

CHAPTER 182A

THE FRANCHISES (REGISTRATION AND CONTROL) ACT

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FRANCHISES (REGISTRATION AND CONTROL)

An Act to provide for the licensing, registration and control of businesses which operate on franchise in Antigua and Barbuda and for matters related thereto.

(21st February, 1991.)

3/1991.

1. This Act may be cited as the Franchises (Registration and Control) Act. Short title.

2. In this Act—

Interpretation.

“citizen” includes

(a) a dependant of a citizen,

(b) a firm in which the partners who are citizens have a right to more than one half of the assets or income of the firm, or

(c) a company that is controlled by individuals who are citizens or by a combination of one or more such individuals or companies;

“franchise” means—

(a) a right granted in writing by the owner of a mark, product, service, technique or device to another person to use the mark, product, service, technique or device whether or not the mark, product, service, technique or device is protected by a trade mark or trade secret, or by usage; and

(b) a licence to use a copyright, an industrial design or an invention;

“Inspector” means a person assigned by the Minister under section 13 to be an inspector for purposes of this Act;

“Minister” means the Minister responsible for Finance.

3. (1) Subject to this section—

Application for
and objection to
licence.

(a) No person shall operate a business in Antigua and Barbuda using the mark, product, service, technique, device, copyright, industrial design or invention of another person; and

(b) no person, other than a citizen shall operate a business in Antigua and Barbuda using his own mark, product, service, technique, device, copyright, industrial design or invention.

(2) Any person—

(a) who wishes to operate a business in Antigua and Barbuda on franchise; or

(b) who not being a citizen, wishes to operate a business in Antigua and Barbuda using his own mark, product, service, technique, design or invention;

shall before he commences business, obtain from the Minister a licence for the purpose.

(3) Where on commencement of this Act—

(a) any person is operating a business on franchise; or

(b) any person other than a citizen is operating a business using his own mark, product, service, technique, device, copyright, industrial design or invention;

without a licence from the Minister and continues to do so he shall, not later than three months after the commencement of this subsection, obtain from the Minister a licence for the purpose.

(4) Any person who not being the holder of a franchise is on the commencement of this Act operating a business using the mark, product, service, technique, device, copyright, industrial design or invention of another person and continues to do so shall—

(a) within three months after the commencement of this Act, obtain a franchise from the other person for the purpose;

(b) within three months after obtaining the franchise referred to in paragraph (a) obtain from the Minister a licence for the purpose.

(5) An application for a licence under this section—

(a) must be in writing;

(b) must, where the applicant is not the owner of the mark, product, service, technique, device, copyright, industrial design or invention, that he is using or wishes to use, be accompanied by a notarised copy of the franchise;

(c) shall be addressed to the Minister; and

(d) shall be in such form as the Minister determines.

(6) The Minister shall on receipt of an application under subsection (2), cause a notice inviting objections to the issue of a licence to be published in the *Official Gazette* and one issue of a local newspaper, and the notice shall state the period during which the objection may be made.

(7) An objection shall be in such form as the Minister determines and shall specify the reasons for objection.

4. The Minister shall consider the application together with any objections to the issue of a licence in respect of such application and in so doing may— Grant of licence.

(a) require the applicant and the objector to appear before him to be interviewed; and

(b) require such other information in writing from the applicant or the objector as he considers necessary, and may issue to the applicant on payment by him of the appropriate fee set out in paragraph 1 of the Schedule a licence under this Act Schedule.

5. A licence under this Act shall—

(a) be in such form as the Minister determines;

(b) not, be transferable;

(c) subject to section 10 (2) be valid for a period not exceeding one year; and

(d) be subject to the conditions specified therein. Conditions of licence.

Register of licence.

6. (1) The Minister shall cause to be kept a register in which there is recorded—

(a) the name and address of each person to whom a licence is issued;

(b) the type of business in respect of which such licence is issued;

(c) the number of the licence;

(d) the address at which the business is conducted.

(2) The register shall at all reasonable times be open to inspection at the Ministry responsible for trade.

Change of address to be notified.

7. The holder of a licence shall within fourteen days of any change of address or of the address at which the business is being conducted notify the fact of such change to the Minister who shall cause such change to be effected in the register.

Business conducted at more than one address.

8. Where—

(a) an applicant for a licence intends to conduct business at more than one address, he shall inform the Minister of each address at which the business is to be conducted; and

(b) the holder of a licence desires to conduct business at an address additional to that at which he at present conducts business, he shall apply to the Minister in writing for permission to do so

and the Minister shall specify the address at which he may conduct such business.

Duplicate licence.

9. Where a licence under this Act has been lost, destroyed or defaced the Minister may on application made to him and on payment of the fee set out in paragraph 2 of the Schedule issue a duplicate licence for the unexpired portion of the term for which the original licence was issued.

Schedule.

Renewal and surrender of licence.

10. (1) Where a licence issued under this Act has expired, the Minister may, on application made to him and on payment of the licence fee set out in paragraph 3 of the

Schedule renew such licence for a period not exceeding one year.

(2) Notwithstanding anything contained in this Act, the holder of a licence may at any time surrender such licence and from the date of such surrender any business in respect of which such licence was issued shall cease to operate for the purposes of this Act.

11. Notwithstanding anything contained in this Act the Minister may where the holder of a licence— **Suspension of licence.**

(a) has been convicted of a criminal offence in Antigua and Barbuda;

(b) has outside of Antigua and Barbuda been convicted of an offence which is punishable in Antigua and Barbuda on indictment;

(c) is deceased, bankrupt or incapable of carrying on the business in respect of which the licence was issued; or

(d) has contravened or failed to comply with any of the provisions of the licence;

suspend or cancel the licence.

12. A decision of the Minister under this Act shall be final. **Minister's decision final**

13. (1) The Minister shall have all powers that are necessary and incidental to the proper carrying out of the provisions of this Act and the regulations and he may assign such public officers as he thinks fit as inspectors to assist him in the exercise of such powers. **Inspectors.**

(2) The powers exercisable by inspectors under this Act shall be deemed to have been conferred on them by the Minister.

(3) An inspector under this Act may on production of authority in writing signed by the Minister enter premises where a business is being operated on franchise to examine the licence and the owner or person in charge of the business shall allow him to examine the licence.

Delegation of powers.

14. The Minister may, without prejudice to the exercise by him of the powers conferred herein, by order delegate any of those powers to any person specified in the order.

Recovery of unpaid fees.

15. Any fees which remain unpaid after the expiration of one month after they become due and payable under this Act may be recovered as a debt due to the Crown in civil proceedings before a magistrate.

Offences.

16. (1) Any person who—

(a) contravenes subsection (1), (2), (3), or (4) of section 3, or

(b) uses any mark, product, service, technique, device, copyright, industrial design or invention that so nearly resembles a mark, product, service, technique, device, copyright, industrial design or invention, as to be likely to mislead the public,

is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars or imprisonment for one year; and in addition to such fine or imprisonment is liable to a further fine of one thousand five hundred dollars per day for every day during which the offence continues after conviction is first obtained.

(2) Where a body corporate commits an offence under subsection (1), in addition to the penalties thereunder, every director of any such body corporate who knew, or could reasonably be expected to have known, of the contravention or use is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for one year.

(3) Any person who—

(a) assaults, resists, obstructs or intimidates an inspector or other authorised person in the performance of his functions under this Act;

(b) interferes with or hinders an inspector or other authorised person in the performance of his functions under this Act;

(c) by any gratuity, bribe, promise or other inducement prevents or attempts to prevent an inspector or

other authorised person from performing his functions under this Act; or

(d) contravenes any provision of this Act for which no penalty has been provided, or of the regulations, is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

17. The Minister may by order amend the Schedule. **Power to amend Schedule.**

18. The Minister may make regulations for carrying into effect the provisions of this Act. **Regulations.**

19. Any expenses incurred in the administration of this Act shall be defrayed out of moneys voted for the purpose by Parliament. **Expenses.**

20. For the avoidance of doubt it is declared that nothing in this Act shall be construed as affecting **Other enactments not affected.**

(a) any right conferred upon any person,

(b) any remedy or other relief available to an aggrieved person, or

(c) any obligation or penalty that may be imposed upon any person,

by or under any enactment relating to copyright, industrial designs, patents or trade marks, or by or under any rule of common law.

21. The Minister may, by order, exempt any business from the application of this Act. **Exemptions.**

SCHEDULE

LICENCE FEES

1.	For issue of original licence	\$10,000.00
2.	For issue of duplicate licence	250.00
3.	For renewal of licence	5,000.00