



UNDERSTANDING FRANCHISING: A MODEL FOR BUSINESS GROWTH



INTRODUCTION

In the realm of business expansion, franchising stands as a beacon of opportunity, offering a unique model that fosters growth, innovation, and sustainability with reduced risk. A franchise is a licensing arrangement wherein a franchisee gains access to a franchisor's exclusive business expertise, methodologies, and trademarks in exchange for adherence to established standards and financial returns which could be in the form of a fee and royalties. This access enables the franchisee to market and sell products or services using the franchisor's brand name. This business model can be adopted where a business intends to break into a new market without major capital investment.

The legal agreement between the two parties is termed the "Franchise Agreement". The term "franchise" commonly refers to the business operated by the franchisee. The process of establishing and distributing the brand and franchise system is typically known as franchising.¹

The success of franchising ventures as a means of business development hinges not only on strategic vision and operational prowess but also on navigating various regulations and laws positioned to regulate the concept of franchising. In this article, we will discuss franchising as a potent catalyst for business growth, with a focus on the regulatory framework of franchising ventures in Nigeria.

¹ <https://www.franchise.org/faqs/basics/what-is-a-franchise> accessed on 5/03/24.



THE MODELS AND SUCCESS METRICS OF FRANCHISING IN NIGERIA



In Nigeria, franchising encompasses various types and models including investment, job, master, and business format franchising. Investment franchises require substantial capital and may involve active management by the franchisor, while job franchises entail lower investments and operate as sole proprietorships. Also, master franchising involves granting rights to a master franchisee to operate in a given area who can then sub-franchise, and as for the business format franchising model, it offers extensive support beyond authorization to sell goods or services including access to the franchiser's designs, quality control measures, operational procedures, group advertising initiatives, and promotional activities.

Notably, franchising has continued to gain significant traction in Nigeria allowing both established foreign and local Companies to expand their business operation with several successful examples such as Shoprite, Spar, Kentucky Fried Chicken, Chicken Republic, Domino's Pizza, and a lot more.

Nigeria, with a population of approximately 226 million people presents a potential growth opportunity for investors. Despite the country's high inflation rate, there is an expanding consumer class with increasing purchasing power. According to a report by Euromonitor International, it is projected that

by 2030, 160 million Nigerians will have sufficient income for discretionary spending, and sales of consumer goods are estimated to triple by then to USD365,548.4 million resulting in a significant increase in consumer goods sales and as the Nigerian government explores mass opportunities for its unemployed citizens and seeks non-oil revenues, the time is ripe for reputable foreign franchisors with solid brands to expand their operations in Nigeria, also, the government is taking steps to improve the business environment which will benefit franchises, measures such as the enactment of the Business Facilitation Act, 2023 aims to enhance business operations in Nigeria, fostering transparency, efficiency, and productivity.

Additionally, the commercial guide from the International Trade Administration reveals that quick service restaurants (QSRs) and fast-food operations dominate Nigeria's franchising scene, comprising **45%** of franchises. South African and U.S. companies are the largest owners of franchise operations in Nigeria. Moreover, the global franchising market is rapidly growing, expected to reach **\$750 billion** by 2025, with international franchise brands increasing by **22%** in the last five years according to a statistics report by Market Splash.

Succinctly, Nigeria provides a promising environment for franchising due to its growing consumer class, supportive government policies, and expanding global market opportunities, enabling franchises to expand their market share and operations. To establish a successful franchise in Nigeria, it is

crucial to register the business with relevant authorities like the Corporate Affairs Commission, register the Franchise Agreement with the National Office for Technology Acquisition Promotion, register the trademark, and obtain industry-specific permits.



LEGAL FRAMEWORK FOR FRANCHISING IN NIGERIA

There is no specific legislation dedicated solely to the offer and sale of franchise in Nigeria. However, there are existing laws that regulate franchising operations and practices which include:

1. **Company and Allied Matters Act (CAMA), 2020:**

The CAMA is the primary legislation that regulates the business environment in Nigeria. The Corporate Affairs Commission (CAC) is vested with the responsibility of administering the Companies and Allied Matters Act, overseeing the entire lifecycle of companies, including incorporation, post-incorporation compliance, winding up, and dissolution. The Act mandates every person who intends to carry on business in Nigeria to duly incorporate such business with the CAC. As a form of business, Franchises

are required to be legally incorporated to operate as a corporate legal entity in Nigeria. The provisions of CAMA on corporate governance and post-incorporation matters shall also apply to the Franchise and will influence how the franchise is structured and governed.

2. **National Office for Technology Acquisition and Promotion (NOTAP) Act, 2004:**

Every franchise agreement for the transfer of technology between a foreign transferor and a Nigeria transferee must be registered with the National Office for Technology Acquisition and Promotion (NOTAP). The NOTAP Act² states that such agreements are registrable if their purpose or intent is, in the opinion of NOTAP wholly or partly for or in connection with:

²Section 4 of the NOTAP Act.

- Use of trademark.
- Use of patented inventions
- supply of technical expertise in the form of assistance of any description whatsoever.
- supply of detailed engineering drawings.
- supply of machinery and plan; and
- provision of operating staff, managerial assistance, and training of personnel.

The NOTAP Act aims to safeguard Nigerian franchisees from potential exploitation by franchisors by laying out comprehensive regulations governing the terms and conditions permissible in franchise agreements. These regulations are designed to promote the registration of franchise agreements with NOTAP, particularly those that genuinely contribute to strengthening local manufacturing capabilities. This includes prohibiting onerous conditions that disadvantage franchisees, ensuring equitable payments, and limiting the duration of franchise agreements to prevent excessive control by franchisors. Franchise agreements must meet certain criteria to be eligible for registration with NOTAP, such as providing long-term benefits to the franchisee and aligning with Nigeria's economic development goals.

Notably, it is important to register the franchise agreement with NOTAP as the NOTAP Act³ provides that payments to parties outside Nigeria for technology transfer agreements cannot be made without presenting a registration certificate issued by NOTAP. This has also been reiterated in a Court of Appeal case between Stanbic IBTC Holding Plc v. Financial Reporting Council of Nigeria (FRCN) & Anor (2018) LPELR-46507(CA), where the court emphasized that non-registration of a Franchise Agreement

with NOTAP does not nullify the agreement but prevents parties in Nigeria from fulfilling payment obligations through authorized channels. In essence, non-registration with NOTAP restricts access to official foreign exchange markets, impacting the ability to repatriate fees/funds under the agreement or leading to higher exchange rates from alternative sources.



3. Nigeria Data Protection Act (NDPA) 2023:

The NDPA regulates the control and processing of personal data within Nigeria and personal data transferred out of Nigeria. The Nigeria Data Protection Commission (NDPC) which was established by the NDPA has the power to develop guidelines, in addition to the NDPA, that oversee the cross-border transfer of personal data. Franchising enterprises frequently employ digital platforms for marketing, communication, and operational management, thus involving the large processing of personal data and the likelihood of the transfer of personal data out of Nigeria, it is therefore pertinent that Franchises are in full compliance with the NDPA and adopt the compliance mechanisms for cross-border data transfer as provided for in the Act.

4. The Trademarks Act, 2004: The Trademarks Act is the primary legislation in Nigeria that protects the distinctiveness of a brand through its registration. Franchising and trademarks are intricately linked. As a business expands through franchising, one of the key legal privileges that extends to the franchisees is the license and authorization to utilize the franchisor's trademarks. As franchisees adopt and replicate business models, they rely on the franchisor's trademarks to maintain consistency and brand recognition. The Trademarks Act provides a framework for registering trademarks, licensing trademarks, and protecting the rights of brand owners in Nigeria. It is thus advisable that the trademarks involved in the franchise agreement are registered at the Trademarks Registry and that the necessary licenses granted on the use of the trademarks to the franchisees be recorded at the Trademarks Registry. Overall, the Trademarks Act in Nigeria provides a robust legal framework for franchisors to protect their intellectual property rights, maintain brand integrity, and regulate trademark usage within franchise networks.

5. Franchising Bill: While no comprehensive law governing franchising currently exists in Nigeria, it is worth noting that the Franchising (Establishment) Bill which passed the second reading in the last assembly seeks to create a legal framework for the operation of franchising (and other related matters) in Nigeria. Some key provisions in the bill include the obligatory provision of a disclosure document by both parties

involved in a franchise agreement which must include all relevant facts, required paperwork, and agreements related to the franchise at least 14 days before agreement execution or fee payment.

The franchisor must also provide a statement of material changes, if any occurs, and register the disclosure document with NOTAP. The Bill allows a 7-day opt-out period for franchisees to terminate the agreement and receive refunds, with exceptions for certain franchise arrangements. Additionally, the Bill designates NOTAP as the regulatory body responsible for all matters addressed contemplated in the Bill.

Furthermore, the Bill seeks to control the relationship between franchisors and franchisees to promote a franchise system that boosts Nigeria's economy. All franchisors and franchisees operating in Nigeria including those involving non-Nigerian Franchisors are required under the Bill to abide by its rules and any restrictions that may be imposed. The Bill also imposes restrictions on franchisee businesses similar to the franchisor's during the agreement, limited to a maximum duration of 5 years. Furthermore, the Bill mandates the registration of all proprietary rights linked to foreign business franchises licensed to franchisees in Nigeria, encompassing patents, trademarks, industrial designs, etc. It also necessitates the registration of all franchise agreements between Nigerian franchisees and foreign franchisors. The Bill incorporates the liability for non-compliance, including fines and imprisonment, signaling stricter enforcement by NOTAP.

Undoubtedly, the Franchise Bill is a positive development for the franchising industry in Nigeria. If passed into law, it will provide a legal framework for the growth of franchising in Nigeria and protect the rights of franchisees and franchisors. However, some sections of the Bill need clarification, such as the definition of an "associate as without clearer definitions and guidelines, the Bill may lead to legal disputes and uncertainties, requiring extensive judicial interpretation for clarification.



CONCLUSION

Franchising, viewed as a strategic partnership, offers significant opportunities for enhancing economic growth by fostering local entrepreneurial skills, promoting indigenous economic activities, and curbing the outflow of capital. As such, it warrants institutional backing and support to thrive effectively. Looking ahead, the impending Franchising Bill presents an opportunity to further strengthen the legal framework for franchising in Nigeria. By proactively addressing regulatory gaps and promoting best practices, the Franchising Bill can foster a conducive environment for franchising growth and investment in the country.

Pending the passage of the Franchising Bill, parties entering into a franchise agreement in Nigeria, to protect their interests must take appropriate measures to ensure compliance with existing laws and incorporate standard practices into their agreement. These include the need for disclosure, precise terms in the agreement regarding fees and territory rights, protection of intellectual property, adherence to legal requirements, setting up procedures for resolving disputes and developing exit plans, and consulting an independent lawyer for direction and risk assessment.

ABOUT STREN & BLAN PARTNERS

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our clients' business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

THE AUTHORS



Christian Aniwkwu
Partner

christiananiukwu@strenandblan.com



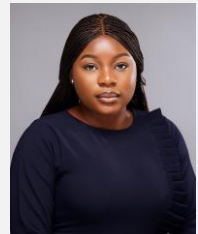
Omonefe Adewinmbi
Associate

omonefeadewinmbi@strenandblan.com



Chizitereihe Oti
Associate

chizitereiheoti@strenandblan.com



Ibitola Akanbi
Associate

ibitolaakanbi@strenandblan.com

Stren & Blan Partners

+234 (0)702 558 0053

4 Princess Folashade Ojutalayo Cl, Lekki

Phase 1, 106104, Lagos

www.strenandblan.com

contact@strenandblan.com

[@strenandblan](https://www.instagram.com/strenandblan)

