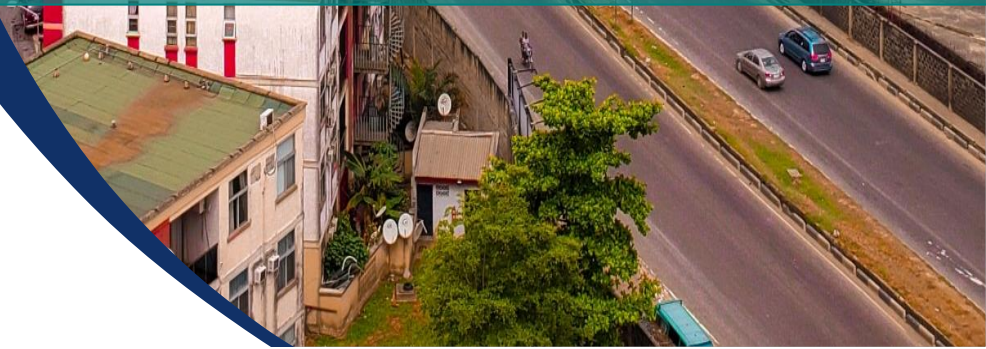




FRANCHISING IN NIGERIA [LAWS, KEY ISSUES AND CONSIDERATIONS]



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FRANCHISING IN NIGERIA – LAWS, KEY ISSUES AND CONSIDERATIONS

“Franchises are advantageous because it usually entails technology transfer particularly from expatriate businesses into Nigeria”

Franchising is an agreement between organisations whereby the producer of a product or service grants rights to independent entrepreneurs to conduct business in a specified way, in a designated place, and during a certain time frame.

The type of franchising that is most common today is called “business format franchising” or “package franchising”. With this type of franchising, the franchisee receives more than just the rights to use the product, service, and trademark. They receive the whole business plan including the standardized marketing strategy, operating and training manuals, quality control, support

from the franchising company, store layout, etc¹ Franchise Agreement is a business arrangement whereby the franchisor grants the rights to exploit the system developed by the franchisor including the intellectual property rights (IPR) to another party, the franchisee, to conduct the business or provide and sell the associated goods or services². A franchise therefore contemplates the

¹ Franchising Globally: Innovation, Learning and Imitation by Ilan Alon

² Section 2.2.7 of the NOTAP revised guidelines, 2018

use of a broad range of intellectual property rights such as formulas and knowhow (patents and trade secrets), design and get up of the business and its products, trade marks, adverts, written and artistic expressions (copyright) among others.³

Franchises are advantageous because it usually entails technology transfer particularly from expatriate businesses into Nigeria. This provides employment opportunities and helps to boost the business of the local franchisee who relies on the existing goodwill, expertise and customer base of the franchisor. The franchisee spends less on advertisement and other similar expenses.

Nigeria has two main bodies overseeing franchise operations in Nigeria, the National Office for Technology Acquisition and Promotion (NOTAP) and Nigerian International Franchise Association, while the former is a Government agency, the latter is a private body. While there is currently no specific law regulating franchises in Nigeria, the National Office for Technology Acquisition and Promotion

Act, Chapter N62, Laws of the Federation of Nigeria 2004 (NOTAP Act) regulates the transfer of foreign technology to Nigeria. Other laws applicable to a franchise relationship includes the Patent and Designs Act, Trade Marks Act, and the Copyrights Act etc.

A franchise arrangement involves the transfer of technology and thus is regulated by the provision of the NOTAP Act. All agreements for the transfer of technology between a foreign transferor and a Nigerian transferee should be registered with NOTAP. Such agreements to be registered are with regards to⁴:

- Use of trade marks;
- Use of patented inventions;
- Supply of technical expertise in the form of technical assistance of any description whatsoever;
- Supply of detailed engineering drawings;
- Supply of machinery and plant;
- Provision of operating staff, managerial assistance, and the training of personnel.

³ Intellectual Property Law in Nigeria by Desmond O. Oriakhogba

⁴ Section 4 of the NOTAP Act

Top Franchises in Nigeria

Quick service restaurants (QSRs) and fast-food operations are the top franchises in Nigeria. South Africa and U.S. companies are the highest owners of franchise operations in Nigeria. These includes Dominos, KFC, SPAR, Shoprite, Pizza Hut, e.t.c. In April 2021, U.S. restaurant brand Burger King formally announced its entry into Nigeria⁵. The brand opened its doors to customers in Nigeria in November, 2021.⁶

Challenges in the Franchise Sector

- **Unstable power supply**
- **Foreign exchange risk**
- **Poor infrastructure**
- **Declining consumer spending power**
- **Ban on dairy products**

Opportunities

Some of the sectors where significant opportunities exist for franchises in Nigeria include food, cinema, transportation, logistics, medical health care, educational services, interior design, mobile devices, and beauty care.

⁵ <https://www.trade.gov/country-commercial-guides/nigeria-franchise-sector>

⁶ <https://www.bellanaija.com/2021/12/burger-king-lagos-launch/#:~:text=On%20November%201st%2C%202021%2C%20Burger,flow%20and%20Lagos%20at%20large.>

STEPS TO FRANCHISING IN NIGERIA – FAST FOOD BUSINESS AS A CASE STUDY

Research



This is necessary in order to understand the operation of the market in the intended industry. Research should cover the laws governing the industry at which point the services of a Law Firm vast in the industry is needed, research should also cover licenses, permits, IP rights to be purchased, support to be received from the intending franchisor, cost of setting up the business. e.t.c.

Application



After research, an application to the prospective fast-food franchisor is made. The franchisor would in turn provide the entrepreneur with information concerning its franchise after parties have executed a Non-Discourse Agreement. The fast-food franchisor provides the entrepreneur with a Franchise Disclosure Document after due diligence. This document delineates the roles of the franchisor and franchisee, the royalty fee, the manner of payment of the royalty fee, manner of business training and equipment to be covered by the royalty fee, nature of intellectual property transfer etc. After the application is approved, parties can enter into a franchise agreement.

Funding



Often, a franchisor may assist the franchisee with funding. This funding may be repaid in form of royalties or a certain percentage of profit is paid to the franchisor until the loan is paid off. Funding covers costs which include buying inventory, obtaining permits rents, insurance, equipment, and machinery, etc. Nevertheless, fast food franchisors who do not provide funding often guide on how to obtain funding from other sources.

Obtaining Legal and Regulatory Permits

The National Agency for Food & Drug Administration and Control (NAFDAC) requires fast-food operators who process and sell food in large quantities to obtain General Hygiene Practice before commencing operations. In Lagos state, additional permits include a food permit, television license, private entertainment and merriment permit, and private car park permit. These permits are to be obtained from the Local Government in which the restaurant is located.

Other Permits and licenses include Tax Clearance Certificate, Business Registration Certificate, Intellectual Property Transfer Certification, etc. However, the franchisee may not obtain some of these permits as they are already obtained by the franchisor. He may use the franchisor permits for a fee as contained in the Franchise Agreement and where the franchise is between two parties in different countries, the franchisee is expected to obtain permits as required by his country.⁷

According to the United Nations Population Fund (UNFPA), Nigeria's population is over 210 million (2021) making the country the most populous in Africa.

While the large population is expected to accelerate the growth of franchises in the country, some economic factors such as the growing inflation rates which are currently at 15.97% (July 2021) has increased the prices of goods and services and reduced the consumer purchasing power. Franchises looking to come into the market must be mindful of this statistics in developing their business model, pricing their products, and segmenting their market.⁸

⁷ <https://tiimafrika.com/step-by-step-guide-to-get-a-fast-food-franchise-in-nigeria/> Step by Step guide to get a fast-food franchise in Nigeria Posted on December 3, 2020 By Abdul-Basit Dagana

⁸ <https://www.trade.gov/country-commercial-guides/nigeria-franchise-sector>



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