

A BILL

FOR

AN ACT TO REGULATE THE FRANCHISED BUSINESS IN NIGERIA; AND FOR RELATED MATTERS, 2018

Sponsored by Senator Ahmad Lawan

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1 1.-(1) This Act applies to franchises to be granted or renewed for
2 the operation of one or more franchised businesses within the Federal
3 Republic of Nigeria.

Scope of application

4 (2) Pursuant to the provisions of subsection (1) of this section, this
5 Act applies to-

6 (a) Trade Name Franchising;

7 (b) Business Format Franchising;

8 (c) Unit Franchising;

9 (d) Multiple Franchising;

10 (e) Area Franchising;

11 (f) Pilot Franchising;

12 (g) Fractional Franchising;

13 (h) Conversion Franchising; and

14 (i) any other type or form of franchising granted or renewed for
15 operation within Nigeria.

16 2. The National Office for Technology Acquisition and Promotion
17 established by the National Office for Technology Acquisition and
18 Promotion Act, Cap. N62, Laws of the Federation of Nigeria, 2004 (in this
19 Act referred to as "the Implementing Agency") shall be responsible for the
20 implementation of the provisions of this Act, provided that where
21 appropriate, NOTAP shall consult the Registrar of Trade Marks and Patents

Implementation of this Act. Cap. N62, LFN, 2004

- 1 or any other relevant authority.
- Enforcement 2 3. The provisions of this Act shall have the force of law and shall be
3 enforceable under the Nigerian law by the implementing agency and the
4 language of the proceedings shall be English.
- Compliance 5 4. From the commencement of this Act, all franchisors and
6 franchisees operating in Nigeria shall ensure compliance with the provisions of
7 this Act and the regulations made under this Act.
- Delivery of
disclosure
document 8 5.-(1) A franchisor shall give every prospective franchisee a
9 disclosure document, to which the proposed franchise agreement must be
10 attached, at least 14 days before-
- 11 (a) the signing by the prospective franchisee of any agreement
12 relating to the franchise, with the exception of agreements relating to
13 confidentiality of information delivered or to be delivered by the franchisor; or
14 (b) the payment to the franchisor or an affiliate of the franchisor by the
15 prospective franchisee of any fee relating to the acquisition of a franchise that is
16 not refundable or the refunding of which is subject to such conditions as to
17 render them not refundable, with the exception of a security (bond or deposit)
18 given on the conclusion of a confidentiality agreement.
- 19 (2) The disclosure document shall be updated within 30 days of the
20 end of the franchisor's fiscal year and where there has been a material change in
21 the information required to be disclosed under section 8 of this Act, notice in
22 writing of such change shall be delivered to the prospective franchisee as soon
23 as practicable before either of the events described in subsection (1) (a) or (b) of
24 this section.
- Format of
disclosure
document 25 6.-(1) The disclosure shall be provided in writing.
26 (2) The franchisor may use any format for the disclosure document,
27 provided that the information contained therein is presented as a single
28 document at one time and meets the requirements of this Act.
- Exemptions
from obligation
to disclose 29 7. No disclosure document shall be required in case of the-
30 (a) grant of a franchise to a person who has been an officer or director

1 of the franchisor or of an affiliate of the franchisor for at least one year
2 immediately before the signing of the franchise agreement;

3 (b) assignment or other transfer of a franchisee's rights and
4 obligations under an existing franchise agreement, where the assignee or
5 transferee is bound by substantially the same terms as the assignor or
6 transferor, and the franchisor has not had a significant role in the transaction
7 other than approval of the transfer;

8 (c) grant of a franchise to sell goods or services to a natural or legal
9 person who has been engaged in the same or a similar business for the
10 previous two years, if the sales of the franchise, as reasonably anticipated
11 by the parties at the time the franchise agreement is entered into, does not,
12 during the first year of the relationship exceed 20% of the total aggregate
13 sales of the combined business of the franchisee and its affiliates;

14 (d) grant of a franchise as a result of which the prospective
15 franchisee commits to a total financial requirement under the franchise
16 agreement in excess of an amount to be provided in a regulation made under
17 this Act;

18 (e) grant of a franchise to a prospective franchisee who, together
19 with its affiliates has a net worth in excess of an amount to be provided in a
20 regulation pursuant to this Act or turnover in excess of an amount to be
21 provided in a regulation made under this Act; or

22 (f) renewal or extension of a franchise on the same conditions.

23 8. In the disclosure document, the franchisor shall provide the
24 following information-

25 (a) the legal name, legal form, legal address and the address of the
26 principal place of business of the franchisor;

27 (b) the trademark, trade name, business name or similar name,
28 under which the franchisor carries on or intends to carry on business in
29 Nigeria or in another country, if outside Nigeria as the case may be, in which
30 the prospective franchisee will operate the franchise business;

Information to
be disclosed

1 (c) the address of the franchisor's principal place of business in the
2 country, if outside Nigeria, where the prospective franchisor is located;

3 (d) a description of the franchise to be operated by the prospective
4 franchisee;

5 (e) information on the categories of goods or services that the
6 franchisee is required to purchase or lease, indicating-

7 (i) whether any of these have to be purchased or leased from the
8 franchisor, affiliates of the franchisor or from a supplier designated by the
9 franchisor;

10 (ii) whether the franchisee has the right to recommend other suppliers
11 for approval by the franchisor; and

12 (iii) whether any revenue or other benefit that may be directly or
13 indirectly received by the franchisor or any of the affiliates of the franchisor
14 from any supplier of goods and/or services to the franchisee, such as rebates,
15 bonuses, or incentives with regard to those goods and/or services, shall be
16 passed on to the prospective franchisee or, if not, whether a price mark-up will
17 be made by the franchisor or the supplier recommended by the franchisor.

Acknowledgment
of receipt of
disclosure
document

18 9. The prospective franchisee shall, at the request of the franchisor,
19 acknowledge in writing the receipt of the disclosure document.

Remedies

20 10.-(1) If the disclosure document or notice of material change -

21 (a) has not been delivered within the time established in section 5 of
22 this Act;

23 (b) contains a misrepresentation of a material fact; or

24 (c) makes an omission of a material fact;

25 then the franchisee may, with 30 days prior written notice to the franchisor
26 terminate the franchise agreement or claim against the franchisor for damages
27 suffered from the conduct described in paragraphs (a), (b) and (c) of this
28 subsection, unless the franchisee had the information required to be disclosed
29 through other means and did not rely on the misrepresentation.

30 (2) The remedies granted to the franchisee under this section shall be

1 exercised not later than-

2 (a) one year after the act or omission constituting the breach upon
3 which the right to terminate is based;

4 (b) three years after the act or omission constituting the breach
5 upon which the right to claim for damages suffered is based;

6 (c) one year after the franchisee becomes aware of facts or
7 circumstances reasonably indicating that it may have a right to claim for
8 damages suffered; or

9 (d) within 90 days of the delivery to the franchisee of a written
10 notice providing details of the breach accompanied by the franchisor's then
11 current disclosure document.

12 (3) The rights provided by subsection (1) of this section shall not
13 reduce other rights a franchisee may have under any other law.

14 11. All franchise agreements between Nigerian franchisees and
15 their franchisors shall incorporate standard provisions in line with
16 international best practices.

Provisions of
franchise
agreement

17 12. All proprietary rights associated with any foreign business
18 franchise licenced to franchisees in Nigeria (including patents, trademarks
19 and industrial designs, etc.) shall be registered with the appropriate
20 authority in Nigeria prior to the commencement of their operation in
21 Nigeria.

Registration of
propriety rights
associated with
business franchise

22 13. Without prejudice to the responsibilities of the Patent and
23 Trademarks Registry with respect to the registration of intellectual property
24 rights associated with franchising, the National Office for Technology
25 Acquisition and Promotion shall-

Registration of
franchise
agreement

26 (a) be responsible for the registration of franchise agreements
27 entered into by franchisees in Nigeria with franchisors outside Nigeria; and

28 (b) coordinate the licencing of indigenous business franchise to
29 interested franchisees.

Local content	1	14. All franchise operators in Nigeria must ensure that they meet a
	2	minimum of 20% local inputs in their operation.
Offences and penalties	3	15. -(1) As from the commencement of this Act failure to comply with
	4	the provisions of this Act shall be an offence.
	5	(2) A person who contravenes the provisions of this Act, commits an
	6	offence and is liable upon conviction to imprisonment for a term not less than 1
	7	year or to a fine not less than N1,000,000 or to both.
Regulations	8	16. The Governing Council of the National Office for Technology
	9	Acquisition and Promotion shall make regulations necessary to carry into full
	10	effect the provisions of this Act.
Waivers	11	17. No franchise agreement shall give a waiver, in any form, of any
	12	right under this Act.
Interpretation	13	18. In this Act-
	14	"affiliate of the franchisee" means a person who directly or indirectly controls
	15	or is controlled by the franchisee, or is controlled by another party who controls
	16	the franchisee;
	17	"affiliate of the franchisor" means a person who directly or indirectly controls
	18	or is controlled by the franchisor, or is controlled by another party who controls
	19	the franchisor;
	20	"development agreement" means an agreement under which a franchisor in
	21	exchange for direct or indirect financial compensation grants to another party
	22	the right to acquire more than one franchise of the same franchise system;
	23	"direct or indirect financial compensation" does not include the payment of a
	24	bona fide wholesale price for goods intended for resale;
	25	"disclosure document" means a document containing the information required
	26	under this Act;
	27	"franchise" means the rights granted by a party (the franchisor) authorising and
	28	requiring another party (the franchisee), in exchange for direct or indirect
	29	financial compensation, to engage in the business of selling goods or services
	30	on its own behalf under a system designated by the franchisor which includes

1 know-how and assistance, prescribes in substantial part the manner in which
2 the franchised business is to be operated, includes significant and continuing
3 operational control by the franchisor, and is substantially associated with a
4 trademark, service mark, trade name or logotype designated by the
5 franchisor and includes-

6 (a) the rights granted by a franchisor to a sub-franchisor under a
7 master franchise agreement,

8 (b) the rights granted by a sub-franchisor to a sub-franchisee under
9 a sub-franchise agreement, and

10 (c) the rights granted by a franchisor to a party under a
11 development agreement and for the purposes of this definition;

12 "franchise agreement" means the agreement under which a franchise is
13 granted;

14 "franchised business" means the business conducted by the franchisee under
15 a franchise agreement;

16 "franchisee" includes a sub-franchisee in its relationship with the sub-
17 franchisor and the sub-franchisor in its relationship with the franchisor;

18 "franchisor" includes the sub-franchisor in its relationship with its sub-
19 franchisees;

20 "master franchise" means the right granted by a franchisor to another party
21 (the sub-franchisor) to grant franchises to third parties (the sub-franchisees);

22 "material change" in the information required to be disclosed means a
23 change which can reasonably be expected to have a significant effect on the
24 prospective franchisee's decision to acquire the franchise;

25 "material fact" means any information that can reasonably be expected to
26 have a significant effect on the prospective franchisee's decision to acquire
27 the franchise;

28 "misrepresentation" means a statement of fact that the person making the
29 statement knew or ought to have known to be untrue at the time the
30 statement was made;

1 "omission" means the failure to state a fact of which the person making the
2 statement was aware at the time the statement ought to have been made; and
3 "sub-franchise agreement" means a franchise agreement concluded by a sub-
4 franchisor and a sub-franchisee pursuant to a master franchise.

Citation

5 19. This Bill may be cited as the Franchise Bill, 2018.

EXPLANATORY MEMORANDUM

This Bill seeks to regulate the franchised business in Nigeria.