



# REVIEW OF THE FRANCHISING

May 11, 2023

## Introduction

The Franchising Bill (the “Bill”) was passed by the Senate of the Federal Republic of Nigeria on January 24, 2023. The Bill seeks to create a legal framework for the operation of Franchise in Nigeria in line with International best practices, while balancing the interest of Franchisors and Franchisees.

The Bill when passed into law would apply to the following;

- a. Franchise agreements entered into on or after the coming into force of the Bill, where the franchise business is operated or to be operated wholly or partly in Nigeria;
- b. Renewed or extended franchise agreements where the Franchise Agreement is renewed or extended on or after the coming into force of the Bill;
- c. Renewed or extended franchise agreements where the Franchise Agreement was entered into before or after the coming into force of the Bill;
- d. Renewed or extended franchise agreement where the franchise business is operated or to be operated wholly or partly in Nigeria.

## Highlights of the Bill

### Registration of Franchise Disclosure Documents

The proposed Law provides for the compulsory registration of franchise disclosure documents with the National Office of Technology Acquisition and Promotion (NOTAP). No payment shall be made to the credit of any person outside Nigeria in respect of any payment due under any Franchise Agreement, without a Certificate of Registration.

The Franchise Disclosure Document shall contain the following;

- 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 to franchisee make an informed investment decision; and
- e. Other prescribed information, descriptions, statements and certificates.

### Obligations of a Franchisor

A Franchisor is obligated to serve on a prospective Franchisee the disclosure document in hard copy or electronically at least 30 days before the signing of

- (a) the franchise agreement or
- (b) any other agreement by the Franchisee or
- (c) the payment of any consideration relating to the franchise to the Franchisor or the Franchisor’s associate, whichever is earlier.

In the event that the disclosure document is not served on the prospective franchisee as one document, the date of delivery of the last document is deemed the relevant date for the computation of the 30 days prior notification period.

A disclosure document will not be required in the following circumstance:

- a. Where the prospective franchisee is a person who has been an officer or a director of the Franchisor or an affiliate of the Franchisor in the preceding two years before the signing of the Franchise Agreement;
- b. The assignment or 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 the approval of the transaction;
- c. The grant of a franchise to sell goods or services to a natural or legal person who has been



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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 its 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 its affiliates has a net worth in excess of an amount to be provided in regulations made under the Bill or a turnover in excess of an amount to be provided in regulations made under the Bill.

A Franchisor is obligated to give a prospective Franchisor a written statement describing any material change within 30 days after the change has occurred and before the signing of the Agreements under the Franchise, or the payment of any consideration relating to the Franchise to the Franchisor or the Franchisor's associate, whichever is earlier.

The Franchisor shall be responsible for the registration and maintenance of Intellectual Property Rights (IPR) related to the Franchise and shall protect such IPR against any infringement or breach.



### Obligations of the Franchisee

The Franchisee including its directors and employees shall not disclose any information relating to the operating manual during the term of the Franchise and two years after the expiration of the Agreement.

The Franchisee including its directors and employees shall not carry out any business similar to the franchised business during the term of the Franchise.

Franchise operators are mandated to use locally grown and locally made raw materials and products in the operations of the Franchise Business.

### Opt-out Period

Where the Franchisee makes an initial payment to the Franchisor, ahead of the execution of the Franchise Agreement, the Franchise Agreement must have an opt-out period as agreed within which parties may contemplate termination of the Franchise

Agreement. The Opt-out period shall not be less than seven working days during which the Franchisee has the option of terminating the Agreement. Upon termination within the opt-out period, the Franchisor shall retain from the initial fees paid an amount to cover the reasonable expenses incurred in the preparation of the agreement.

### The Governing Law

All Franchise Agreements required to be registered under the Bill shall be governed by Nigerian Law. It is pertinent to state that the Bill is silent on the venue for dispute resolution in the event of a dispute.

### Duration of Franchise Agreement

The Bill prescribes a minimum permitted term of five years for Franchise Agreement.

### Conclusion

The Bill is a welcome development for the sustainability of the Franchising industry in Nigeria as it seeks to promote fairness and transparency in the relationship between Franchisors and Franchisees.

