

Confidentiality in the Franchise Contract: A Condition or an Obligation

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Abstract :

Confidentiality in a franchise contract is the foundation upon which parties rely to protect their agreement. It refers to the hidden methods used in manufacturing and production processes, and the ways in which industrial and technical mechanisms are applied and acquired. It is what gives the contract its economic value and exists in different degrees. Maintaining this confidentiality is governed by the contractual relationship. It may be based on an explicit condition that obliges the franchisee to maintain confidentiality in the franchise agreement. This condition is found in most business contracts that deal with this technical knowledge, or it may be an obligation imposed by the franchiser, before the negotiation stage or during the conclusion stage, and extends until its expiry. The franchisee avoids disclosing this information to other non-contracting parties, because its value lies in its confidentiality and seriousness. The information must be guaranteed not to be disclosed.

Keywords:

Franchise contract, confidentiality commitment, confidentiality clause.

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السرية في عقد الفرانشيز شرط أم التزام

الملخص:

يعتبر موضوع السرية الأساس الذي يركز عليه طرفا عقد الفرانشيز لحماية اتفاقهم، ويقصد بالسرية الطرق الخفية المستخدمة في عمليات التصنيع والإنتاج وبكيفية تطبيق الآليات الصناعية والتقنية التي تكتسب بالخبرة والمهارة والمجال الميداني في السوق، وهي تضي على العقد القيمة الاقتصادية وتكون على درجات مختلفة ومتفاوتة، فهي سرية نسبية وغير مطلقة، وسواء تعلق الأمر بالموضوع أو بالأشخاص، علما أن الحفاظ عليها يكون بمقتضى العلاقة التعاقدية، فقد تكون بموجب شرط صريح يلزم الطرف الممنوح له بحفظ السرية في عقد الفرانشيز، وهو شرط يرد في جل عقود الأعمال التي ترد على هذه المعارف الفنية أو التزام يضعه الطرف مانح الامتياز سواء قبل مرحلة المفاوضات أو خلال مرحلة الإبرام ويمتد إلى غاية انقضائه، ويتجنب إفشاءها لباقي المتعاملين غير المتعاقدين معه في السوق، لأن قيمة هذه المعرفة والمهارة أو الخبرة تكمن في سريتها وجديتها، فالمعلومات التي يطلع عليها الطرف الممنوح له والتي يوازن بين حاجاته للمعرفة ومتطلباته الاقتصادية لا بد له ضمان عدم إفشاءها وكتمانها.

الكلمات المفتاحية:

عقد الفرانشيز، الالتزام بالسرية، شرط السرية.

La confidentialité dans le Contrat de Franchise: Une condition ou une obligation

Résumé :

La confidentialité dans un contrat de franchise est le fondement sur lequel les parties s'appuient pour protéger leur accord. Elle concerne les méthodes utilisées dans les processus de fabrication et de production, les modalités d'application et d'acquisition des mécanismes industriels et techniques. C'est ce qui confère au contrat sa valeur économique et son degré de confidentialité varie. Son maintien est régi par la relation contractuelle, sur une clause explicite obligeant le franchisé à la confidentialité. Cette clause se retrouve dans la plupart des contrats commerciaux portant sur ce type de savoir-faire technique, comme une obligation imposée par le franchiseur, avant la phase de négociation ou lors de la conclusion du contrat, et qui demeure en vigueur jusqu'à son expiration. Le franchisé s'abstient de divulguer ces informations à des tiers non contractants, car leur valeur réside dans leur confidentialité et leur importance. La non-divulgaration de ces informations doit être garantie.

Mots clés :

Contrat de franchise, engagement de confidentialité, clause de confidentialité.

Introduction

The franchise contract works on the trading and use of technical knowledge that is not freely offered in the market, but remains the property of strong and giant companies that conduct research and development in industrial countries and then control the offering of technology¹. Therefore, this contract has become one of the commonly used contracts, especially because it represents a successful means of transferring technical knowledge and technical assistance, and it contributes to reducing the percentage of liquidity leaking abroad, increasing investment in small and medium enterprises, and motivating local companies to rearrange their affairs so that they compete in the markets and raise the quality of their products and goods that they offer to the consumer public².

But in order for a franchise contract to be valid and produce its legal effects, the elements required by civil and commercial contracts must be present, such that the absence of any one of them may lead to its invalidity. If it is concluded correctly, it produces its effects³. The subject matter of the contract consists of several elements represented by the brand and signs that attract customers, technical knowledge, and technical assistance. That is, it pertains to a subject matter with multiple elements. It also includes several conditions, the most important of which is the "confidentiality clause", which is one of the most important conditions included in the franchise contract in order to achieve its intended purpose⁴.

Added to this, a franchise agreement is a bilateral contract that entails reciprocal contractual obligations for both parties. Foremost among these obligations is the "obligation of confidentiality", which is a fundamental

¹ Sasan Rashid, Distribution Contract with Trademark Use License (Franchise Contract) : An Attempt at Rooting, Dar Al Nahda Al Arabiya, Cairo, 2013, p.69.

² Fayez Naeem Radwan, Commercial Franchising Contract, Al-Hassan Islamic Press, 1990, p.15.

³ Mendelssohn(M), Franchising an Overview International Bar Association Section on Business Law, 1984, p.55.

⁴ Aisha Ibrahim Al Haidoush, The Legal Nature of the Franchise Contract : A Comparative Study, Thesis submitted to fulfill the requirements for the Master of Laws degree in Private Law, Faculty of Law, Qatar University, 2020, p.26.

commitment⁵ from the negotiation period through to the end of the agreement. The franchisor is careful not to disclose any confidential technical knowledge, industrial secrets, technological information, or technical methods to other economic partners outside of the franchisee with whom they have a contractual relationship⁶. This leads us to the following question: **Is confidentiality in the franchise agreement a condition of the agreement, or is it an obligation that it entails?**

To answer the question posed, it is necessary to clarify confidentiality as an essential condition in the franchise contract (**chapter I**), and then confidentiality as an essential obligation in the franchise contract (**Chapter II**).

Chapter I: Confidentiality is an essential condition in the franchise contract

The requirement to maintain the confidentiality of information provided under the contractual relationship takes the form of an explicit clause in the franchise agreement, obligating the franchisee to preserve confidentiality. This is known as a "confidential clause", and it applies to all contracts transferring technology and technical know-how. Its purpose is to ensure that this information is not exploited or used outside the scope of the contract after its expiration.

Confidentiality is a fundamental condition of the franchise agreement⁷, and failure to respect it will harm the franchise system or network and hinder its ability to foster a competitive market environment. This is because the lack of confidentiality means that related information becomes known to all institutions in the markets engaged in production, distribution, or manufacturing activities⁸. Therefore, we will explain the concept of the confidentiality clause in a franchise agreement (**section I**), and then list the essential elements of the confidentiality clause in this contract (**section II**).

⁵ Bang and Gerd, Know How, Journal of research and education, 9B, 1960, p.112.

⁶ Mendelssohn(M), Franchising an Overview International Bar Association Section on Business Law, Op.cit., p.56.

⁷ Bang and Gerd, Know How, Journal of research and education, Op.cit., p.112.

⁸ Mendelssohn (M), Franchising an Overview International Bar Association Section on Business Law, Op.cit., p.98.

Section I: The concept of the confidentiality clause in the Franchise Contract

The confidentiality clause is closely linked to franchise agreements, as it can be instrumental in achieving commercial success, particularly in the distribution of various products and services. Without confidentiality, these agreements cannot facilitate the transfer of technical and technological knowledge, patents, and trademarks, which are essential for propelling national companies from domestic to international competition. This is especially crucial for small and medium-sized enterprises that often lack such knowledge, as it would enhance their competitiveness in the market and enable them to acquire technical expertise⁹. Therefore, it is necessary to define the confidentiality clause in a franchise agreement (**subsection 1**) and then to determine its dimensions (**subsection 2**).

Subsection 1: Defining the confidentiality clause in the Franchise Contract

Confidentiality means not disclosing or revealing to others the secrets obtained, or it is a manufacturing method applied by manufacturers that has scientific and commercial value, and they keep it secret in the face of competitors who are unaware of it unless it is transferred to them by agreement¹⁰. The condition of confidentiality is considered one of the most important reasons that distinguish the technical knowledge subject to the franchise contract. Without it, this knowledge becomes useless, and there is an inability to compete with dealers working in the same commercial or industrial activity, and this contract cannot acquire markets or compete in them¹¹.

The confidentiality clause in the franchise agreement means maintaining the confidentiality of all information obtained during the contract period, with the exception of information commonly known to economic actors in the market and business environment, but not publicly available in the business world or unrelated to the franchise network concept. Besides, it prohibits allowing third parties to use this information, directly or indirectly, by any means whatsoever,

⁹ Guyenot (J), "Commercial Franchising Comparative Study of Distribution Interentreprises Constituting Groups of Dealers Quarter Ly", *Revue of Commercial Law*, pp.119-134.

¹⁰ François Magnin, *Know How et propriété industrielle*, Librairies Techniques, Paris, 1974, p.23.

¹¹ Bang and Gerd, *Know How*, Op.cit., p.45.

or for the purpose of achieving economic objectives¹². Confidentiality is a fundamental condition of this contract, stemming from the confidentiality of the technical knowledge it contains. If this confidentiality is violated, the objectives of the franchise network are also negated¹³.

Subsection 2: Dimensions of the confidentiality clause in the Franchise Contract

The application of the confidentiality clause in a franchise contract depends on maintaining the confidentiality of all information obtained throughout the contract period, and employees of the franchiser are not entitled to transfer it to others. It is understood that the confidentiality clause is not absolute, and both the franchisor and the recipient must always define the dimensions, scope, or field of this clause in three aspects¹⁴ : in terms of the persons concerned with it (**First**), in terms of the content (**Second**), and finally in terms of the duration (**Third**).

A- Defining the confidentiality clause in the Franchise Contract in terms of the persons concerned

The confidentiality clause in a franchise agreement is defined by the parties involved, primarily the franchisee or beneficiary. If the franchisee is a legal entity, its legal representative is bound by the same condition. The confidentiality clause also extends to individuals who may have access to the technical know-how or technology covered by the agreement, such as the franchiser's employees, agents, partners, or subcontractors¹⁵. Economic necessities or the requirements of the franchise system may compel the franchiser to deal with third parties with whom it has no contractual relationship. This also increases the number of intermediaries and partners within the franchise network.

Therefore, the franchiser must exercise caution and vigilance in dealing with these individuals, otherwise, the risks of maintaining the confidentiality of the

¹² Adams (J-N), *Franchising : Practice and Precedents in Business Format franchising* Butterworth, London, 1990, p.110.

¹³ Mendelssohn(M), *Franchising an Overview* International Bar Association Section on Business Law, Op.cit., p.101.

¹⁴ François Magnin, *Know How et propriété industrielle*, Op.cit., p.126.

¹⁵ Mohamed Muhsin Annadjar, *The Commercial Franchise Contract : A Study in the Transfer of Technical Knowledge*, Dar Al-djami'a Al-djadida Publishing House, 2001, p.46.

transferred technical knowledge will increase¹⁶. Thus, including confidentiality as a condition or clause in the franchise agreement is essential to prevent the leakage of industrial and commercial secrets to third parties. All necessary measures must be taken to protect this clause within the franchise agreement. It is worth noting that this clause is grounded in general principles and is implemented according to the principle of good faith and the terms of the contract¹⁷.

B- Defining the confidentiality clause in the Franchise Contract in terms of content

The confidentiality clause encompasses all technical knowledge, expertise, information, methods, and techniques transferred from the franchiser to the franchisee. This clause excludes public knowledge or information commonly known and freely disseminated by anyone without restrictions. Given that a franchise agreement is a business contract designed to meet the needs of economic operators seeking access to and competition in various markets, it is essential to specify, upon its conclusion, the portion subject to confidentiality. This includes knowledge rights, technical information, and technology to be adopted during the agreement's implementation.

In addition, the agreement must explicitly prohibit the disclosure of any element of the franchise agreement, except in rare cases involving elements typically subject to enhanced legal protection. Examples include situations where the knowledge right or certain elements pertain to public property, or for any other reason, or if the franchisee can prove they possessed the confidential information at the time of receipt and did not acquire it from the franchiser¹⁸.

C- Determining the confidentiality clause in the Franchise Contract in terms of time

The confidentiality clause in the franchise contract is determined, in terms of time, by the period specified for the validity and enforceability of the contract. This period can begin from the date the franchisee acquires the rights to the

¹⁶ Al Kadi Hassan Mohamed Hamdan, *The Legal Protection of Franchise : A Comparative Study*, Al-Halabi Legal Publications, Beirut, 2008, p.42.

¹⁷ Bang and Gerd, *Know How*, op.cit., p.98.

¹⁸ Mohamed Muhsin Annadjar, *The Commercial Franchise Contract*, Op.cit., p.91.

various technical, technological, and know-how until the contract expires¹⁹. In this regard, legal opinions vary. One view holds that the confidentiality clause in a franchise agreement is perpetual and has no time limits. According to this view, the agreed-upon technical and technological information is confidential and only loses its confidentiality if it becomes publicly known. The second view, however, argues that the confidentiality clause must be limited to a reasonable time period and not made perpetual, especially given the rapid pace of technological development and the evolving nature of information over time, particularly with the emergence of digitalization and artificial intelligence. What is confidential today may not be so tomorrow²⁰.

Section II: Conditions for the validity of the confidentiality clause in the Franchise Contract

The TRIPS Agreement²¹ and various judicial precedents, such as French²² and European²³ precedents and Exemption Regulation No. 88/4087²⁴, have recognized the legitimacy of the confidentiality clause in the field of agreements, including the franchise contract, in order to protect transferred technical knowledge and new technologies in distribution, marketing and manufacturing methods, and to integrate confidential knowledge within intellectual property rights. To ensure the validity of confidentiality in this contract, the following conditions must be met:

¹⁹ HAWAS Fatiha, "The Legal System of Trade Secrets", Journal of Legal and Political Thought, Vol. 04, n° 02, University of Algiers, 2020, pp. 50-66.

²⁰ Omar Kamel Assawaeda, The Legal Basis for the Protection of Trade Secrets : A Comparative Study, First Edition, Jordan, 2009, p.26.

²¹ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Available on : www.tas.gov.eg/nr/rdonlyres//tripsarabic.pdf

²² In a 1982 ruling, the French Court of Cassation affirmed the validity of the confidentiality clause regarding technical know-how and the prohibition against its disclosure. Transferred technical knowledge remains protected as long as it is not relegated to the public domain. Mohamed Hussam Lotfy, Op. cit., P56.

²³ The European Court of Justice ruled in the "Pronuptia" case that a provider's right to protect its technical knowledge from the direct or indirect transfer of that knowledge by a competitor is valid through the confidentiality clause, which serves as a safeguard for that knowledge. The decision was issued by the European Court of Justice on January 28, 1986. Available on : <http://www.eur-lex-europu-eu>, Accessed on January 20, 2026, at 2 :00 PM.

²⁴ It also disclosed a ban on disseminating technical knowledge and methods until the end of the franchise agreement, and this is not considered an anti-competitive practice. Rasha Ibrahim Abdullah Abdullah, The Legal System of Commercial and Industrial Licensing Agreements (Franchise), A Comparative Study with Special Reference to the Palestinian Legal System, Doctoral Dissertation, Faculty of Law, Cairo University, 2012, p.50.

confidentiality of information (**First section**), commercial value of technical and technological information (**Second section**), taking the necessary measures and mechanisms to maintain confidentiality in the franchise contract (**Third section**).

Subsection1: Confidentiality of Information in the Franchise Contract

Institutions and projects are extremely keen to protect the technical information and knowledge in the franchise agreement and to preserve the risk of disclosing it to others, because revealing its confidentiality would cause a loss of its economic value, and thus a loss of the advantage that this information provides to the economic projects and institutions that possess it. Many definitions and judicial rulings have confirmed this meaning, that is, the confidentiality of technical knowledge in the franchise agreement means that it is original, unique, not easily available and not generally known²⁵.

The confidentiality of information is a fundamental and essential condition for technical knowledge in the franchise contract. Confidentiality is one of the most important characteristics of information, which is subject to the legal protection of trade secrets. It should be noted that these secrets are, in reality, a relative and not absolute matter. For technical knowledge and information to be considered confidential, it is sufficient that accessing it would encounter many difficulties or require a long time. Consequently, the recipient would consider requesting its transfer from its owner. That is, it is not required for the validity of technical knowledge to be absolutely confidential. Rather, the information may be known to a few of those involved in the branch of commercial activity.

The relative concept of confidentiality is not limited to the people who have access to the information, but also extends to the content of the innovation itself. Some projects may participate in the processes of developing technical information without this affecting its confidentiality. In other words, it is sufficient for the validity of technical knowledge that it is not known only to the person to whom it is granted and not to everyone. Likewise, the assessment of the

²⁵ Hammadi Mithaq Talib Abdul Khafadji Mohamed Djaafar, "The Obligation of Confidentiality in Technology Transfer Contracts : A Comparative Study", Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Vol. 02, n° 06, University of Babylon for Legal Sciences, Iraq, 2014, pp.130-147.

confidentiality of the recipient's person, knowledge, experience, and skills is considered²⁶.

Subsection 2: The Commercial Value of Technical Information in the Franchise Contract

The economic value of technical information in a franchise agreement means that revealing to an industrial establishment method of manufacturing or manual skills that it admired and would not have discovered on its own except through arduous and costly research, such that what it gives to the contracting party in the contract is considered an advantage that can be valued and whose use is contingent upon paying a tribute.

Confidentiality is a necessary matter that extends to all stages of the production process, from engineering work to marketing of products or services, and the ability to absorb technological capabilities and increase profits. Therefore, information must be accurately assessed to ensure the availability of the confidentiality condition. Rather, it is sufficient for the information or its usefulness or benefit to be useful in the field of the project, because the usefulness of the information or the amount of its usefulness is what gives it economic value in the field of activity, as the economic value of technical information decreases as the number of people who know it increases, since it is related to the difficulty or ease with which others obtain the information through their own means²⁷.

Subsection 3: Taking the necessary measures to maintain confidentiality in the Franchise Contract

The means required to protect confidentiality in the franchise contract are numerous and varied, depending on the nature of the information, its economic value in the market, or the type of economic activity in which it is used. The owner or the franchisee always seeks to ensure that his trade secrets are not disclosed and to take all necessary measures to ensure that they are not leaked to others dealing in the same activity. This is done by including a contractual condition or clause that stipulates the preservation of technical and confidential information,

²⁶ Omar Kamel Assawaeda, *The Legal Basis for the Protection of Trade Secrets : A Comparative Study*, op.cit., p.50.

²⁷ BESSIS Philippe, *The franchise contract*, LGDJ, Paris, 1990, p.123.

under penalty of bearing the responsibility for disclosing the trade secret²⁸, or by licensing its use by others through licensing the exploitation of technical knowledge and confidential information, or by placing warning signs not to enter a certain place, or installing surveillance cameras and alarm devices and using codes and secret words.

Chapter II: Confidentiality is a fundamental obligation in the Franchise Contract

Personal considerations play a crucial role in the execution of a franchise agreement, as the personalities of both parties are a key factor in its formation. It is essential to examine the personal characteristics of the contracting parties and whether they possess the necessary qualities and attributes for fulfilling the contract²⁹. This agreement entails mutual contractual obligations for all parties, from the negotiation and conclusion phases to its final execution. Among these obligations is the obligation of confidentiality, a primary commitment related to the transfer of technical knowledge, expertise, technological skills, and all necessary documentation and technical assistance for implementation. The parties to this agreement are obligated to maintain the confidentiality of this information, methods, and improvements, and to refrain from disclosing trade secrets essential for production and marketing.

Therefore, we must first clarify the elements of the confidentiality obligation in a franchise agreement (**Section I**), and then proceed to explain the scope of its application within this contract (**Section II**).

Section I: Elements of confidentiality obligation in the Franchise Contract

The franchise agreement is considered a bilateral contract between the two parties, meaning that the contracting parties are obligated to maintain the necessary confidentiality that it creates. This obligation falls on the granting party and the receiving party to maintain the confidentiality of the technical information and trade secrets that are exclusive to the franchise system or network. It should be noted that the obligation to maintain confidentiality is closely related to the

²⁸ Adams (J-N), *Franchising : Practice and Precedents in Business Format franchising* Butterworth, op.cit., p.114.

²⁹ Mounir Khalil, Djihad Ben Younes, "Protection of Trade Secrets in the Jordanian Legal System", *Annadjah Journal for Research*, Vol. 27, n° 4, 2013, pp.773-785.

obligation to provide information related to technical and technological knowledge. To determine this obligation, it is necessary to have the elements that constitute it, which are mainly represented in: the element of maintaining the confidentiality of technical knowledge (**subsection 1**), the element of confidentiality of information and technology (**subsection 2**), and finally the element of confidentiality of improvements (**subsection 3**).

Subsection 1: The element of information and technology confidentiality

The parties benefiting from the franchise agreement are obliged to maintain the confidentiality of all information, knowledge, documents, and skills acquired throughout the contract period. Neither they nor their economic partners in the market may transfer this information to others, whether it pertains to documents, distribution and marketing methods, manufacturing methods, or how to utilize them in the market³⁰. The same applies to the confidentiality of the technology to be imported and transferred. That is to say, what is known as technological secrets, such as the method of assembling and designing devices, how to use them, and all industrial secrets.

Considering that the franchise agreement is among the business contracts that transfer technology, it is an effective mechanism for transferring technical knowledge between countries, especially developing countries, which are always in dire need of such knowledge, information, and technologies. Such matters are characterized by flexibility, development, and keeping pace with the business field. Therefore, it is necessary not to disclose this information and technology within it³¹.

Subsection 2: The element of technical knowledge confidentiality

The franchise agreement is one of the new technologies of our era, within the framework of economic globalization and capital accumulation. It is considered one of the most effective means of penetrating foreign markets³². Therefore, it is

³⁰ CHAFI Nadir, "The Franchise Agreement : Its Concept, Characteristics, and Obligations of Both Parties", Aldjaich Magazine, n° 243, 2005. Available on : <http://www.lebramy.gov.lb>

³¹ CHAFI Nadir, "The Franchise Agreement : Its Concept, Characteristics, and Obligations of Both Parties", op.cit.

³² CLEMENT Jean- Paul, The Industrial Franchise and Modern Commercial Enterprise, LGDJ, Paris, 1981, p.119.

the franchiser's responsibility to place technical knowledge at the disposal of the franchisee, transfer its components, and enable them to use and exploit it. This includes providing all the necessary elements of confidential technical information, as well as the commercial, administrative, technical, and material methods related to the franchise system³³.

Technical knowledge in a franchise agreement is a set of specific, confidential, and essential practical information transferred from the franchiser to the franchisee. It includes methods of production, marketing, and business management, and is a key element for the success of the franchise. As a result, the franchisee is keen to maintain its confidentiality and takes all necessary precautions and mechanisms to ensure this confidentiality against anything that might disclose it or transfer it to competitors or other economic actors³⁴.

Subsection 3: The element of improvements confidentiality

The franchiser's obligation to transfer the elements of the franchise agreement entails his obligation to maintain the confidentiality of the technical improvements that the recipient may introduce and transfer to him. This obligation is one of the joints between the franchiser and the franchisee³⁵. It is established at the stage of concluding the contract and during its implementation. It should be noted that the obligation to maintain the confidentiality of the improvements included in the franchise agreement is characterized by its contingent nature, and its existence is determined by the franchiser's technical circumstances and its ability to develop.

Due to the importance of this obligation, the franchisee must respect the level of quality in the face of its consumers and thus maintain the general commercial reputation of the network, while the other party, that is to say the franchiser, is obliged to strict control that guarantees its trademark subject to the contract³⁶.

³³ BESSIS Philippe, The franchise contract, op.cit., p.112.

³⁴ KHAYAT DE CYWINSKA Annie, The franchisee : rights and obligations, Doctoral thesis in law, Panthéon-Sorbonne University (Paris I), 1996, p.153.

³⁵ GRAC Stéphane, The franchiser and franchisee relations : cooperation and conflict, Doctoral thesis in law, Nice-Sophia Antipolis University, 1998, p.117.

³⁶ KHAYAT DE CYWINSKA Annie, The franchisee : rights and obligations op.cit., p.156.

Section II: The scope of application of the confidentiality obligation in the Franchise Contract

The obligation of confidentiality in the franchise contract has a special legal nature, as it is an obligation to achieve a result and not just an obligation for care. Its scope of application is that it remains in effect from the negotiation stage, or in the conclusion or implementation stage, until its expiry, so that all information transferred to it must remain confidential as long as this information is not generalized to all the parties involved³⁷. Therefore, we will seek it during the negotiation (**First section**), during its implementation (**Second section**), until its expiry (**Third section**).

Subsection 1: Confidentiality is a commitment during the Franchise Contract negotiation phase

The negotiation phase is considered one of the most important stages in the franchise contract, as it includes a set of obligations that negotiators must adhere to during this phase. The aim is to reach an agreement on a final contract, achieve the best interests of all parties, and ensure the protection of their rights. Among these obligations is the obligation of confidentiality, whereby a negotiating party who has access to information, data, and documents during the negotiation refrains from disclosing them to others or exploiting them for personal gain without the owner's permission or consent. This technical knowledge holds significant economic value in the agreement and therefore must be protected³⁸.

Legal opinions and interpretations have differed regarding the basis for determining the obligation of confidentiality during the negotiation phase. Three main approaches have emerged: the first establishes that this obligation is based on the principle of good faith and trust in dealings, which means the obligation to negotiate in good faith; the second is based on the theory of the implied contract between the negotiating parties, thus making the negotiation always contractual rather than purely financial in nature; while the third is based on the provisions of tort and contractual liability established in general legal principles, prohibiting the disclosure of any information, data, industrial or commercial designs or models

³⁷ AROUSSI Sasia, Protection of technical knowledge in Algerian law, Doctoral thesis in legal sciences, Specialization in business law, Faculty of Law, University of Algiers 1, 2020, p.115.

³⁸ GRAC Stéphane, The franchiser and franchisee relations : cooperation and conflict, op.cit., p.109.

that are confidential constitute grounds for establishing liability based on the legal text that mandated it, because disclosing trade secrets is one of its most prominent manifestations of harming others, especially since some of these trade secrets form the backbone of the franchise network³⁹.

Negotiating a franchise agreement is a sensitive and critical stage, given the element of confidentiality that characterizes most of the technological information disclosed at this stage. So, the party granting the exploitation of technical knowledge is keen to provide guarantees that ensure the recipient's commitment to maintaining the confidentiality of the information, technologies, and expertise that he accesses. One of the most important of these guarantees⁴⁰ is the written undertaking, meaning that the seeker of technical knowledge undertakes, by written undertaking, to maintain the confidentiality of the information he accesses during the negotiations and not to disclose that confidentiality, use it, or facilitate its use by others. This undertaking creates a unilateral obligation. The other is the financial guarantee, as the owner of the technology may require the importer to provide a financial guarantee as to ensure that the condition of maintaining confidentiality is not violated, in addition to other guarantees⁴¹.

Subsection 2: Confidentiality is a commitment during the Franchise Contract execution phase

The obligation to maintain the confidentiality of transferred technical know-how is a fundamental requirement of the franchisee. Confidentiality is essential in defining the nature of know-how and determines its actual economic value in the market or the capital upon which it is based. Such knowledge diminishes, disappears, and ultimately vanishes if it becomes widely known and disseminated among economic actors in the market, potentially exposing its owner to commercial and technological losses.

Therefore, the obligation to maintain confidentiality ensures its protection. It should be noted that the obligation to maintain the confidentiality of technical knowledge, skills, and experience in a franchise agreement is a shared obligation

³⁹ CAHEN Murielle, "The Franchise Contract, the know-how and the Nullité Clauses", Available on : <https://www.legavox.fr>, Accessed on January 5, 2026, at 08.00 A.M.

⁴⁰ CAHEN Murielle, op.cit.

⁴¹ Djalal Wafaa Mohamedin, "The Idea of Technical Knowledge and the Legal Basis for its Protection : A Study in American Law", Journal of American Law and Legal Research, n° 03, Egypt, 1993, pp. 38-55.

incumbent upon both parties to the transfer agreement. Both parties must adhere to it. However, for it to be considered shared, its scope and framework must be defined, specifying the subject matter and the parties who have access to the trade secrets of the transferred know-how, particularly in the case of an international franchise agreement.

The breach by one of the parties to the franchise agreement of the obligation to maintain the confidentiality of technical and artistic knowledge, given its unique inherent characteristics, is detrimental. According to the general rules established for contractual liability in civil law⁴², the penalty for non-performance in the franchise agreement⁴³ and also the penalty for compensation.

Subsection 3: The confidentiality commitment is a consequence upon the expiry of the Franchise Contract

The distinctive thing about a franchise contract is that, despite its expiry and termination, it continues to arrange its obligations even after. This is a result of economic necessities in the market that required the continuation of some of its obligations even after its end. This is something we do not find in civil contracts such as business contracts, as the franchise contract is a form of them, so its obligations extend and continue after its end. This is its special character.

Among these obligations is the extension of the franchisee's obligation to confidentiality after its end, so that it is obligated to maintain the confidentiality of the technical knowledge and trade secrets that it obtains from the franchise system, which can give the brand and trade name a competitive advantage and fame like other brands, so that this prohibition extends whether during the period of the contract or even after its termination.

The franchisee's continuous commitment to maintaining the confidentiality of technical and technological information and skills acquired after the franchise agreement's termination, and not disclosing them to others, is a guarantee to protect the economic value of the franchise network and the competitive advantage of the economic projects included in this agreement.

⁴² Ibrahim Ahmed Ibrahim, "Protection of Trade Secrets and Technical Knowledge", Journal of Legal and Economic Sciences, n° 02, 2002, pp. 25-43.

⁴³ SIMON François-Luc, "Franchise Law", The small posters, n° 229, Paris, November 15, 2007, p.251.

In addition to the confidential nature of the technical knowledge, maintaining it is a condition to ensure that it does not reach other economic operators, and to ensure that the franchisee protects its trade secrets and the distinctive elements of its technical knowledge, as these are the characteristics that determine its financial and economic value in the market, and to prevent other competing projects from accessing them⁴⁴.

Conclusion

Confidentiality is the basis upon which the parties to a franchise contract rely to protect their agreement, whether during the negotiation phase, during its implementation, or even after its expiry. The interest of the parties is always based on not disclosing technical knowledge and keeping it confidential. The franchisee is obliged to keep the principles transferred to him confidential and not to disclose them to customers, especially to competitors. Transferring technical knowledge, achieving brand fame, and introducing customers is one of the most economically and financially effective means of conquering new global markets. Expanding by establishing new networks abroad ensures greater efficiency, lower costs, greater returns, and a realistic approach to developing and facilitating the franchise's international expansion.

By examining whether confidentiality in a franchise contract is a condition or an obligation, we come up to the following results:

The franchise contract is among the most important business contracts that transfer technical knowledge, as the remarkable development in its concept has led to the emergence of the features of technical knowledge, which is considered one of the most essential elements that make up its subject matter, and which means all the technological, industrial, commercial, administrative and financial knowledge kept by the projects confidential to ensure that it is not violated or disclosed and is transferable.

The confidentiality clause in the franchise contract is of great importance, making it one of the conditions inherent to and associated with this contract, and indeed one of the conditions dictated by its nature. This is because the

⁴⁴ Hammadi Mithaq Talib Abdul Khafadji Mohamed Djaafar, "The Obligation of Confidentiality in Technology Transfer Contracts : A Comparative Study", Op.cit., pp. 130-147.

confidentiality stipulated in it is what causes it to lose its economic value in the market in case of disclosure of the technical knowledge that represents its premises, as these experiences and information become merely general, common, and available information for everyone.

The confidentiality clause in a franchise agreement is a set of technical information, technical knowledge, methods and techniques related to the use of a particular technology, or the design of administrative, financial or economic data pertaining to marketing and distribution methods or any means of attracting customers, forms of intellectual property that must be protected and which should not be available to everyone and should be known only to a limited number of economic operators.

The obligation of confidentiality in a franchise contract is of a special legal nature, as it is an obligation to achieve a result and not just an obligation for care. Its scope of application lies in the fact that it remains in effect from the negotiation stage, or in the conclusion or implementation stage, until its end. Thus, all the information transferred to it must remain confidential as long as this information is not generalized to all the parties involved.

A franchise agreement is a reciprocal and binding contract for both parties, the franchiser and the franchisee. While these obligations may initially appear balanced, in practice, the opposite is often true. If either party breaches the confidentiality agreement by disclosing information obtained during negotiations, implementation, or even termination, they are in breach of their obligation to maintain the confidentiality of the information they learned. This breach can result in liability, whether tortious or contractual.

In light of these findings, we offer the following recommendations:

- Legislative definition of the scope of the obligation of confidentiality in the franchise contract, with recognition of the standard for breaching it, in order to identify the cases in which confidential information is disclosed, and to take all necessary measures to maintain this obligation.
- Adopting the written undertaking, which is considered the best way to maintain the confidentiality of technical and technological knowledge in the franchise contract, because the party benefiting from this contract is willingly committed to

confidentiality by not disclosing any information of a confidential nature that he has seen during the stages of concluding the contract.

- Working to establish the culture of franchise agreements as a newly developed contractual mechanism in the field of finance and business, due to their economic value in the market, by conducting media campaigns that explain its elements, most notably the element of confidentiality in it.

- The need to establish research and development centers to acquire technical knowledge in franchise contracts, maintain its confidentiality, use it according to its designated purpose, and conduct scientific experiments and research to determine its application framework.