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Legislative Update

The New Startup Act at a Glance: 10 Key Takeaways

Introduction

A few days ago, the President signed the Nigerian Start-up bill 2022 into law (the “**Act**” or “**Nigerian Startup Act**”). The enactment of the law is generally considered to be a welcome development – particularly within the technology space. Amongst other things, the Act is expected to accelerate growth and lower market entry barriers for start-ups.

In this legislative update, we have highlighted 10 key provisions to note about the newly signed Act and what it means for the start-up ecosystem.

1. Definition of Start-ups

The Act defines a start-up to mean a company in existence for not more than 10 years with its objectives being the creation, innovation, production, development or adoption of a unique digital innovative product, service, or process.

Globally, depending on the metric adopted, start-ups are considered to be companies between 3-5 years. Therefore, the definition of start-ups under the Act is generally considered to be broad enough to accommodate a range of businesses although what would be considered as a unique digital innovative product, service, or process is not defined.

2. The Council and Secretariat

The Act establishes a body known as the National Council for Digital Innovation and Entrepreneurship (the "**Council**"), which amongst others, shall consist of the President and Vice President of the Federal Republic of Nigeria, the Minister for Communications and Digital Economy, Minister for Finance, and Governor of the Central Bank of Nigeria (**CBN**). The Council shall be responsible for the formulation of policy direction for the implementation of the objectives of the Act.

The Act also identifies the National Information Technology Development and Authority (NITDA) as the secretariat (the "**Secretariat**") with the director general of NITDA as the head of the Secretariat. The Secretariat is expected to serve as the day-to-day operational structure of the Council as it relates to implementation of the Act.

3. The Start-up Label

The Act creates a process known as start-up labelling which is essentially the steps required and processes to be followed in order to obtain the status of a start-up. Therefore, start-ups seeking to be so labelled for the purposes of the Act, are required to meet the labelling requirements.

The Act provides that a start-up is eligible for labelling where (a) it is registered as a limited liability company under the Companies and Allied Matters Act; (b) its objects are innovation, development, production, improvement and commercialisation of a digital technology innovative product or process; (c) it is a holder or repository of a product or process of digital technology or the owner or author of a registered software; (d) it has at least one third local shareholding held by one or more Nigerians as founders or co-founders; (e) in the case of a sole proprietorship or partnership, it satisfies the conditions set out in b, c and d, although the Act also grants a 6 months concession to sole proprietorships or partnerships within which they could be eligible for a pre-label status pending their compliance with b, c, and d.

Upon meeting the eligibility requirements and submission of an application via the start-up portal, the applicant will be granted a start-up label by way of a certificate which shall, unless otherwise proven, serve as conclusive evidence that the start-up has complied with the labelling requirements under the Act. Once granted, a start-up label is valid for 10 years from the date of issuance.

Upon being labelled, a start-up is required to comply with all extant laws including maintaining proper books and filing necessary returns with the applicable regulator. Failure to regularise a default after being notified of such default could lead to withdrawal of the start-up's label.

4. Tax, Fiscal and Other Incentives

10 Years Validity

Once granted, a start-up label is valid for 10 years from the date of issuance.

This is perhaps one of the most applauded aspects of the Act. The Act provides that a labelled start-up which falls under an industry that is covered by the extant pioneer status incentives (PSI) may upon application through the Secretariat receive expeditious approvals from the Nigerian Investment Promotion Commission (NIPC) for access to the PSI. The Federal Government is also expected to simplify the requirements for labelled start-ups to benefit from existing fiscal incentives.

There is also room for a labelled start-up to be exempt from paying income tax and other taxes chargeable on income and revenue for a period of three years and an additional two years.

In relation to investors, the Act provides that the Federal Government through the Ministry of Finance and other MDAs shall develop and implement policies to incentivize angel investors, venture capitalists, private equity funds etc. that invest in a labelled start-up or in the start-up ecosystem.

Further, an investor that invests in a labelled start-up is entitled to an investment tax credit equivalent to 30% of the investment and capital gains tax shall not be charged in gains that accrue from the disposal of assets in a labelled start-up by an investor provided the asset has been held in Nigeria for a minimum of 24 months.

30%

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5. Funding

The Act introduces a number of provisions generally aimed at providing labelled start-ups with some degree of access to finance as well as provide relief to tech labs, accelerators, incubators and hubs. For example, it establishes a credit guarantee scheme (CGS) that seeks to give start-ups access to loan facilities and grants from the Central Bank of Nigeria (CBN) and other statutory bodies with a similar mandate.

It also provides for the establishment of the Startup Investment Seed Fund (the "**Fund**") to be funded with a sum not less than N10,000,000,000 (ten billion Naira) annually from sources to be approved by the Council. The Fund is to be managed by the Nigeria Sovereign Investment Authority (NSIA).

Further, the Secretariat is to ensure that labelled start-ups have access to grants and loans administered by the CBN, the Bank of Industry, or other bodies.

6. Start-up Consultative Forum and Capacity Building

With the approval of the Council, the Secretariat is also expected to establish a consultative body known as the start-up consultative forum (the "**Forum**"). The Forum is to serve as a platform for the sharing of information and collaboration amongst Nigerian start-ups with respect to incentives, availability of local capabilities and other policy proposals affecting the start-up ecosystem. In the same vein, the Secretariat is to design and implement training and capacity building programs for

start-ups and create avenues for start-ups to access trainings by the Industrial Training Fund (ITF) or other organisations which partners with the Secretariat.

7. Start-up Support and Engagement Portal

The Act mandates the setting up of a start-up support and engagement portal (the "**Portal**") which shall serve as a platform through which start-ups shall conduct registration processes with various government ministries, departments, and agencies (MDAs).

The Portal is expected to facilitate the issuance of licenses and permits and serve as an interaction point between start-ups and other participants in the ecosystem such as regulators, investors, accelerators, incubators, etc.

8. Crowdfunding

Evidencing its commitment to the development of start-ups, the Act provides that start-ups may raise funds through crowdfunding platforms licensed by the Securities and Exchange Commission (**SEC**) accessible through the Startup Portal.

The Council is also expected to collaborate with the SEC to fast-track crowdfunding processes for labelled start-ups.

9. Intellectual Property Protection

The Act recognises the importance of intellectual property rights and has mandated the Secretariat to provide assistance with respect to the exploitation of intellectual property rights including the institutionalisation and commercialisation.

In this regard, the Secretariat is required to collaborate with the Nigerian Copyright Commission (NCC) and the Trademarks, Patents and Designs Registries to give start-ups easy access to registration and protection of their rights.

10. Establishment of Clusters, Innovation Parks and Tech Development Zones

To promote collaboration and innovation between start-ups, the Council is to issue a framework for the establishment and operation of innovation clusters, hubs, physical and virtual innovation parks in each state of the federation.

These innovation centres will generally provide support services to start-ups, free workspaces, or spaces at a subsidized rate, and assist with facilitating the expansion of start-ups into foreign markets amongst others. Through collaboration with the Nigerian Export Processing Zone, the Secretariat is expected to establish a Technology Development Zone to spur growth and development of start-ups including through licensing start-ups to carry out approved activities within the Zone

and benefitting from incentives provided under the Nigerian Export Processing Zone Act.

Conclusion

Nigeria is not the first country to introduce a bespoke law for start-ups. However, it is expected that the Act would revolutionize the start-up ecosystem and hopefully make Nigerian entities more attractive for investors.

That said, the success of the Act would depend on the level of inter-agency collaboration across multiple regulators, which tends to be a challenge, and could potentially undermine the objectives of the Act.