

A BILL

FOR

AN ACT TO PROVIDE FOR THE REGULATION OF FRANCHISING IN NIGERIA;
AND FOR RELATED MATTERS

Sponsored by Hon. Sylvester Ogbaga

[] Commencement

BE IT ENACTED by the National Assembly of the Federal
Republic of Nigeria as follows:

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

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 Implementation
17 established by the National Office for Technology Acquisition and of this Act
18 Promotion Act Cap N62 Laws of the Federation of Nigeria, 2004 (in this Act
19 referred to as "the implementing agency") shall be responsible for the
20 implementation of the provisions of this Act.

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

1 least one year immediately before the signing of the franchise agreement;

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

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

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

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

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

24 8.-(1) In the disclosure document, the franchisor shall provide the
25 following information:

Information to be
disclosed

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

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

1 the prospective franchisee will operate the franchise business;

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

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

6 (e) a description of the business experience of the franchisor and its
7 affiliates granting franchises under substantially the same trade name,
8 including:

9 (i) the length of time during which each has run a business of the type
10 to be operated by the prospective franchisee, and

11 (ii) the length of time during which each has granted franchises for the
12 same type of business as that to be operated by the prospective franchisee.

13 (f) the names, business addresses, positions held, and business
14 experience of any person who has senior management responsibilities for the
15 franchisor's business operations in relation to the franchise;

16 (g) any criminal convictions or any finding of liability in a civil action
17 or arbitration involving franchises or other businesses relating to fraud,
18 misrepresentation, or similar acts or practices of:

19 (i) the franchisor, and

20 (ii) any affiliate of the franchisor who is engaged in franchising for the
21 previous five years, and whether any such action is pending against the
22 franchisor or its subsidiary, and the court or other citation of any of the above.

23 (h) any bankruptcy, insolvency or comparable proceeding involving
24 the franchisor and its affiliate(s) for the previous five years and the court
25 citation thereof;

26 (i) the total number of franchisees and company-owned outlets of the
27 franchisor and of affiliates of the franchisor granting franchises under
28 substantially the same trade name;

29 (j) the names, business addresses and business phone numbers of the
30 franchisees, and of the franchisees of any affiliates of the franchisor which are

1 granting franchises under substantially the same trade name whose outlets
2 are located nearest to the proposed outlet of the prospective franchisee, but
3 in any event of not more than 5 franchisees, in the country of the franchisee
4 and/or contiguous country, or, if there are no contiguous country, the country
5 of the franchisor;

6 (k) information about the franchisees of the franchisor and about
7 franchisees of affiliates of the franchisor that grant franchises under
8 substantially the same trade name that have ceased to be franchisees during
9 the three fiscal years before the one during which the franchise agreement is
10 entered into, with an indication of the reasons for which the franchisees have
11 ceased to be franchisees of the franchisor;

12 (l) information regarding the franchisor's intellectual property to
13 be licensed to the franchisee, in particular trademarks, patents, copyright
14 and software:

15 (i) the registration and/or the application for registration, if any,

16 (ii) the name of the owner of the intellectual property rights and/or
17 the name of the applicant, if any,

18 (iii) the date on which the registration of the intellectual property
19 rights licensed expires, and

20 (iv) litigation or other legal proceedings, if any, which could have a
21 material effect on the franchisee's legal right, exclusive or nonexclusive, to
22 use the intellectual property under the franchise agreement in the country in
23 which the franchised business is to be operated;

24 (m) information on the categories of goods and/or services that the
25 franchisee is required to purchase or lease, indicating:

26 (i) whether any of these have to be purchased or leased from the
27 franchisor, affiliates of the franchisor or from a supplier designated by the
28 franchisor,

29 (ii) whether the franchisee has the right to recommend other
30 suppliers for approval by the franchisor, and

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

7 (n) financial matters, including:

8 (i) (a) an estimate of the prospective franchisee's total initial
9 investment,

10 (b) financing offered or arranged by the franchisor, if any,

11 (c) the financial statements of the franchisor and when available
12 audited or otherwise independently verified financial statements, including
13 balance sheets and statements of profit and loss, for the previous three years.

14 (ii) (a) if information is provided to the prospective franchisee by or
15 on behalf of the franchisor concerning the historical or projected financial
16 performance of outlets owned by the franchisor, its affiliates or franchisees, the
17 information must:

18 (aa) have a reasonable basis at the time it is made,

19 (bb) include the material assumptions underlying its preparation and
20 presentation,

21 (cc) state whether it is based on actual results of existing outlets,

22 (dd) state whether it is based on franchisor-owned and/or franchisee-
23 owned outlets, and

24 (ee) indicate the percentage of those outlets that meet or exceed each
25 range or result,

26 (b) if the financial information referred to in the preceding
27 subparagraph is provided, the franchisor must state that the levels of
28 performance of the prospective franchisee's outlet may differ from those
29 contained in the information provided by the franchisor.

30 (o) a description of:

1 (i) the state of the general market of the products or services that are
2 the subject of the contract,

3 (ii) the state of the local market of the products or services that are
4 the subject of the contract,

5 (iii) the prospects for development of the market; and

6 (p) any other thing necessary to prevent any statement in the
7 document from being misleading to a reasonable prospective franchisee.

8 (2) The following information shall also be included in the
9 disclosure document. However, where the information is contained in the
10 franchise agreement, the franchisor may in the disclosure document merely
11 make reference to the relevant section of the franchise agreement. Where the
12 following items of information are not included in the proposed franchise
13 agreement, that fact shall be stated in the disclosure document:

14 (a) the term and conditions of renewal of the franchise, if any;

15 (b) a description of the initial and on-going training programs;

16 (c) the extent of exclusive rights to be granted, if any, including
17 exclusive rights relating to territory and/or to customers and also
18 information on any reservation by the franchisor of the right:

19 (i) to use, or to license the use of, the trademarks covered by the
20 franchise agreement,

21 (ii) to sell or distribute the goods and/or services authorized for sale
22 by the franchisee directly or indirectly through the same or any other
23 channel of distribution, whether under the trademarks covered by the
24 agreement or any other trademark.

25 (d) the conditions under which the franchise agreement may be
26 terminated by the franchisor and the effects of such termination;

27 (e) the conditions under which the franchise agreement may be
28 terminated by the franchisee and the effects of such termination;

29 (f) the limitations imposed on the franchisee, if any, in relation to
30 territory and/or to customers;

- 1 (g) in-term and post-term non-compete covenants;
- 2 (h) the initial franchise fee, whether any portion of the fee is
- 3 refundable, and the terms and conditions under which a refund will be granted;
- 4 (i) other fees and payments, including any gross-up of royalties
- 5 imposed by the franchisor in order to offset withholding tax;
- 6 (j) restrictions or conditions imposed on the franchisee in relation to
- 7 the goods and/or services that the franchisee may sell;
- 8 (k) the conditions for the assignment or other transfer of the franchise;
- 9 and
- 10 (l) any forum selection or choice of law provisions, and any selected
- 11 dispute resolution processes.

12 (3) Where the franchise is a master franchise, the sub-franchisor must,

13 in addition to the items specified in subsection (1) and (2) of this section,

14 disclose to the prospective sub-franchisee the information on the franchisor

15 that it has received under subsections (1)(a), (e), (h), and (2)(c) and (f) of this

16 section, as well as inform the prospective sub-franchisee of the situation of the

17 sub-franchise agreements in case of termination of the master franchise

18 agreement and of the content of the master franchise agreement.

Acknowledgment
of receipt of
disclosure
document

19 9. The prospective franchisee shall at the request of the franchisor

20 acknowledge in writing the receipt of the disclosure document.

Remedies

21 10.-(1) If the disclosure document or notice of material change:

22 (a) has not been delivered within the period of time established in

23 section 5 of this Act;

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

25 (c) makes an omission of a material fact, then the franchisee may on

26 30 days prior written notice to the franchisor terminate the franchise agreement

27 and/or claim against the franchisor for damages suffered from the conduct

28 described in paragraphs (a), (b) and (c) of this subsection, unless the franchisee

29 had the information required to be disclosed through other means and did not

30 rely on the misrepresentation.

1 (2) The remedies granted to the franchisee pursuant to this section
2 shall be exercised not later than the:

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

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

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

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

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

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

Provisions of
Franchise
agreement

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

Registration of
Propriety Rights
Associated with
business Franchise

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

Registration of
Franchise
Agreement

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

29 (b) coordinate the licencing of indigenous business franchise to
30 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) Where a person fails to comply with the provisions of this Act, he
	6	shall be guilty of an offence and shall be liable upon conviction to
	7	imprisonment for a term not less than 1 year or to a fine not less than
	8	N1,000,000 or to both such fine and imprisonment.
Regulations	9	16. The Governing Council of the National Office for Technology
	10	Acquisition and Promotion shall make regulations necessary to carry into full
	11	effect the provisions of this Act.
Waivers	12	17. No franchise agreement shall give a waiver, in any form, of any
	13	right under this Act.
Inter-Retation	14	18. In this Act, unless the context otherwise requires:
	15	"affiliate of the franchisee" means a person who directly or indirectly controls
	16	or is controlled by the franchisee, or is controlled by another party who controls
	17	the franchisee;
	18	"affiliate of the franchisor" means a person who directly or indirectly controls
	19	or is controlled by the franchisor, or is controlled by another party who controls
	20	the franchisor;
	21	"development agreement" means an agreement under which a franchisor in
	22	exchange for direct or indirect financial compensation grants to another party
	23	the right to acquire more than one franchise of the same franchise system;
	24	"disclosure document" means a document containing the information required
	25	under this Act;
	26	"franchise" means the rights granted by a party (the franchisor) authorising and
	27	requiring another party (the franchisee), in exchange for direct or indirect
	28	financial compensation, to engage in the business of selling goods or services
	29	on its own behalf under a system designated by the franchisor which includes
	30	know-how and assistance, prescribes in substantial part the manner in which

1 the franchised business is to be operated, includes significant and continuing
2 operational control by the franchisor, and is substantially associated with a
3 trademark, service mark, trade name or logotype designated by the
4 franchisor and includes:

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

7 (b) the rights granted by a sub-franchisor to a sub-franchisee under
8 a sub-franchise agreement;

9 (c) the rights granted by a franchisor to a party under a
10 development agreement;

11 For the purposes of this definition:

12 "direct or indirect financial compensation" shall not include the payment of
13 a bona fide wholesale price for goods intended for resale;

14 "franchise agreement" means the agreement under which a franchise is
15 granted;

16 "franchised business" means the business conducted by the franchisee under
17 a franchise agreement;

18 "franchisee" includes a sub-franchisee in its relationship with the sub-
19 franchisor and the sub-franchisor in its relationship with the franchisor;

20 "franchisor" includes the sub-franchisor in its relationship with its sub-
21 franchisees;

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

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

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

30 "misrepresentation" means a statement of fact that the person making the

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

Short Title

7 **11.** This Bill may be cited as the Franchise Bill, 2019.

EXPLANATORY MEMORANDUM

This Bill seeks to provide a framework for the regulation of franchising in Nigeria.