



# The Nigeria Franchise Bill

Analysis and Comparison with other Jurisdictions  
SOUTH AFRICA | AUSTRALIA



# Table of Content

About Techhive .....	i
Contributors.....	ii
Disclaimer .....	ii
Introduction .....	1
Definition of Key cocncepts .....	3
Legal Framework for Franchising in Nigeria.....	4
Legal Framework for Franchising in South Africa .....	6
Legal Provision of Franchising in Australia .....	7
Comparison of Franchise Laws in Nigeria, South Africa and Australia .....	8
Gaps in the Legislation .....	9
Conclusion.....	10

# About Tech Hive™

Tech Hive Advisory Limited ("Tech Hive") is a technology policy and advisory firm that provides advisory and support services to private and public organisations regarding the intersection between technology, business, and law. We focus on how emerging and disruptive technologies are altering and influencing the traditional way of doing things while acting as an innovation partner to our clients.

Our experience and capability extend across Research and Policy Advisory, Privacy and Data Protection, Data Ethics, Cybersecurity, Start-Up Advisory, and Digital Health. We ensure our advice serves our clients well by having an excellent understanding not only of their business but of the markets in which they operate through accurate policy and legislative development tracking and intelligence.

Contact: [contact@techhiveadvisory.org.ng](mailto:contact@techhiveadvisory.org.ng)

# About Ikigai™

Ikigai Innovation Initiative is a non-profit organisation set up with the vision of becoming the one-stop centre for technology policy in Africa. We promulgate diverse research on technology policy and legal frameworks across Africa. We also engage relevant stakeholders around the intersection of law, business and technology and advocate for better policies for the ecosystem at large. Being a research and advocacy centre focused on emerging technologies, policy and research, we often work and collaborate with leading research institutes, academia, organisations, civil society, and individuals on policy affecting technology. We also publish and contribute to whitepapers, reports, policy briefs, infographics, guides and guidance, academic journals and publications.

Our researchers work closely with government, stakeholders and ecosystem players, placing evidence and academic intuition at the heart of policymaking. We bring together the latest insights, evidence and commentary from our researchers with our one-stop-shop vision for policy by connecting policymakers, decision-makers, and practitioners with our industry-leading research. We also deliver evidence-based policy that meets the grand challenges facing society by advocating for social justice in the face of technology; sensitization of the public on technology policies that impact their rights and lives and promoting digital rights and digital ethics.

Contact: [policy@ikigaination.org](mailto:policy@ikigaination.org)

# Contributors

Ayodeji Sarumi  
Michael Odozi  
Oghosa Eghe-Abe  
Savier Esenowo  
Tolulope Ogundele  
Victoria Adaramola

## Disclaimer - Usage of Guide

This article is general and educational in nature and is not intended to provide, and should not be relied on as a source of legal advice. This information and material provided in this article may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.

The absence of any trademark or service mark from this list does not waive Tech Hive's intellectual property rights in that name, mark or logo.

All rights reserved. © 2022 Tech Hive Advisory.  
Copyright © Tech Hive Advisory Limited 2022.

This publication is the copyright of Tech Hive Advisory. No portion of this document may be photocopied, reproduced, scanned into an electronic system or transmitted, forwarded or distributed in any way without the prior consent of Tech Hive.



# Introduction

Despite the multifaceted woes facing Nigeria and its economy, the nation has remained an attractive market for brands to invest in. Several reasons can be suggested to explain why Nigeria continues to draw the interests of these brands. The most obvious of these reasons is the significant population of Nigeria, which stands at about 200 million people<sup>1</sup>. Consequently, the market is populated with consumers that need suppliers and service providers to meet their various needs. It is also a salient fact that fast-moving consumer goods are extremely successful in the country<sup>2</sup>. The potential for profit in such a large market coupled with the boom of information technology (IT) has contributed to the expansion of local brands as well as the influx of foreign brands and investors into the Nigerian market<sup>3</sup>. Franchise Arrangements are one of such ways through which these brands can enter into and operate in new markets like Nigeria.

The Nigerian International Franchising Association defines franchising as a business arrangement whereby the franchisor, usually an established brand operating in a local or foreign market, grants a franchise operator, referred to as the franchisee, the right to distribute certain products or services in a particular way, at a particular location and for specified periods of time<sup>4</sup>. It connotes a contractual relationship between two or more parties whereby the franchisee is given the right to engage in the business of selling or distributing similar goods or services under a marketing plan or system prescribed, in substantial part, by the franchisor<sup>5</sup>. Despite this, the franchisee maintains control over the administrative and financial decisions of the franchise. This distinguishes franchises from subsidiary companies.

Thus, a prominent feature of franchising is the operation of the franchisee's business according to a plan or system substantially associated with the franchisor's trademark, marketing strategies, trade name, logo, advertising or other commercial symbol<sup>6</sup>. In return for implementing the franchisor's strategies or brandishing its trademark or commercial symbol, the franchisee is mandated to pay royalties and other agreed fees.

---

1. Okonkwo IE and Yaqoub M, 'Trademark Franchising in Nigeria: The Impact of the NOTAP Act and What Brands Need to Know' (Social Science Research Network 2022) SSRN Scholarly Paper ID 4017729 <<https://papers.ssrn.com/abstract=4017729>> accessed 5 April 2022

2. Ibid

3. Ibid

4. Group GL, 'International Comparative Legal Guides' (International Comparative Legal Guides International Business Reports) <<https://iclg.com/practice-areas/franchise-laws-and-regulations/nigeria>> accessed 6 April 2022

5. 'The Franchise Law Review - The Law Reviews' <<https://thelawreviews.co.uk/title/the-franchise-law-review/the-regulation-of-franchising-around-the-world>> accessed 6 April 2022. This definition is also adopted in Section 31005 (a)(1) of the California Corporation Code of 1970

6. Ibid



Franchising presents a unique yet complex business strategy for expansion and profit-making. It provides an intricate business model under which an established brand with a successful business system can expand its reach into newer markets<sup>7</sup>, whether local or foreign, without concern for significant capital expenditures or direct management. Hence, it poses various profit-making opportunities for established businesses that can now access a wider customer base and increase brand fame. Franchisees and their local markets also stand to make economic gains. In this sense, franchisees come into the market operating under an established name which increases their chances of success and profitability. Furthermore, its immediate local market, i.e. the consumers in the market, will gain under the allocative efficiency principle of competition law<sup>8</sup> which seeks to ensure that consumers in a market have access to various products and services. Franchising also creates job opportunities, encourages competition which is favourable for the growth of the producer/consumer market, and ultimately benefits the nation's economy. Presently, Nigeria has over 100 franchises ranging from food to health, construction and other services<sup>9</sup>. Kentucky Fried Chicken (KFC) and Pizza Hut are some of the popular franchises operating in the country.<sup>10</sup>

Although the potential for nationwide benefits exists, franchising arrangements require proper regulation because of their complexity. The intricate nature of franchising means that its agreements border on various legal principles, including contract, trade and competition law, company law and corporate governance, intellectual property and so on. These pre-existing intricacies and the high likelihood of disputes or disagreements mandate the proper regulation of franchising arrangements.

Unfortunately, Nigeria lacks substantive laws to adequately regulate Franchising Agreements. Currently, the National Office for Technology Acquisition and Promotion (NOTAP) Act<sup>11</sup> is the major law regulating franchising in Nigeria. However, the Act is inadequate in regulating franchising arrangements as its provisions are limited to the transfer of technology and technology-related franchising. Fortunately, there is a silver lining with the introduction of the Franchise (Establishment) Bill 2018<sup>12</sup>. The Bill, if passed, will be Nigeria's first substantive legislation on franchising. It seeks to regulate franchise relationships between franchisees and franchisors and covers a wide range of issues. In light of the above, this article analyses the Franchise Bill of Nigeria, highlighting its key provisions and flaws. It further compares the Bill with the Franchise laws in South Africa and Australia to extract best practices that can be adopted in Nigeria.

---

7. 'Franchising In Nigeria: Models And Legal Considerations - Corporate/Commercial Law - Nigeria' <<https://www.mondaq.com/nigeria/franchising/930530/franchising-in-nigeria-models-and-legal-considerations>> accessed 6 April 2022

8. '(PDF) Allocative and Productive Efficiency' (ResearchGate) <[https://www.researchgate.net/publication/228269633\\_Allocative\\_and\\_Productive\\_Efficiency](https://www.researchgate.net/publication/228269633_Allocative_and_Productive_Efficiency)> accessed 6 April 2022

9. Okonkwo IE and Yaqoub M, N.1

10. 'Just How Much Does It Cost to Own a Fast Food Franchise in Nigeria?' (Blog, 21 June 2017) <<https://invoice.ng/blog/-just-how-much-does-it-cost-to-own-a-fast-food-franchise-in-nigeria/>> accessed 6 April 2022

11. National Office for Technology Acquisition and Promotion Act, Chapter N62, Laws of the Federation of Nigeria, 2004

12. 'The Franchise Bill, 2019 - Centre for Trade and Business Advocacy' <<https://centre-tba.org/position-papers/the-franchise-bill-2019/>> accessed 6 April 2022

# DEFINITION OF KEY CONCEPTS

## Franchise Agreement

A franchise agreement is defined as a contract under which a person or company known as the 'franchisor' grants another person or company known as the 'franchisee' the right to operate a business, or offer, sell or distribute goods or services identified or associated with the franchisor's business or trademark<sup>13</sup>. In exchange, the franchisee makes payment(s) in accordance with the terms stipulated in the franchise agreement<sup>14</sup>. The agreement governs the business relationship between the franchisor and the franchisee, including the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor. The franchise agreement essentially governs the operations of the franchise between the parties and will ordinarily outline the rights and obligations of the parties<sup>15</sup>.

## Franchisor

A franchisor is a person or company that grants the licence to a third-party (the franchisee) to conduct its business under the brand name<sup>16</sup>. The franchisor is the owner of the proprietary rights and trademarks of the company and is responsible for sanctioning the use of these rights by the franchisee under the franchise agreement<sup>17</sup>. Besides the use of brand name or trademark, the franchisor may also provide directions as to the business model to adopt in the operation of the franchise.

## Franchisee

A franchisee is a party (either a natural person or legal entity) who purchases the right to use an already existing company's trademark, brand name and, in certain cases, business model, from the franchisor<sup>18</sup>. Essentially, the franchisee acquires the rights to operate a business under the brand of the franchisor and is required to pay a given fee or continuous fees for the use of the franchisor's brand.

## Proprietary Rights:

Proprietary Rights refer to the rights in patents, utility models, trademarks, trade names and other trade-identifying symbols and inventions, copyrights, design rights, database rights, trade secrets and any other intellectual property rights, whether registered or unregistered and includes applications for the grant of any such rights.<sup>19</sup> It refers to the ownership and the right to use such intellectual property rights however the owner of the right deems fit.

---

13. 'Franchise Agreement' (LII / Legal Information Institute) <[https://www.law.cornell.edu/wex/franchise\\_agreement](https://www.law.cornell.edu/wex/franchise_agreement)> accessed 5 April 2022

14. Ibid

15. Ibid

16. Franchising 101: What Is a Franchisor?' <<https://www.pointfranchise.co.uk/articles/franchisor-definition-4/>> accessed 5 April 2022

17. Ibid

18. 'Franchisee – What Is a Franchisee? A Complete Guide' <<https://www.pointfranchise.co.uk/articles/franchisee-definition-3/>> accessed 5 April 2022

19. 'Proprietary Rights Definition: 4k Samples' (Law Insider) <<https://www.lawinsider.com/dictionary/proprietary-rights>> accessed 5 April 2022

# LEGAL FRAMEWORK FOR FRANCHISING IN NIGERIA



The Franchise (Establishment) Bill 2018 applies to the grant or renewal of franchise licences in Nigeria. It covers trade name franchising, business format franchising, unit franchising, multiple franchising, area franchising, pilot franchising, fractional franchising, conversion franchising, and other forms of franchising in Nigeria.

According to the Bill, a Franchise refers to *“rights granted by a party (the franchisor) authorising and requiring another party (the franchisee), in exchange of direct or indirect financial compensation to engage in the business of selling goods or services on its own behalf under a system designated by the franchisor which includes know-how and assistance, prescribes in substantial part the manner in which the franchise business is to be operated, includes significant and continuing operational control by the franchisor, and is substantially associated with a trademark, service name, trade name, or logotype designated by the franchisor and includes*

- (a) the rights granted by a franchisor to a franchisee under a master franchise agreement,*
- (b) the rights granted by a sub-franchisor to a sub-franchisee under a sub-franchise agreement, and*
- (c) rights granted by a franchisor to another party under a development agreement”.*<sup>20</sup>

## Regulator

The National Office for Technology Acquisition and Promotion (NOTAP) is responsible for the implementation of the Franchise Bill in Nigeria alongside the Registrar of Trademarks and Patents.<sup>21</sup>

## Scope

The Bill seeks to regulate franchise businesses in Nigeria, including franchises to be granted or renewed for operation in the country.<sup>22</sup>

## Relationship with Other Laws

The Bill is the first legislation created to specifically cater to the franchise sector. However, there are extant laws which provide for certain aspects of franchise business in the country. The Bill, when passed into law, will be implemented in tandem with those laws which include the NOTAP Act<sup>23</sup> and the Trademark Act amongst other laws that make minor provisions for franchises depending on the sector the parties to the agreement operate in.

## Key Provisions

### 1. Disclosure Document

The Bill mandates every franchisor (the owner of the franchise) to give the franchisee (the buyer of the franchise) a written disclosure document which must contain a franchise agreement at least fourteen (14) days before the signing of any agreement and the payment of any non-refundable fees relating to the acquisition of the franchise.<sup>24</sup> Agreements relating to the confidentiality of information to be shared concerning the franchise are exempted from this requirement.

---

20. Section 18, Franchise Bill, 2018

21. Section 2, Franchise Bill 2018

22. Section 19, Franchise Bill 2018

23. Okonkwo IE and Yaqoub M, 'Trademark Franchising in Nigeria: The Impact of the NOTAP Act and What Brands Need to Know' (Social Science Research Network 2022) SSRN Scholarly Paper ID 4017729 <<https://papers.ssrn.com/abstract=4017729>> accessed 5 April 2022.

24. Section 5, Franchise Bill 2018





A disclosure document is not required where:<sup>25</sup>

- a) The franchisor is a person who has been a director or affiliate of the franchisor for at least a year before the signing of the franchise agreement;
- b) There is an assignment or transfer of a franchisee's rights under an existing franchise agreement to another person who is bound by the same terms as the franchisee;
- c) The grant of the franchise is to someone who has been engaged in the same or similar business within the past two years, and the sales of the franchise do not reasonably exceed 20% of the entire sale of the franchise and their affiliates;
- d) The franchisee commits to a sum under the franchise agreement that is above an amount prescribed by a regulation made under the Act; and
- e) The grant of the franchise is to a franchisee with a net worth above an amount stated by a regulation made under the Act.

The disclosure is required to contain the legal name, form, address of the principal place of business, trademark, trade name, description of the franchise to be operated, categories of goods or services, whether the franchisee has the right to recommend other suppliers and whether revenue received directly or indirectly by the franchisor will be passed down to the franchisee. In addition, the Bill allows a franchisee to terminate a franchise<sup>26</sup> agreement with thirty (30) days prior notice where the disclosure document is not delivered within the stipulated time and contains a material misrepresentation or omission.<sup>27</sup>

## **2. Registration of Proprietary Rights**<sup>28</sup>

The proprietary rights associated with foreign business franchises licensed to franchisees in Nigeria must be registered with relevant authorities before they can begin operation in Nigeria. In a case where the right exists in a patent or design, the relevant authority is the Patent Registry and Trademark Registry where the right exists in a trademark.

## **3. Registration of Franchise Agreement**<sup>29</sup>

NOTAP is responsible for the registration of franchise agreements entered into by Nigerian franchisees with foreign franchisors and the licensing of indigenous business franchises to interested franchisees. Registration of Intellectual Property relating to the franchise is the responsibility of the Patent and Trademarks Registry.

## **4. Local Content**<sup>30</sup>

Operators of franchises in Nigeria are required under the Bill to have a minimum of twenty percent (20%) local input in their operations.

---

25. Section 7, Franchise Bill 2018

26. Section 8, Franchise Bill 2018    27. Section 19, Franchise Bill 2018    28. Section 12, Franchise Bill 2018

29. Section 13, Franchise Bill 2018    30. Section 14, Franchise Bill 2018    31. Section 15, Franchise Bill 2018

# LEGAL FRAMEWORK FOR FRANCHISING IN SOUTH AFRICA



The South African Consumer Protection Act of 2008 regulates franchise arrangements and dealings in South Africa.

## Key Provisions

### 1. Definition of key terms

Section 1 of the Act considers franchisees to be consumers whether they are in a franchise agreement or a franchise transaction. Under the above Section, a 'Franchise Agreement' is defined as an agreement between the franchisor and franchisee:

- a. in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of the Republic under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor;
- b. under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes or one or more trademarks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor; and;
- c. that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor.

### 2. Requirements for a legally binding franchise agreement

The Act stipulates requirements that must be satisfied for a franchise agreement to be legally binding. Section 7 provides that a franchise agreement must be in writing and signed by or on behalf of the franchisee, must include any prescribed information, or address any prescribed categories of information. Sub-section (2) of the Section gives the franchisee the option of cancelling, by written notice, the franchise agreement without cost or penalty. However, the said franchisee may only do so within ten (10) business days after signing such an agreement.

### 3. Rights of the Consumer

Under the Act, the consumer is entitled to various rights that promote fair competition and the availability of goods and services under the market's efficiencies. One of such rights is the right to select suppliers and freely choose the product or service to purchase as provided under Section 13 of the Act. The consumer is within his/her rights to choose which product or service to purchase, and the supplier, including franchisors, is prohibited from attaching any other agreement for the sale of another product to the consumer. However, subsection (2) of the Section allows the franchisor to append such additional agreements if any goods or services that the franchisee was required to purchase from or at the direction of the franchisor are reasonably related to the branded products or services that are the subject of the franchise agreement.

# LEGAL FRAMEWORK OF FRANCHISING IN AUSTRALIA



Australia has substantial regulations for franchise agreements within its regions. This is contained in the Competition and Consumer (Industry Codes – Franchising) Regulation 2014. These agreements are guided by the major principles of disclosure and notice. It is important that these principles are in place in order to promote transparency and reduce the inherent risks in a franchise business. This law also stipulates the Franchising Code of Conduct.<sup>32</sup> A detailed summary of the code has been published by the Australian Competition and Consumer Commission (ACCC), the country's national regulator of franchising, on its website.<sup>33</sup>

## Key Provisions

### 1. Definition of a Franchise Agreement

The Regulation has defined a Franchise Agreement as an agreement, whether oral, written or implied, that is entered into between the franchisor and the franchisee, which grants the latter a right to supply or distribute goods or services according to the preference of the former.<sup>34</sup> Furthermore, it is required that the franchise business is associated with a trademark that is owned, used or licenced by the franchisor<sup>35</sup> and that the franchisee pays a certain agreed sum for the duration of the agreement.<sup>36</sup>

### 2. The Principle of Good Faith

There are certain requirements from both parties to the franchise agreement in order to create a favourable business environment. There is an obligation to act in good faith towards one another in relation to the agreement,<sup>37</sup> which must not be excluded by the franchise agreement<sup>38</sup>. In the event of a contravention of the obligation, 300 penalty units are imposed on the defaulter(s).<sup>39</sup>

### 3. Disclosure Document

Similar to the Nigerian Franchise Bill, the franchisor must tender a disclosure document whose purpose is to enable the prospective franchisee to make a reasonably informed decision about the franchise before entering into the franchise agreement.<sup>40</sup> The form of the document must be in compliance with that stated in Annexure 1 of the Regulation. The franchisor must disclose the document to the prospective franchisee no less than fourteen (14) days before the latter intends to enter into the agreement or makes a prescribed fee to that end.<sup>41</sup> The franchisor must also receive a written statement from the franchisee stating the latter's understanding of the document before the franchisor enters into a new or renewed agreement with the franchisee.<sup>42</sup>

### 4. Other relevant documents

In the event of a new agreement, the Regulation makes it pertinent that the franchisee brings forth a signed statement that states that an independent personnel has advised such franchisee on the rudiments and operations of a franchise.<sup>43</sup> Also, a franchisor must give a copy of the information statement as stipulated in Annexure 2 of the Regulation to a prospective franchisee that indicates interest in acquiring a franchise. It is important to note that these provisions are not for franchisees that wish to enter a renewed agreement because it is assumed that they well understand the functionalities of a franchise.

32. The Competition and Consumer (Industry Codes – Franchising) Regulation 2014, Schedule 1

33. Commission AC and C, 'Franchising Code of Conduct' (Australian Competition and Consumer Commission, 11 January 2013) <<https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct>> accessed 5 April 2022

34. The Competition and Consumer (Industry Codes – Franchising) Regulation 2014, Schedule 1, Clause 5(1)(a) & (b)

35. Ibid, Clause 5(1)(c)    36. Ibid, Clause 5(1)(d)    37. Ibid, Clause 6(1)    38. Ibid, Clause 6(4)

39. Ibid, Clause 6(1)    40. Ibid, Clause 8(1) & (2)    41. Ibid, Clause    42. Ibid, Clause 10(1)

43. Ibid, Clause 10(2)    44. Ibid, Clause 11

Additionally, alongside the disclosure document, the franchisor is obligated to give the franchisee other documents such as lease agreements in the event where the franchisee leases premises from the franchisor;<sup>45</sup> copies of other agreements such as hire purchase agreements, intellectual property agreements, security agreements (loan, mortgage, indemnity, etc.), confidentiality and non-compete agreement; and financial statements.<sup>46</sup>

### 5. Termination of a Franchise Agreement

In the termination of a franchise agreement, the franchisor must give reasonable notice in writing to the franchisee where there has been a breach by the franchisee and must give a reasonable time of not more than thirty (30) days to remedy the breach upon conditions stated by the franchisor.<sup>47</sup> Even where there has been no breach, reasonable written notice is required in tandem with reasons for termination.<sup>48</sup>

## COMPARISON OF FRANCHISE LAWS IN NIGERIA, SOUTH AFRICA, AND AUSTRALIA

Metrics	Nigeria 	South Africa 	Australia 
Disclosure Document	Required	N/A	Required
Cancellation by Written Notice	Written Notice Required.	Written Notice Required.	Written Notice Required.
Rights to select a supplier and decide goods or services to be provided	Franchisees must obtain Franchisor's consent on suppliers and goods or services to be provided.	The law automatically grants the franchisee the rights to select suppliers and decide the goods or services to provide	N/A
Information Statement	N/A	N/A	Required - Must be given to the Franchisee
Disclosure of Materially Relevant Facts	Required	N/A	Required
Transfer of Franchise Agreement	N/A	N/A	Consent of the Franchisor must be obtained.
End of Term Obligations	N/A	N/A	Notification obligation on extension, renewal, or termination is imposed on the Franchisee and Franchisor
Obligation to Act in Good Faith	N/A	N/A	Required
Local content	20%	N/A	N/A
Dispute Resolution	N/A	N/A	Provided for

45. Ibid, Clause 13

46. Ibid, Clause 15(1)

47. Ibid, Clause 27

48. Ibid, Clause 28(3)

## **GAPS IN THE NIGERIAN LEGISLATION**

Franchising offers numerous benefits because franchises often have an established and reputable business image. Franchising also provides access to established operating procedures and industry knowledge. The operation of franchises has the potential to benefit the populace and the economy at large. The importance of the laws and regulations in driving franchise operations and ensuring fair practices cannot be overlooked. It is, therefore, applaudable to see this attempt through the introduction of this Bill. However, there are certain gaps which the law fails to address.

First, the Bill does not address the prospective impact of non-registration of franchise agreements. It stipulates that franchise agreements must be registered, however, the repercussions for not complying with this provision are omitted. Notably, in the past, as exemplified in the case of *Stanbic IBTC Holding Plc v Financial Reporting Council*, where the court stated that the non-registration of transfer of technology does not render the contract invalid but prohibits the payment of royalties to the foreign company, it may be reasonably deduced that non-registration of franchise agreements may attract similar penalties which should have been stated in the Bill to avoid vagueness and ambiguity.

Section 14 of the Bill which mandates 20% local input in franchise operations is vague and open to various interpretations as local input could mean staff list, investment portfolio or shareholding, technical capacity, etc. The Bill must specify what 'local input' entails for clarity and proper enforcement. Similarly, the definitions of certain key terms, such as 'franchisee', 'franchisor', and 'franchise agreement' which are frequently used under the Bill, are inadequate and deficient for the sake of regulation.

Furthermore, the Bill does not make provision for a 'cooling-off' period which is a staple in Franchise laws across the globe. The 'cooling-off' period is a period during which a franchisee may withdraw from a franchise agreement without penalty. It is important to have this provision in order to protect the franchisee's interest. There are also no provisions on dispute resolution mechanisms in the Bill. Considering the magnitude of most franchise agreements, it is expedient that the law makes provision for the manner in which disputes may be resolved between the parties in order to safeguard their interests.

In addition, unlike the Australian law, the Bill fails to provide for other relevant documents such as financial statements, leases and third-party agreements that should be given to the franchisee in order to protect them. One of the major risks of franchises is insolvency, where a franchise becomes insolvent after the execution of a franchise agreement, which could lead to a massive loss of investment that could have been avoided if legal standards were put in place to mandate the franchisor to provide details of the state of affairs of the franchise.

There is no requirement for good faith in the Bill. It is essential that both parties are mandated to act in good faith toward each other and make full disclosures of their state of affairs.

The Bill also makes no mention of franchise or licence brokers. The role of franchise or licence brokers in franchises cannot be understated. Franchise or licence brokers are often involved in mediation activities in the course of concluding and performance of the complex franchise licence contracts. Similar to insurance brokers, it is important the activities of franchise brokers be regulated under the law with a duty to act with dignity and honesty.

## **CONCLUSION**

The introduction of the Franchise Bill by the Nigerian government is commendable and implies that the government is interested in providing a conducive environment for franchises to thrive by providing the necessary framework in the country. The provisions of the law are quite straightforward and cover a vast range of franchise-related activities.

Furthermore, they do not contain any ambiguous information, making it easy for prospective franchisees and franchisors to understand the rights and obligations accorded to them. However, the Bill fails to make adequate provisions which creates a regulatory vacuum for franchises in Nigeria and this was aptly highlighted in the 'gaps' section above. It is thus advisable that the Bill be reviewed to include such provisions to adequately address the concerns of this relevant sector of the Nigerian economy.



**TECH HIVE**  
ADVISORY



**IKIGAI**