Franchising first appeared mainstream in Nigeria in 1951 when the Nigerian Bottling Company acquired the right to sell Coca Cola products and leverage the brand’s strength to monopolise the beverage market.

The Nigerian Franchising sector is considered to be in its infancy, particularly when compared to the likes of South Africa where the sector accounts for 12.5% of their GDP. Currently, the dominance of international franchises is visibly evident in Nigeria as manifested in the activities of Shoprite and Game in retail, Exxon mobile and Total in petroleum product marketing and, Dominos, KFC, Krispy crème, Cold stone creamery in fast food.

Although Nigeria Franchising industry is relatively budding, there are still so many entrepreneurs who do not believe that franchising can work for them. It is important to state that the apprehension to buying a franchise in Nigeria comes from a general lack of understanding of the benefits of a franchise, the requirements and what it entails to run one.

Franchising is a well utilized model used for business expansion by both multinationals and local businesses. With the growth of consumerism, markets for goods and services are becoming increasing globalised. Franchising provides a means of expanding the reach of a business into new territories and new markets in a lower risk model than traditional company owned expansion. Franchising in Nigeria has evolved over the years from not being properly utilised and understood to now being employed across various sectors. In this article, we will discuss the various models in franchising and the legal frameworks and considerations involved in Nigeria.

What is Franchising?
According to the International Franchise Association (IFA), “A franchising operation is a contractual relationship between the franchisor and franchisee in which the franchisor offers or is obligated to
maintain a continuing interest in the business of the franchisee in such area as know-how and training; wherein the franchisee operates under a common trade name, format and procedure owned and controlled by the franchiser, and in which the franchise has or will make a substantial capital investment in his business from his own resources”

A modern franchise includes a format for the conduct of the business, a management system for operating the business and a shared trade identity. Essentially, a franchisee pays an initial fee and on-going royalties to a franchisor; in return, the franchisee gains the use of a trademark, on-going support from the franchisor, and the right to use the franchisor’s system of doing business and sell its products or services. In addition to a well-known brand name, buying a franchise offers many other advantages that are not available to the entrepreneur starting a business from scratch. Perhaps the most is that you get a proven system of operation and training in how to use the product into brand and then a franchise requires a lot of deliberate action and planning.

1.0 MODELS OF FRANCHISING

1. Trade Name Franchising: This is also otherwise called traditional franchising. This is a model where the franchisee uses the brand name or trade name, trademark and logo of the franchisor to sell the franchisor’s own product. Usually, for a start the franchisees have to pay some sort of fees or buy a minimum amount of product from the franchisor. In Nigeria, this model is largely identified as “Distributorships or Dealerships”. Having met the basic requirements of this model, the franchisee is allowed the littlest benefit of branding their outlet to optimally leverage on the brand popularity to attract brand loyalists. Dangote cement is an example of a Nigeria company using the trade name franchising model. They are able to distribute their products to smaller groups of franchisees to reach the final end users and help cut cost on logistics. This Model also comes with great benefits for franchisees as they get more control of their day-to-day business operations.

2. Business Format Franchising Model: This is the most popular type of franchising model used. Business format franchising, according to Business Dictionary is an arrangement where a franchisee receives (in addition to the right to sell goods or services) the franchisor's designs, quality control and accounting systems, operation procedures, group advertising and promotions, training, and (in case of hotels and travel agencies) worldwide reservation systems. A business format franchise provides a franchisee formula for conducting business. For example, fast food restaurants such as McDonald’s and Burger-King teach their franchisees every detail of how to run their restaurants, from how many seconds to cook French fries to the exact words their employees should use when they greet customers (such as “will this be dine-in or carry out?”). Business format franchisors obtain the majority of their revenues from their franchisees in the form of royalties and franchise fees.

3. Manufacturing Franchising Model: Easily put, a manufacturing franchise is a franchising agreement where the franchisor allows a manufacturer to produce and sell products using its name and trademark. That is, the franchisee aside manufacturing the products in line with provided guidelines and recipe, is allowed to make use of the tradename to sell same products within the assigned territory.

A very good example of the use of this model is the Coca-Cola Franchise in Nigeria. The parent company Coca-Cola sold the right to use their brand name and trademarks, to the Nigerian bottling company, one of the world’s largest bottlers of products by the Coca Cola Company. The company takes care of mixing and bottling the finished product before selling it on to various suppliers.

2.0 FRANCHISING DISTINGUISHED FROM LICENSING

The franchising model though looks similar to licensing, it is however completely different. Licensing is granting a limited right related to a trade mark, formula or technology for a limited purpose. A licensing arises for instance where the owner of a patent or proprietary right over a technology grants a license to an individual or a company, as a licensee, to use the particular technology. An example would include Microsoft granting a license to individual users allowing them to use the Windows operating system or a company using the design of a popular character like Mickey Mouse on their product.

Franchising includes a license to use the business system, an obligation to share developments and improvements, and the right for the franchisor to determine how the business operates. While a licensing model is where a licensing company may exercise control over how its IP is used but does not control the business operations of the licensee.

Franchising in Nigeria: Legal Considerations

Before venturing into setting up a franchise, there are some key legal considerations that has to be
1. **Brand Protection:** There is a need to ensure timely renewals of trademarks. By default, Intellectual Property protection does not ensure in perpetuity and the franchisor must ensure a mechanism to perpetuate this protection where the law allows for such. Section 23 Trademarks Act, Cap. T13, LFN 2004 for instance, provides that the registration of a trademark shall be for a period of seven years, but may be renewed from time to time. Patents, on the other hand is for one block non-renewable term. Section 7, Patents and Design Act, Cap. P2, LFN 2004 provides that the term of a patent shall be twenty years from the filing date of the application.

2. **Real Estate Franchise Lease:** The terms of the lease and the terms of the franchise must be in substantial alignment. A key issue that could arise, where these terms do not align is in the area of mismatch in the tenure of the respective agreement. For instance, a franchisee may be left with no premises to run the franchise if its lease expires during the life of the franchise. Also, where franchise term ends while the lease term is still operational, the franchisee may be left with a lease term without any optimal utility value. Both of these scenarios are not only uncomfortable but can occasion unnecessary financial exposure for franchisees. So, it is important to ensure that all of this is put into consideration when entering into a franchise agreement.

3. **Restraint of Trade:** It is important that a trade restraint clause is included in a franchise agreement in order to prevent the franchisee from leveraging franchisors trade secrets in competition against the franchisor within a certain period. It is trite law that trade restraint clauses are enforceable as long as same is within the scope of reasonability and justified by a protectable interest. The supreme court held in Koumolis v Leventis motors limited that an employer can lawfully prohibit the employee from setting up competing business which it is likely to destroy the employers trade connection by a misuse of his acquittance with the employer’s customers or clients.

While the above-mentioned case is on strict employment violation, it is not unlikely that the court would apply the same principle to a franchise relationship.

4. **Labour Issues**
A clause should be included stating that the franchisor cannot directly control the franchisee’s employees, including hiring or firing them. This is necessary in order to avoid joint employer liability where the franchisee violates a labour or employment law.

### 3.0 LEGAL FRAMEWORKS AFFECTING FRANCHISING IN NIGERIA

There are currently no specific law governing the franchise industry in Nigeria. The basic principles of contracts and intellectual property law are applied to franchises in Nigeria especially in the event of a dispute.

Since there are yet to be specific laws governing franchising in Nigeria, franchise sales agreements are however regulated by the National office for Technology and Promotion Act LFN 2004. This is the law that regulates the transfer of foreign technology to Nigeria.

A franchise arrangement involves the transfer of technology and thus is regulated by the provision of the NOTAP Act. It is required by the NOTAP Act that all agreements for the transfer of technology between a foreign transferor and a Nigerian transferee must be registered with NOTAP. Section 4 of the NOTAP Act states that such agreements are to be registered if they are related to:
- Use of trademarks
- 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.

The NOTAP Act stipulates that an agreement for the transfer of technology must not exceed a term of 10 years. Within this ambit, NOTAP usually approves a franchise agreement for a period of three years and upon its expiration, it needs to be renewed for further periods of three years. The NOTAP also has the power to refuse the registration of a franchise agreement which contains provisions that impose obligation on the franchisee to acquire equipment, tools, parts, or raw materials exclusively from the franchisor or any other person or given source.

### 4.0 CHALLENGES FACING FRANCHISING IN NIGERIA

Franchising’s in Nigeria have continued to face diverse challenges due to poor economic conditions in the country. A very important challenge in this regard is the constant downward value of the naira. Businesses with naira priced earnings and dollar denominated expenses have experienced a significant...
increase in costs while revenues have declined or at best remained flat. This has resulted in higher costs for franchises which is likely to be passed on to the consumers in the form of higher prices for goods and services. Nigeria’s foreign exchange risk is increasingly becoming a challenge. The country’s foreign exchange rate has lost over 100% of its value in the past four years.

The availability of credit and interest rates also affect the growth of franchises in Nigeria. The current interest rate is 11.5% down from 13.5% in 2019, and this affects the cost of financing via debt as the loan repayment is structured to accommodate the current high interest rates which in turn could discourage franchisees from having access to fund.

Low Level of Infrastructure: The International Monetary Fund put the ratio of Nigeria’s infrastructure stock to GDP at about 25% against the World Bank’s recommendation of 70%. It will require annual financing of USD 100 billion over the next 30 years to address this deficit. The country’s infrastructure deficit cuts across several segments, with power and roads the most salient. The country produces 141kWh of electricity for its 200+ million people. The lack of stable electricity in the country has resulted in widespread self-generation by individuals and businesses using electric generators. It is estimated that power accounts for over 60% of the costs of doing business in Nigeria.

Hostile regulations and multiple taxation by the Nigeria government has also created an hostile environment for franchises in Nigeria to do business. For example, in February 2020, the value-added task was increased from 5% to 7.5% thereby resulting in increase in cost of goods and services for franchises.

**CONCLUSION**

In conclusion, the consumer-class in Nigeria is growing at a rapid rate. By 2030, it is estimated that some 160 million Nigerians (out of a projected population of 273 million) could live in households with sufficient income for discretionary spending. Sales of consumer goods are, therefore, estimated to more than triple by then, to USD365, 548.4 million. A number of countries, both developed and emerging, have embraced the franchise concept as a method of creating job opportunities. A comparable economy like South Africa generates over 12% of its GDP from franchising. As the Nigerian government explores mass opportunities for its unemployed citizenry, and seeks other non-oil revenues, the time is right for reputable foreign franchisors with solid brands to start expanding their operations in Nigeria, as well as for local established businesses to embark on the franchise journey. Nigeria is deemed to be fertile ground in which the franchising industry could grow and flourish.