

INTELLECTUAL PROPERTY LAW

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Navigating Intellectual Property in Corporate Transactions: A Nigerian Perspective

Intellectual Property Rights (IPRs) are legal protections granted to creations of the mind, such as inventions, creative works, brand identifiers, and confidential business information. In today's knowledge-based economy, IPRs have become vital strategic assets, often representing a significant share of a company's value. This article provides a comprehensive overview of the key categories of IPRs and their role in various corporate transactions, including mergers, acquisitions, licensing, franchising, joint ventures, and financing. It also explores how IPRs are valued, transferred, and regulated under Nigerian law, and highlights important considerations such as due diligence, risk factors, and best practices.

Categories of Intellectual Property Rights

Copyrights: Copyright protects original creative expressions like literary works, music, films, software, and art. In Nigeria, the Copyright Act 2022 governs copyright law, replacing the previous 1988 law. The new Act extends protection to digital content and enhances enforcement in the online space. Copyright typically lasts for the author's lifetime plus 50 to 70 years.

Patents: Patents grant inventors exclusive rights to exploit their inventions for a fixed period, usually 20 years from the filing date. The Patents and Designs Act in Nigeria governs patents and also covers industrial designs, which are initially protected for five years, with potential renewals for up to fifteen years. Patents are territorial rights, meaning protection must be sought in each country where enforcement is desired.

Trademarks: Trademarks protect brand elements such as names, logos, and slogans. Under the Trademarks Act, a registered trademark in Nigeria is valid for seven years initially and can be renewed every fourteen years. Trademarks play a central role in brand recognition and can be key assets in franchising, merchandising, and business negotiations.

Trade Secrets: Trade secrets refer to confidential business information that provides a competitive edge. Examples include formulas, client lists, algorithms, and marketing strategies. Nigeria does not have a standalone trade secret law, so protection relies on contract law and common-law principles of confidentiality (Resolution Law Firm, n.d.).¹

Role of IPRs in Corporate Transactions

Mergers and Acquisitions (M&A): In M&A deals, IP portfolios often represent a large part of the target company's value. Due diligence must confirm IP ownership, validity, and whether there are any existing licenses or disputes. IP assets must be properly assigned or transferred and registered post-transaction.

Licensing and Technology Transfer: Licensing allows a party to use another's IP in exchange for royalties or fees, without transferring ownership. This model is common in technology, software, and brand-driven industries. In Nigeria, licensing arrangements involving foreign entities must be registered with the National Office for Technology Acquisition and Promotion (NOTAP).

Franchising: Franchising involves granting rights to use a brand and business model. Trademarks and proprietary business methods are central to these agreements. Although Nigeria does not have a specific franchise law, IP rights must be properly registered and protected through detailed contracts.

Joint Ventures: In collaborative ventures, parties may contribute their own IP and jointly develop new IP. Clear agreements must be in place to define ownership, usage rights, and how any new IP developed during the collaboration will be managed (Resolution Law Firm, n.d.).²

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Transfer of IPRs

Assignments and Licenses: IP rights can be transferred either through assignment (ownership transfer) or licensing (usage rights). Assignments must be documented in writing and registered with the relevant IP authorities to be enforceable. Licensing agreements must clearly define the scope, duration, and financial terms.

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Due Diligence and Risk Management

IP Due Diligence: Before entering any transaction, parties should thoroughly verify the ownership, status, and enforceability of IP assets. This includes reviewing registration certificates, licensing agreements, and identifying any encumbrances.

Legal and Regulatory Compliance: Nigerian laws require proper registration of patents, trademarks, and designs. IP agreements involving foreign parties may require registration with NOTAP. Compliance with international treaties is also necessary for cross-border transactions.

Freedom to Operate: Conducting searches for third-party rights helps assess the risk of IP infringement. Buyers should be aware of any ongoing disputes or opposition proceedings that might affect IP rights.

Valuation and Integration: Assessing the commercial value of IP and planning its integration into the acquiring company's operations are important steps. IP audits, retention agreements for key personnel, and transition plans should be considered.

Contractual Protections: Agreements should include representations, warranties, indemnities, and quality control clauses to safeguard IP interests and allocate risks.

Post-Transaction Management: Once a deal is completed, it is important to register any changes in ownership and integrate the IP portfolio. Confidentiality obligations and internal policies should be reviewed and updated (Barao, 2025).³

Conclusion

Intellectual property rights are essential assets that can significantly influence corporate transactions. Proper management of IPRs from the due diligence stage to post-transaction integration can prevent legal complications, preserve asset value, and support strategic business goals. For businesses in Nigeria and beyond, understanding how to navigate the legal and commercial aspects of IP in transactions is a crucial component of long-term success.

Bibliography

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