

CHAPTER 179A

FRANCHISES (REGISTRATION AND CONTROL)

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SCHEDULE

THE LAWS OF BARBADOS

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CHAPTER 179A

FRANCHISES (REGISTRATION AND CONTROL)

An Act to provide for the licensing, registration and control of businesses which operate on franchise in Barbados and for related matters. 1974-48.
1977-45.
1975/71.
1987/71.
1989-4.
2004-24.

[1st April, 1975] Commence-
ment.

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

2. For the purposes of this Act, Interpretation.

"citizen" includes 1989-4.

(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;

"Community" means the Caribbean Community established by the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy that was signed in the Bahamas on 4th July, 2001; 2004-24.

- 1989-4. "franchise"
- (a) means 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, or otherwise; and
 - (b) includes a licence to use a copyright, an industrial design or an invention;
- 1989-4.
Cap. 309A. "industrial design" has the meaning assigned to it by section 4 of the *Industrial Designs Act*;
- "inspector" means a person assigned by the Minister under section 13 to be an inspector for the purposes of this Act;
- 1989-4.
Cap. 314. "invention" has the meaning assigned to it by section 4 of the *Patents Act*;
- 1989-4.
Cap. 319. "mark" has the meaning assigned to it by sections 2 and 4 of the *Trade Marks Act*;
- 1977-45. "Minister" means the Minister responsible for Finance;
- 2004-24. "national" means a person who
- (a) is a citizen of a Member State; or
 - (b) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or permanent resident of the State;
- 1989-4.
Cap. 190. "permanent resident" means
- (a) a permanent resident within the meaning of the *Immigration Act*;
 - (b) a dependant of a permanent resident;
 - (c) a firm in which the partners who are permanent residents have a right to more than one half of the assets or income of the firm; or

(d) a company that is controlled by individuals who are permanent residents or by another company that is so controlled or by a combination of one or more such individuals or companies.

2A. (1) The purpose of this Act is to provide

Purpose.
1989-4.

(a) for the licensing, registration and control

(i) of businesses operated on franchise;

(ii) of businesses operated by any person, using his own mark, product, service, technique, device, copyright, industrial design, or invention; and

2004-24.

(b) the orderly development of businesses referred to in paragraph (a).

(2) This Act is remedial and shall be given such fair, large and liberal construction and interpretation as would best ensure the attainment of its purpose.

3. (1) Subject to this section,

Application
for and
objection to
licence.
1977-45.
1989-4.

(a) no person shall operate a business in Barbados using the mark, product, service, technique, device, copyright, industrial design or invention of another person unless the first-mentioned person obtains a franchise from the owner of the mark, product, service, technique, device, copyright, industrial design or invention; and

(b) no person, other than a citizen or permanent resident, or a national of a Member State of the Community, shall operate a business in Barbados using his own mark, product, service, technique, device, copyright, industrial design or invention.

2004-24.

(1A) Any person

1989-4.

(a) who wishes to operate a business in Barbados on franchise; or

- 2004-24. (b) who, not being a citizen or permanent resident, or a national of a Member State of the Community, wishes to operate a business in Barbados using his own mark, product, service, technique, device, copyright, industrial design or invention, shall, before he commences business, obtain from the Minister a licence for the purpose.
- 1989-4.
2004-24. (1B) Where on or after the commencement of this Act
- 2004-24. (a) any person is operating a business on franchise; or
- 2004-24. (b) any person, other than a citizen or permanent resident, or a national of a Member State of the Community, 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 shall, not later than 3 months on or after the commencement of this Act, obtain from the Minister a licence for the purpose.
- 1989-4.
2004-24. (1C) Any person who, not being the holder of a franchise is, on or after 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
- 2004-24. (a) within 3 months after the commencement of this Act obtain a franchise from the other person for the purpose; and
- (b) within 3 months after obtaining the franchise referred to in paragraph (a) obtain from the Minister a licence for the purpose.
- 1989-4. (2) 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) must be addressed to the Minister; and

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

(3) The Minister shall, on receipt of an application under this section, cause a notice inviting objections to the issue of a licence in respect of such application to be published in the *Official Gazette*, and the notice shall state the period during which the objection may be made.

(4) 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 thinks 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

Conditions
of licence.

(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.

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

Register of
licence.

(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; and

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

(2) The register shall at all reasonable times be open to inspection at the Ministry of Trade.

7. The holder of a licence shall within 14 days of any change of his 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. Change of address to be notified.

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 Business conducted at more than one address.

(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 addresses at which he may conduct such business.

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. Duplicate licence.
Schedule.

10. (1) Where a licence issued under this Act has expired, the Minister may, on application made to him and on payment of the fee set out in paragraph 3 of the *Schedule*, renew such licence for a period not exceeding 1 year. Renewal and surrender of licence.

(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 and cancellation of licence.

(a) has been convicted of a criminal offence in Barbados;

- (b) has outside Barbados been convicted of an offence which is punishable in Barbados 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.

Minister's
decision
final.

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

Inspectors.

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.

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

1989-4.

(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 pursuant to a licence granted under section 4 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 1 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 for District A.

Offences.

16. (1) Any person who

1977-45.
1989-4.

(a) contravenes subsection (1), (1A), (1B) or (1C) 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 \$15 000 or imprisonment for 1 year or both; and in addition to such fine and imprisonment is liable to a further fine of \$1 500 per day for every day during which the offence continues after conviction is first obtained.

(1A) Where a body corporate

(a) contravenes subsection (1), (1A), (1B) or (1C) 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,

it is guilty of an offence and liable on summary conviction to a fine of \$15 000, and in addition to such fine is liable to a further fine of \$1 500 for every day during which the offence continues after conviction is first obtained; and every director of any such 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 \$15 000 or imprisonment for 1 year or both.

(2) 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) uses indecent, abusive or insulting language to an inspector or other authorised person in the performance of his functions under this Act;

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

(d) 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

(e) 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 \$2 500.

Power to
amend
Schedule.

17. The Minister may by order amend the *Schedule* by increasing or decreasing the fees specified therein.

Refunds.
1977-45.

18. (1) Any person who satisfies the Minister that he has, in respect of a licence issued to him under this Act, paid an amount in excess of the amount that is payable by him is entitled to have the amount so paid in excess refunded, and the Accountant General shall make the refund accordingly.

(2) No claim for a refund shall be entertained after the expiration of 6 months from the date on which the cause of the claim for such refund arose.

Exemptions
and waiver.
1977-45.

19. (1) The Minister may, by order, exempt any business from the application of this Act.

(2) Notwithstanding subsection (1), the Minister may refund, waive or remit any licence fee paid or payable, as the case may be, under this Act.

Regulations.

20. The Minister may make regulations generally for carrying into effect the provisions of this Act.

Other
enactments
not affected.
1989-4.

21. For the avoidance of doubt it is hereby declared that nothing in this Act shall be construed as affecting

- (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.

Expenses.

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

SCHEDULE

ss.4,9,10.

Licence fees

1. For issue of original licence	...	...	...	...	...	\$10,000	1987/71.
2. For issue of duplicate licence	...	...	...	...	...	\$400	
3. For renewal of licence	...	...	...	...	...	\$2,000	