



THE SENATE
FEDERAL REPUBLIC OF NIGERIA

FRANCHISE BILL, 2023.
(SB. 969)

A BILL
FOR
AN ACT TO CREATE THE FRAMEWORK FOR THE REGULATION OF
FRANCHISING AND TO GUIDE THE RELATIONSHIP BETWEEN
FRANCHISORS AND FRANCHISEES IN NIGERIA; AND FOR RELATED
MATTERS

FIRST READING

TUESDAY 29TH MARCH, 2022

SECOND READING

TUESDAY 12TH APRIL, 2022

THIRD READING

TUESDAY 24TH JANUARY, 2023

FRANCHISE BILL, 2023.



Clauses

Arrangement of Clauses

1. Objectives of the Bill
2. Implementation of this Bill
3. Scope of Application of Bill to new, extended and renewed franchise agreement
4. Requirements of franchise agreement
5. Franchisor's Disclosure Obligations
6. Statement of material change
7. Substantial compliance
8. No disclosure obligation
9. Refundable Deposit
10. Pre-franchise agreement fees and opt out period
11. Maintenance and Protection of Intellectual Property Rights
12. Obligations of the Franchisee
13. Freedom of association
14. Freedom from Discrimination
15. Termination of Franchise
16. Effect of non-renewal by franchisor
17. Local Content
18. Compliance and Offences
19. Dispute resolution
20. Regulations
21. Interpretation
22. Citation

A BILL FOR AN ACT TO CREATE THE FRAMEWORK FOR THE REGULATION OF FRANCHISING AND TO GUIDE THE RELATIONSHIP BETWEEN FRANCHISORS AND FRANCHISEES IN NIGERIA; AND FOR RELATED MATTERS.

[] Commencement

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

1. The objectives of this Bill are to:

(a) regulate and guide the relationship between franchisors and franchisees by imposing certain obligations and prohibiting certain actions;

(b) promote the growth of franchising through the adoption of international best practices that balance the interests of franchisors and franchisee; and enhance the capacity of the National Office of Technology Acquisition and Promotion for effective regulation, administration, and enforcement of the provisions of Franchising under this Bill.

Objectives of the Bill

2. (1) The National Office for Technology Acquisition and Promotion established by the National Office for Technology Acquisition and Promotion Act Cap N62 Laws of the Federation of Nigeria, 2004 (in this Bill referred to as “the implementing agency”) shall be responsible for the implementation of the provisions of this Bill.

Implementation of this Bill

(2) All franchise disclosure documents shall be registered with the National Office of Technology Acquisition and Promotion.

(3) No payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Federal Ministry of Finance, the Central Bank of Nigeria or any licensed bank in Nigeria in respect of any payments due under a contract or agreement under this Bill, unless a certificate of registration issued under this Bill is presented by the party or parties concerned together with a copy of the contract

3. (1) This Bill applies to –

(a) A franchise agreement entered into on or after the coming into force of this Bill, if the franchised business is operated, or is to be operated, partly or wholly in Nigeria irrespective of whether the agreement is with a Nigerian or foreign franchisor; and

Scope of Application of Bill to new, extended and renewed franchise agreements

(b) a renewal or extension of a franchise agreement, if:

(i) the renewal or extension is entered into on or after the coming into force of this Bill;

(ii) the franchise agreement was entered into before, or is entered into after, the coming into force of this Bill; and

(iii) the franchised business is operated, or is to be operated, partly or wholly in Nigeria.

(2) Pursuant to the provisions of subsection (1) of this section, this Bill applies to -

- (a) Trade Name Franchising;
- (b) Business Format Franchising;
- (c) Unit Franchising;
- (d) Multiple Franchising;
- (e) Area Franchising;
- (f) Pilot Franchising;
- (g) Fractional Franchising;
- (h) Conversion Franchising; and
- (i) any other type or form of franchising granted or renewed for operation within Nigeria.

4. A franchise agreement shall be in writing and contain at least the following -

Requirements of
franchise
agreement

- (a) the name and description of the product, service and business under the franchise;
- (b) the territorial rights granted to the franchisee;
- (c) the franchise fee, promotion fee, royalty or any related type of payment which may be imposed on the franchisee, if any;
- (d) the obligations of the franchisor;
- (e) the obligations of the franchisee;
- (f) the franchisee's rights to use the mark or any other intellectual property, pending the registration or after the registration of the franchise;
- (g) the conditions under which the franchisee may assign the rights under the franchise;
- (h) a statement on the opt out period as provided in section 10;
- (i) a description pertaining to the mark or any other trade mark, service mark, patent, design or other intellectual property owned or related to the franchisor which is used in the franchise;
- (j) if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor;
- (k) the type and particulars of assistance provided by the franchisor;
- (l) the duration of the franchise provided always that this shall not be less than five years;
- (m) the terms of renewal;
- (n) the effect of termination or expiration of the franchise;
- (o) a copy of the disclosure document; and
- (p) mode of settlement in case of dispute.

5. (1) A franchisor must give every prospective franchisee a copy of the franchisor's disclosure document.

Franchisor's
Disclosure
Obligations

(2) The disclosure document must be served on the prospective franchisee personally in hard copy or electronically at least 30 days before –

- (a) the signing of the franchise agreement or any other agreement relating to the franchise by the prospective franchisee; or
- (b) the payment of any consideration relating to the franchise by or on behalf of the prospective franchisee to the franchisor or franchisor's associate,

whichever is earlier provided that where the disclosure document is not served on the Franchisor as one document it is the date of delivery of the last document that is relevant for the purpose of this section.

(3) The franchisor shall request the prospective franchisee to acknowledge the receipt of the disclosure document in writing.

(4) The disclosure document must contain –

- (a) all material facts;
- (b) the prescribed financial statements;
- (c) copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee;
- (d) the prescribed statements that will enable the Franchisee make an informed investment decision;
- (e) other prescribed information, statements, descriptions and certificates; and

copies of other prescribed documents.

6. (1) The franchisor must give the prospective franchisee a written statement describing any material change.

Statement of
material change

(2) The statement of material change must be received by the prospective franchisee within 30 days after the change has occurred and before -

- (a) the signing of the franchise agreement or any other agreement relating to the franchise by the prospective franchisee; or
- the payment of any consideration relating to the franchise by or on behalf of the prospective franchisee to the franchisor or franchisor's associate; whichever is earlier.

7. A franchisor complies with this Bill -

Substantial
compliance

(a) if the franchisor's disclosure document substantially complies with this Bill; and

if the disclosure document contains a technical irregularity or mistake not affecting the substance of the document.

8. A disclosure document is not be required, in the case of –

No disclosure obligation

- (a) the grant of a franchise to a person who has been an officer or director of the franchisor or of an affiliate of the franchisor for at least two year immediately before the signing of the franchise agreement;
- (b) the assignment or other transfer of a franchisee's rights and obligations under an existing franchise agreement, where the assignee or transferee is bound by substantially the same terms as the assignor or transferor, and the franchisor has not had a significant role in the transaction other than approval of the transfer;
- (c) the grant of a franchise to sell goods or services to a natural or legal person who has been engaged in the same or a similar business for the previous two years, if the sales of the franchise, as reasonably anticipated by the parties at the time the franchise agreement is entered into, will not, during the first year of the relationship, exceed twenty per cent of the total aggregate sales of the combined business of the franchisee and his affiliates;
- (d) the grant of a franchise pursuant to which the prospective franchisee commits to a total financial requirement under the franchise agreement in excess of an amount to be provided in regulations made under this Bill;

(e) the grant of a franchise to a prospective franchisee who, together with his affiliates, has -

- (i) a net worth in excess of an amount to be provided in regulations made under this Bill, or a turnover in excess of an amount to be provided in regulations made under this Bill.

9. Payment of any consideration relating to a franchise does not include the payment of a fully refundable deposit that:

Refundable Deposit

- (a) does not exceed the prescribed amount;
- (b) is refundable without any deductions; and
- (c) is given under an agreement that in no way binds the prospective franchisee to enter into any franchise agreement.

10. (1) All franchise agreement must have an opt out period as may be agreed between the franchisor and franchisee, provided always that it shall not be less than seven working days, during which the franchisee has the option to terminate the agreement.

Pre-franchise agreement fees and opt out period

(2) Upon termination of the franchise agreement under subsection (1), an amount to cover the reasonable expenses incurred by the franchisor to prepare the agreement shall be retained by the franchisor from any initial fees paid to the franchisor provided that all other moneys shall be refunded to the franchisee.

(3) A person who fails to comply with subsection (2) commits an offence and shall be liable to a fine of not less than N5,000,000.

(4) If a franchisor requires that a franchisee makes a payment before signing a franchise agreement, including a payment which is part of a franchise fee, the franchisor shall state in writing in the disclosure document, the purpose for the payment and the conditions for the use and refund of the moneys.

11. The Franchisor shall register and maintain any mark, patent, design or intellectual property that is used or related to the Franchise and shall protect such property against any infringement or breach.

Maintenance and
Protection of
Intellectual
Property Rights

12. (1) Franchisees shall not disclose any information contained in the operating manual during the term of the franchise and for two years after the expiration of the term of the franchise.

Obligations of
the Franchisee

(2) Franchisees shall not carry out any other business similar to the franchised business during the term of the franchise.

(3) The obligations in this section extends to the directors and employees of the franchisee company.

13. (1) A franchisee has the right to associate with other franchisees and may form or join an organization of franchisees.

Freedom of
association

(2) No franchisor or franchisor's associate shall interfere with, prohibit or restrict by contract or otherwise a franchisee from forming or joining an organization of franchisees or from associating with other franchisees.

(3) No franchisor or a franchisor's associate shall directly or indirectly penalize, attempt to penalize or threaten to penalize a franchisee for exercising any right under this section.

(4) Any provision in a franchise agreement or other agreement relating to a franchise that purports to interfere with, prohibit or restrict a franchisee from exercising any right under this section is void.

(5) The franchisee has a right of action for damages against a franchisor or franchisor's associate who contravenes this section.

14. (1) No franchisor shall unreasonably and materially discriminate between franchisees operating a franchise in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services if the discrimination will cause competitive harm to a franchisee competing with another franchisee who receives the benefit of the discrimination.

Freedom
from
Discrimin
ation

(2) The following incentives granted to franchisees shall not be regarded as being discriminatory:

(a) incentives based on franchises granted at different times, and such discrimination is reasonably related to the differences in time;

(b) incentives related to one or more programmes for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;

- (c) incentives related to efforts by the Government or any of its agencies to promote variation in products or service lines or business formats or designs;
- (d) incentives related to efforts by one or more franchisees to cure deficiencies in the operation of franchised businesses or defaults in franchise agreements; or
- (e) incentives based on other reasonable distinctions considering the purposes of this Act and is not arbitrary.

15. (1) A franchise agreement may be terminated before the expiry of the minimum term of five years where both parties to the franchise agreement agree to a termination. Termination of Franchise
- (2) A franchisor or franchisee shall not terminate a franchise agreement before the expiration date except for good cause as provided in subsections (3) and (4).
- (3) "Good cause" includes
- (a) the failure of a franchisor or a franchisee to comply with any terms of the franchise agreement or any other relevant agreement entered into between the franchisor and franchisee; and
 - (b) the failure of a franchisor or the franchisee to remedy the breach committed by him or any of his employees within the period stated in a written notice given by the franchisor, which shall not be less than fourteen days, for the breach to be remedied.
- (4) "Good cause" also includes, but without the requirement of notice and an opportunity to remedy the breach, circumstances in which the franchisor or franchisee –
- (a) makes an assignment of the franchise rights for the benefit of creditors or a similar disposition of the assets of the franchise to any other person;
 - (b) becomes bankrupt or insolvent;
 - (c) voluntarily abandons the franchised business;
 - (d) is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor's mark or other intellectual property; and
 - (e) repeatedly fails to comply with the terms of the franchise agreement.
- (5) Subject to this Bill, a franchisee may, on thirty days prior written notice to the franchisor, terminate the franchise agreement and claim against the franchisor damages suffered therefrom.

16. A franchisor who refuses to renew a franchise agreement or extend a franchise term shall compensate a franchisee either by a re-purchase or by other means at a price to be agreed to between the franchisor and the franchisee after considering the diminution in the value of the franchised business, caused by the expiration of the franchise where – Effect of non-renewal by franchisor
- (a) the franchisee is barred by the franchise agreement, or by the refusal of the franchisor at least six months before the expiration date of the franchise agreement to waive any portion of the franchise agreement, which prohibits the franchisee, from continuing to conduct substantially the same business under another mark in the same area subsequent to the expiration of the franchise agreement; or
 - (b) the franchisee has not been given a written notice of the franchisor's intent not to renew the franchise agreement at least six months prior to the expiration date of the franchise agreement.

17. All franchise operators are to use locally grown and locally made raw materials and products. Local Content

18. (1) All franchise agreements entered into before or after the coming into force of this Bill must comply with this Bill. Compliance and Offences

(2) Any clause in any franchise agreement that provides for any exemption or waiver from the obligations in this Bill shall be invalid.

(3) Any person who fails to comply with the provisions of this Bill shall be guilty of an offence and shall be liable upon conviction to a term of imprisonment of not less than one year or to a fine of not less than N1,000,000 or to both fine and term of imprisonment.

19. (1) Nigerian law shall govern all franchise agreements under this Bill. Dispute resolution

(2) If a franchise agreement provides that disputes may be referred to, or resolved by, mediation or arbitration, the disclosure document must include information about mediation procedures and arbitration proceedings, including –

- (a) the criteria and methods for selecting a mediator or arbitrator;
- (b) the rules and procedures governing mediation and arbitration;
- (c) any confidentiality obligations imposed on parties to the mediation or arbitration;
- (d) the costs of mediation or arbitration proceedings or the method of calculating those costs; and

any other prescribed information and statements.

20. The National Office of Technology Acquisition and Promotion may make regulations prescribing anything required to be prescribed for the purposes of this Bill. Regulations

21. In this Bill, unless the context otherwise requires – Interpretation

“body corporate” means a legal entity, an artificial or otherwise, recognised by the Companies and Allied Matters Act (2020) or established under the authority of any other law in Nigeria;

“development agreement” means an agreement under which a franchisor, in exchange for direct or indirect financial compensation, grants to another party the right to acquire more than one franchise of the same franchise system;

“disclosure document” means the documents describes in section 5 as the disclosure document.

“franchise” means a right to engage in a business in which the franchisee is required by contract or otherwise to make a payment or continuing payments (whether direct or indirect) or a commitment to make that payment or those payments to the franchisor or the franchisor’s associate in the course of operating the business or as a condition of acquiring the franchise or commencing operations, and

(a) In which –

(a) In which –

- (i) The franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor's, or the franchisor's associate's, trademark, trade name, logo or advertising, and
- (ii) The franchisor or the franchisor's associate exercises significant control over, or offers significant assistance in the franchisee's method of operation under a business plan, including building design and furnishings, locations, business organization, marketing strategies or training; or

(b) In which –

- (i) the franchisor or the franchisor's associate grants the franchisee the representational or distribution rights whether or not a trademark, trade name, logo or advertising is involved to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor, and
- (ii) the franchisor, the franchisor's associate or another person designated by the franchisor provides location assistance, including -
 - (a) securing retail outlets or customer accounts for the goods or services to be distributed, offered for sale or sold, or
 - (b) securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee; and includes a master franchise and a sub-franchise.

"franchise agreement" means any agreement that relates to a franchise between –

- (a) a franchisor or franchisor's associate; and
- (b) a franchisee.

"franchised business" means a business operating under a franchise agreement.

"franchisee" means a person to whom a franchise is granted and includes –

- (a) a sub-franchisor with regard to that sub-franchisor's relationship with a franchisor; and
- (b) a sub-franchisee with regard to that sub-franchisee's relationship with a sub-franchisor.

"franchise system" includes –

- (a) the franchise's business plan or marketing plan;
- (b) the use of or association with a trademark, trade name, logo or advertising;
- (c) the obligations of the franchisor and franchisee with regard to the operation of the

franchised business; and

(d) the goodwill associated with the franchise.

“franchisor” means a person who grants or offers to grant a franchise and includes a sub-franchisor with regard to that sub-franchisor’s relationship with a sub-franchisee.

“franchisor’s associate” means a person –

(a) who, directly or indirectly:

(i) controls the franchisor,

(ii) is controlled by the franchisor, or

(iii) is controlled by another person who also directly or indirectly controls the franchisor; and

(b) Who –

(i) is directly involved in the grant of the franchise by being involved in reviewing or approving the grant, or by making representations to the prospective franchisee on behalf of the franchisor for the purpose of granting the franchise, marketing the franchise or otherwise offering to grant the franchise, or

(ii) exercises significant operational control over the franchisee and to whom the franchisee has a continuing financial obligation in respect of the franchise.

“franchisor’s broker” means a person other than the franchisor, franchisor’s associate or franchisee who, on behalf of the franchisor:

(a) grants, markets or otherwise offers to grant a franchise; or

(b) arranges for the grant of a franchise.

“grant” in respect of a franchise, includes the sale or disposition of the franchise or of an interest in the franchise.

“interest in the franchise” includes the ownership of shares in the corporation that owns the franchise.

“master franchise” means a franchise that is a right granted by a franchisor to a sub-franchisor to grant or offer to grant franchises for the sub-franchisor’s own account.

“material change” means a change –

(a) in the business, operations, capital or control of the franchisor or franchisor’s associate; or

(b) In the franchise or the franchise system,

that would reasonably be expected to have a significant adverse effect on the franchise's value or price to be granted or on the decision to acquire the franchise, and includes a decision to implement such a change made by the board of directors of the franchisor or franchisor's associate or by senior management of the franchisor or franchisor's associate who believe that the decision's confirmation by the board of directors is probable.

"material fact" means any information about –

- (a) the business, operations, capital or control of the franchisor or franchisor's associate; or
- (b) the franchise or the franchise system,

that would reasonably be expected to have a significant effect on the franchise's value or price to be granted or the decision to acquire the franchise.

"misrepresentation" includes –

- (a) an untrue statement of a material fact; or
- (b) an omission to state a material fact that –
 - (i) is required to be stated, or
 - (ii) is necessary to make a statement not misleading in light of the circumstances in which it was made.

"person" includes an individual, partnership, trustee and unincorporated association or organization.

"prescribed" means prescribed by regulation under this Bill.

"prospective franchisee" means a person –

- (a) who has indicated, directly or indirectly, to a franchisor or a franchisor's associate or broker an interest in entering into a franchise agreement; or
- (b) whom a franchisor or a franchisor's associate or broker, directly or indirectly, invites to enter into a franchise agreement.

"statement of material change" means the statement required by this Bill.

"sub-franchise" means a franchise granted by a sub-franchisor to a sub-franchisee.

21 (2) A corporation is controlled by another person, if –

the other person; and

the votes carried by those securities are entitled, if exercised, to elect a majority of the corporation's board of directors.

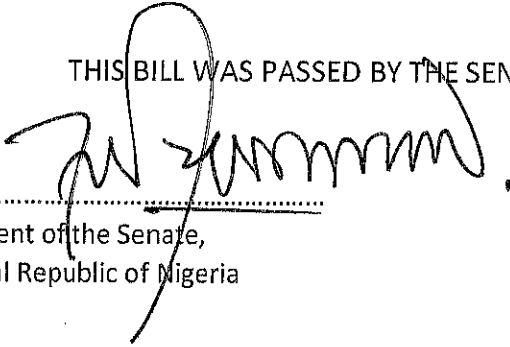
22. This Bill may be cited as the Franchise Bill, 2023.

Citation

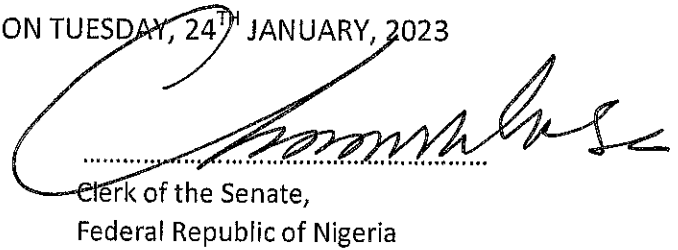
EXPLANATORY MEMORANDUM

The Bill seeks to establish a framework for the regulation of franchising in Nigeria.

THIS BILL WAS PASSED BY THE SENATE ON TUESDAY, 24TH JANUARY, 2023



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President of the Senate,
Federal Republic of Nigeria



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Clerk of the Senate,
Federal Republic of Nigeria