol.* 1, p. 62-83

separates the price of the product that franchisee buy and the cost of service that franchisor provides to franchisee.[42]

Franchising is relatively new in Algeria, as such most of the franchisors are foreigners. As the key factor in franchising is for the franchisor to receive payment (in the form of initial fees and ongoing royalties), the question that arises is what are the laws that are related to the transactions of money between Algeria and other countries and how does this affect the franchising development in Algeria?

### 4.2. Banking System

The current banking system in Algeria does not allow transfer of money abroad. This complicates transfers of royalties.[43]

The fund transfers are strictly controlled and royalty payments are prohibited.[44]

The prohibition of royalty payments by the Algerian Central Bank is in line with section 12 of Legislative Decree 93-12 of the Investment Law promulgated on 10th October 1993 which states that: an investment operation can enjoy the benefits of fund transfers abroad, provided it has obtained a certification from the Central Bank that it transacts in imports to finance its economic activities or purchases technical means or commodities destined for the market. Franchisees are not able to benefit from this procedure because they are not considered as investors under section 12 of Legislative Decree 93-12 of the Investment Law when making payment of royalties and other ongoing fees as they do not import technical means or goods destined for the market. As a result, European companies which operate their franchises in Algeria effect payments of royalties and other franchise fees by invoicing them as goods imported by the franchisee.[45]

42 CLDP, *Practical Guide to Franchising in Tunisia*, Republic of Tunisia Ministry of Commerce, 2018

43 E. Aliouche, D. Bonet, M. Guechtouli and W. Guechtouli, *Franchising in Emerging Markets: The Case of Algeria*, in *The 8th International Conference on Economics and Management of Networks Havana,* Cuba 2018, p. 14-18

44 E. Aliouche, D. Bonet, M. Guechtouli and W. Guechtouli, *Franchising in Emerging Markets: The Case of Algeria*, in *The 8th International Conference on Economics and Management of Networks Havana, Cuba,* 2018, p. 14-18

45 U.S, *Doing Business in Algeria*, Country Commercial Guide for U.S. Companies, 2014

### 4.3. The Consequences of Restricting Royalty Transfer for Franchises in Algeria

Franchisees have managed to circumvent the law to make payment of royalties by using additional billing.[46]

This however may expose the franchisees to legal penalties under section No. 1 of Ordinance 96-22 of 9 July 1996 of the Penal Code which regards transferring of funds abroad as a dangerous crime that has implications to the country's economy as follows: "The transfer of funds abroad is a serious crime that has implications for the economy, and the penalty for the violator is imprisonment between 3 to 5 years, and a fine equal to twice the value of the violation."[47]

Through the penalties imposed by the Algerian legislator regarding the transfer of funds abroad, we note a tightening of the judgment from three to five years and fines of up to twice the amount seized, all in order to deter and prevent the transfer of funds abroad. Many experts in the franchising field agree that the prohibition of payment of royalties has impeded the development of the franchising sector in Algeria. Bachir Mihoubi, the founder and managing director of FranCounsel Group, with experience in international business development, management, and law in over 35 countries said during his appearance on an Algerian national TV channel that Algeria remains a potentially lucrative market for franchisees if only the government changes its laws affecting the repatriation of royalties. Algeria needs its Central Bank to repatriate royalties to franchisors.[48]

Babette Märzheuser-Wood who is the Global Head of the Franchise Group and specializes in global franchise, distribution, agency and concession agreements and IP-driven joint ventures argued that a change in the law to approve payment of franchise fees is needed to enable the industry to prosper in Algeria.[49]

Yazid Belkhouso, an economist and commercial consultant for multinational companies believes that the absence of a legal framework regulating the activities of franchising in Algeria has caused the parties to a franchising contract a huge problem

[46] E. Aliouche, D. Bonet, M. Guechtouli and W. Guechtouli, *Franchising in Emerging Markets: The Case of Algeria*, in *The 8th International Conference on Economics and Management of Networks Havana,* Cuba 2018, p. 14-18

[47] Algerian Penal Code, *Ordinance 96-22 of 9 July 1996*. Section 1.

[48] B. PHIL, Franchising in Algeria, *Franchising in Algeria Potentially Attractive Once Laws Are Changed*, in Global Atlanta, 28.1.2016

[49] W-B, Franchise in Algeria , in *Franchise News: Algeria*, 22.6.2014

which is related to the transfer of net profits to the country of the franchisor. The Central Bank of Algeria and Investment Law prohibits the transfer of currency outside Algeria except to branches of foreign companies in Algeria. This does not apply to companies active in franchising in Algeria.[50]

The International Trade Administration of the U.S. Department of Commerce published an article in its official site under the heading Algeria Commercial Guide about franchises in Algeria. The article mentions that franchises by foreign companies is limited in Algeria, largely because of its strict foreign exchange controls that do not allow the simple repatriation of royalties.[51]

It is clear that the current banking system and legislations relating to the payment of royalties and fees discourage the development of the franchising sector in Algeria. The Nebni group, the first citizen think tank working to propose reforms for Algeria, explained the need to lift the constraints for the entry of foreign franchises in the country and to set up a specific franchise status and a regulatory and legal environment.[52]

## 4.4. The Payment of Royalties and Fees

In one of the interviews, respondent 8 mentioned, "In some franchise contracts, the franchisee is obligated to pay a cash sum in return for the total services he benefits from, before starting his activity. This fee is paid when he becomes a member of the trademark owner's network. Usually, this fee is called the entry fees. This amount (i.e., royalties) covers all expenses incurred by the owner of the mark for the benefit of the franchisee, such as technical assistance, training, transfer of technical knowledge, and the right to exploit the mark. All these benefits that he benefits from save his time, effort, and money that he would have spent if he relied on his personal efforts. The royalties are also due upon renewal of the contract, and in this case, it is called renewal royalties. However, there is a difficulty in transferring the amount of royalties owed to the franchisor. Where the Central Bank of Algeria refuses to transfer funds abroad unless it is related to company profits or in-kind transactions regarding the entry of a specific product or service quantitatively and qualitatively.

[50] K-H, Franchise in Algeria توكيلات الجزائر: الامتيازات التجارية تنتظر التحرر من قيود الحكومة. [online] العربي الجديد, 3.5.2016

[51] Trade.gov, Franchising in Algeria, in *International Trade Administration*, 4.9.2020

[52] FBC, *La Franchise en Algérie*,Franchise Business Club, File, 2017


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And it is difficult in the case of franchising, where it comes to supplying intangible elements such as the brand or technical know-how."[53]

Respondent 1 added, "The franchisee must pay royalties and fees to the franchisor, which is the biggest problem that causes the concession contracts to be dissolved due to the lack of a smooth currency conversion mechanism without the intervention of the Central Bank."[54]

Respondent 2 observed the following: "The process of payment needs to be controlled in terms of royalties and fees, and this will only be done according to a legal text, since the Algerian franchisee, who benefits from the foreigner franchising, pays in fraudulent and illegal ways in the eyes of the law, especially with regard to the monetary and exchange law."[55]

Franchisee in Algeria managed to circumvent the law to make payment of royalties by using additional billing. This however may expose the franchisees to legal penalties under section No. 01 of Ordinance 96-22 of 9 July 1996 of the Penal Code which regards transferring of funds abroad as a dangerous crime that has implications to the country's economy. An offender shall be sentenced between 3 to 5 years imprisonment and a fine equal to double the subject value of the violation. Respondent 4 added, "Algerian law does not allow taking out hard currency to buy a franchise, Algerian law allows taking out the money abroad to buy goods or obtain a service such as installing equipment. In the case of my company, I negotiated with the franchisor to buy goods instead of buying the franchise, for example, the franchisor will give you the franchise for $100,000. We agree with him to buy franchises and merchandise for $1 million, but the price of the franchise is declared as merchandise."[56]

Respondent 12 mentioned, "Officially, franchisees pay royalties without declaring them in Algeria. Or they include them in the sales prices of goods imported into Algeria, or they introduce authorization requests for the payment of non-existent services in Algeria. But in reality, the practices are much more different and depend on many factors: legal, commercial, financial, customs and fiscal."[57]

[53] R 8 (Lecturer at University Professor), *interviewed by researcher*, WhatsApp, December 12, 2021.
[54] R 1 (Director of the Algerian Franchise Association), *interviewed by researcher*, November 17, 2021.
[55] R 2 (Lawyer), *interviewed by researcher*, WhatsApp, December 18, 2021.
[56] R 4 (Franchisee), *interviewed by researcher*, WhatsApp, January 29, 2022.
[57] R 12 (Representative of the Ministry of Commerce), *interviewed by researcher,* December 31, 2021.

### 4.5. Algerian Banking System

Respondent 4 highlight that, "The problem is clear, and it is the banking system in Algeria to carry out the process of transferring money abroad to the franchisor takes about 3 months, while in the rest of the countries the process requires only 3 days. In addition, the law in Algeria does not allow the entry of goods without financial compensation for them, for example, my company is able to obtain goods from the franchisor and the payment is after one year, for example, but the Algerian law forbids that. Once the goods enter Algeria, the payment must be made within a period not exceeding 3 months."[58]

The respondent 2 agrees with the respondent 4, stating the following: "The main challenges that prevent the development of the franchise in Algeria are the transfer of funds to the foreign franchisor."[59]

The respondent 6 agree with theme and he stated that, "The biggest problem that prevents the development of franchising in Algeria are the transfer of currency abroad and the movement of capital."[60]

Moreover, respondent 8 highlighted that, "The most important problem in franchising in Algeria is the absence of legal framing, in addition to the difficulty of transferring the amount of royalties owed to the franchisor."[61]

The analysis above shows that there is a difficulty in the payment of fees and royalties owed to the franchisor. The current banking system in Algeria does not allow transfer of money abroad. This complicates transfers of royalties. This lead Algerian franchisees circumvent the law to make payment of royalties and fees to foreigner franchisors, which could cause to them legal penalties. All the respondents agreed that the main challenges that prevent the development of the franchise in Algeria are the payment of royalties and fees to the foreign franchisor. The prohibition of payment of royalties and fees has impeded the development of the franchising sector in Algeria.

58 R 4 (Franchisee), *interviewed by researcher*, WhatsApp, January 29, 2022.
59 R 2 (Lawyer), *interviewed by researcher*, WhatsApp, December 18, 2021.
60 R 6 (Franchisor), *interviewed by researcher*, WhatsApp, February 23, 2022.
61 R 8 (Lecturer at University Professor), *interviewed by researcher*, WhatsApp, December 12, 2021.

## 4.6. Current Practice of Franchise Business Related to Financial Aspects

In regard to the current practice of franchise business related to financial aspects, one item was asked to the respondents. Is it necessary for the franchisees in Algeria to pay the royalties and continuous fees to foreigner franchisors? If yes, what is the process and practices in Algeria?

The above table shows that there is necessary for the franchisees in Algeria to pay the royalties and continuous fees to foreigner franchisors; all respondents agreed with that. Respondent 2 highlighted that, "The Algerian franchisee, who benefits from the foreigner franchising, pays the royalties and fees in fraudulent and illegal ways in the eyes of the law, especially with regard to the monetary and exchange law."[62]

The current law in Algeria does not allow transfer of money abroad. This complicates the transfers of royalties. The fund transfers are strictly controlled, and royalty payments are prohibited. Due that the franchisees in Algeria have managed to circumvent the law to make payment of royalties by using the following ways:

Respondent 12 observed that, "Officially, franchisees pay royalties without declaring them in Algeria. Or they include them in the sales prices of goods imported into Algeria, or they introduce authorization requests for the payment of non-existent services in Algeria."[63]

Respondent 4 explained more, "I negotiated with the franchisor to buy goods instead of buying the franchise, and for example, the franchisor will give you the franchise for $100,000. We agree with him to buy franchises and merchandise for $1 million, but the price of the franchise is declared as merchandise."[64]

The rest of respondents talked about the difficulties that face franchisees to pay the royalties and fees to foreigner franchisors and pointed that this is the biggest problem that prevents the development of franchising in Algeria. They did not talk about the practice of the payment by the franchisees.

It is apparent from the discussion above that the current practice of franchise business related to financial aspects (paying royalties and fees) is illegal due the prohibition of transfer money abroad. The franchisees managed the payment of royalties and fees

[62] R 2 (Lawyer), *interviewed by researcher*, WhatsApp, December 18, 2021.
[63] R 12 (Representative of the Ministry of Commerce), *interviewed by researcher*, December 31, 2021.
[64] R 4 (Franchisee), *interviewed by researcher*, WhatsApp, January 29, 2022.

**Table 2:** Knowing the necessity for the franchisees in Algeria to pay the royalties and continuous fees to foreigner franchisors

| Respondents | Yes | No | Do not know |
|---|---|---|---|
| **R1** | ✓ | | |
| **R2** | ✓ | | |
| **R3** | ✓ | | |
| **R4** | ✓ | | |
| **R5** | ✓ | | |
| **R6** | ✓ | | |
| **R7** | ✓ | | |
| **R8** | ✓ | | |
| **R9** | ✓ | | |
| **R10** | ✓ | | |
| **R11** | ✓ | | |
| **R12** | ✓ | | |

by circumvent the law. The franchisees pay royalties without declaring them in Algeria, or they include them in the sales prices of goods imported into Algeria.

## 5. RECOMMENDATION AND SOLUTIONS

Respondent 3 observed that, "It is necessary to issue a special law that gives the legal status to the franchise businesses and allows the payment of royalties abroad in an easy and smooth manner without the intervention of the central bank."[65]

Respondent 4 added, "The government should allow the payment of royalties and fees abroad if it wants to bring in foreign franchisors and develop the franchise field in Algeria."[66]

Respondent 2 agreed with respondent 4, he stated that, "If Algeria wants to develop the franchise, it must facilitate the process of transferring funds to the franchisor by enacting a clear law in this matter."[67]

65 R 3 (Lawyer), *interviewed by researcher*, WhatsApp, February 22, 2022.
66 R 4 (Franchisee), *interviewed by researcher*, WhatsApp, January 29, 2022.
67 R 2 (Lawyer), *interviewed by researcher*, WhatsApp, December 18, 2021.

Respondent 9 highlighted, "The most important problem impeding the development of the franchise in Algeria is the financial and banking system that prevents the payment of royalties and fees abroad. To solve this problem, these laws must be amended in order to allow the franchisee to pay royalties and fees abroad."[68]

Respondent 1 observed that, "The situation of franchising in Algeria can be improved by amending the investment law or enacting a new law on franchising, as Tunisia did, a law that includes the allowing of royalties and fees to be paid to the foreign franchisor."[69]

Respondent 10 added, "The situation in Algeria can be improved by putting in place new legal systems and frameworks, as neighbouring Tunisia did."[70]

Respondent 5 added, "Officials in Algeria should provide a business environment for the franchise by enacting laws that protect the interests of the parties (franchisee and franchisor) and allow the transfer of funds to the outside party (foreigner franchisor)."[71]

Respondent 8 highlighted that, "Framing the franchise activity in Algeria by enacting a special law on franchising contains articles that clarify and facilitate the payment of royalties."[72]

It is apparent from the discussion above that all the respondents recommended the need for a special law for franchising in Algeria. This law allowed the payment of royalties and fees abroad (paid to the foreign franchisor). This law will encourage foreigner franchisors to enter Algerian market. Some respondents recommended to inspire from Tunisian experiment and law.

## 6. CONCLUSION

There is a difficulty in the payment of fees and royalties owed to the franchisor. Algeria's current banking system does not permit money transfers abroad. This makes royalties transfers more difficult. The current banking system and legislation governing the payment of royalties and fees clearly discourage the development of

68 R 9 (Lecturer at University Professor), *interviewed by researcher*, WhatsApp, November 10, 2021.
69 R 1 (Director of the Algerian Franchise Association), *interviewed by researcher*, November 17, 2021.
70 R 10 (Representative of the Algerian Central Bank), *interviewed by researcher*, January 05, 2022.
71 R 5 (Franchisee), *interviewed by researcher*, WhatsApp, January 02, 2022.
72 R 8 (Lecturer at University Professor), *interviewed by researcher*, WhatsApp, December 12, 2021.

the franchising sector in Algeria. The current practice of franchise business related to financial aspects (paying royalties and fees) done by franchisees who managed the payment of royalties and fees by circumvent the law. The franchisees pay royalties without declaring them in Algeria, or they include them in the sales prices of goods imported into Algeria. Hence, there is a need to establish a specific law to regulate franchise in Algeria. This law should allow the payment of royalties and fees abroad (paid to the foreign franchisor). This law will encourage foreigner franchisors to enter Algerian market.

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