

Aurora

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THE NIGERIA START UP ACT AND ITS IMPORTANCE

INSIDE TOLG ADVISORS

BACKGROUND

The President of the Federal Republic of Nigeria gave his assent to the Nigeria Startup Bill 2021 (the “Bill”), effectively signing it into law as the Nigeria Startup Act 2022 (the “Act”). The Act seeks to establish a legal and institutional framework for the advancement of “labelled startups” in Nigeria, and to create an environment that encourages the formation, growth and operation of startups in Nigeria. The Act seeks to foster the growth of tech-related skills and place the Nigerian startup ecosystem as the foremost digital technology hub in the continent.

In this publication, we accentuate some of the notable features of the Act and the possible impact it is set to have on labelled startups, its employees, investors and service providers (stakeholders).

NOTABLE FEATURES OF THE ACT

1. ESTABLISHMENT OF THE NATIONAL COUNCIL FOR DIGITAL INNOVATION AND ENTREPRENEURSHIP

Notable among the key provisions in the Act is the establishment of the National Council for Digital Innovation and Entrepreneurship (the Council), which is comprised of the President and Vice-President of the Federal Republic of Nigeria serving respectively as Chairman and Alternate Chairman of the Council, as well as other stakeholders comprising of: the Honourable Minister for Communications and Digital Economy, who shall serve as the Vice Chairman of the Council; the Honourable Minister for Finance, Budget and National Planning; the Honourable Minister for Industry, Trade and Investment; the Honourable Minister for Science, Technology and Innovation; the Governor of the Central Bank of Nigeria; three representatives of the “Startup Consultative Forum”; two representatives from the Nigeria Computer Society; and the Director-General of the National Information Technology who shall serve as the Secretary of the Council. Some of the functions of the Council include:

- a) the formulation of policies for the realization of the objectives of the Act, and ensuring implementation of these policies;
- b) the creation of a pathway for the harmonization of laws which regulate startups; and
- c) the provision of support in form of grants to persons, research institutions and universities for the furtherance of technological development.

The Act engages the National Information Technology Development Agency (NITDA) as the Secretariat to the Council. The role of the Secretariat is designed to focus on the operational structure of the Council. The Secretariat is empowered by the Act to establish a ‘Startup Support and Engagement Portal (the Startup Portal) to deal ultimately with Startup registration process with relevant Ministries, Departments and Agencies (MDAs).

2. START UP LABELLING

By virtue of Section 2 of the Act, only companies that have been incorporated under the Companies and Allied Matters Act 2020 and have been granted the ‘Startup Label’ (the ‘Label’) in accordance with the provisions of the Act, come under the purview of the Act. This major development grants only companies that have been given the “Startup Label”, incentives provided by the Act (See Section 13). The Act also applies to organizations and establishments whose activities affect the creation, support and incubation of labelled startups in Nigeria.

A Startup Label is a certificate issued by the Secretariat to a Startup upon meeting the labelling requirements as provided in the Act. A Startup is eligible for labeling under the Act when:

- a) it is registered as a limited liability company under the Companies and Allied Matters Act 2020, and has been in existence for a period of not more than 10 years from the date of incorporation;
- b) its objects are innovation, development, production, improvement, and commercialization 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 the author of a registered software;
- d) it has at least one Nigerian as a founder or Co-founder of the startup, provided that the Nigerian founder or co-founder will share from profit or revenue from the sale of shares; and
- e) in the case of a sole proprietorship or partnership, it satisfies the conditions set out in paragraphs(b), (c) and (d) of this sub-section.

Paragraph (e) above suggests that the applicability of the Act extends to Startups set up as sole proprietorships and partnerships. However, a sole proprietorship and a partnership will be granted a 'pre label' status for a period of six months pending its registration as a company, and upon meeting the above set out conditions, it will be given a labelled startup status. Failure of its registration as a company, the pre label status will be stripped off.

To be granted a Startup Label, the Startup is required to apply on the Portal. The Portal Coordinator, with the approval of the Secretariat, enters the name and particulars of the Applicant in the Register of Startups and then issues a Startup Label to the Applicant. The Label is valid for a period of 10 years and will be prima facie evidence that the Startup has complied with all the requirements for labelling and has been labelled according to the Act.

By the provisions of Section 17, a Labelled Startup may however be stripped of its labelled status if it fails to abide by its obligations as set out in Section 16. A Labelled Startup whose labelled status has been withdrawn may apply to the Secretariat for its reissuance. (See section 18).

3. ESTABLISHMENT OF THE STARTUP INVESTMENT SEED FUND

Section 19 of the Act establishes a Fund known as Startup Investment Seed Fund (the “Fund”) to be managed by the Nigeria Sovereign Investment Authority (the “Fund Manager”), where on an annual basis, the sums from sources to be approved by the Council shall be paid. The Fund serves to provide Labelled Startups with financial assistance and to provide relief to technology laboratories, accelerators, incubators and hubs. The purpose of the Fund is to mitigate the challenges faced by Labelled Startups, technology laboratories, accelerators, incubators, and hubs by creating access to funding.

The Fund Manager is saddled with the responsibility of creating a grant budget and management framework to support research and development projects; issue a framework which sets out modalities to fund; and access to the Fund.

4. TRAINING, CAPACITY BUILDING AND TALENT DEVELOPMENT

The Secretariat is required to design and implement a Training and Capacity Building Programme through the Portal for training Startup Entrepreneurs and their employees. The Secretariat is further required to collaborate with the National Universities Commission, Universities and Polytechnics within Nigeria to develop modules, programmes, and hold workshops aimed at impacting knowledge necessary for the establishment and running of a Startup in Nigeria. The Secretariat shall also establish centres in the six geopolitical zones in Nigeria, to promote the utilization of digital technology and strengthen the Nation’s digital technology management capability.

5. TAX AND FISCAL INCENTIVES

The Act provides for certain tax reliefs and fiscal incentives for Labelled Startups, investors investing in a Labelled Startup, employees of Labelled Startups and foreign service providers.

5.1 INCENTIVES FOR LABELLED STARTUPS

Section 24 of the Act provides that a Labelled Startup within industries captured under the extant Pioneer Status Incentives (PSI) Scheme may apply to the Nigerian Investment Promotion Commission (NIPC) for the grant of the tax reliefs and incentives under the PSI Scheme.

The following are some of the tax reliefs and incentives provided by the Act in respect of a Labelled Startup:

5.1.1 PERCENTAGE BASED TAX RELIEF FOR A LABELLED STARTUP

The Act provides that in addition to any other tax relief, a Labelled Startup with a minimum of ten employees, 60% of which are employees without any form of work experience and are within three years of graduating from school or any vocation within the assessment period, shall enjoy tax relief from income tax of 5% of its assessable profits in the year of assessment in which the profits were generated. A Labelled Startup may only be entitled to the benefit of this tax relief for a maximum period of five years. This is as provided by Section 26 of the Act.

5.1.2 ACCESS TO EXPORT FACILITIES

Section 27 provides that the Secretariat shall ensure that a Labeled Startup involved in the exportation of products and services which are deemed eligible under the Export (Incentives and Miscellaneous Provisions) Act, is entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and the Export Adjustment Scheme Fund.

5.1.3 ACCESS TO GOVERNMENT GRANTS, LOANS AND FACILITIES

By the provisions of Section 28, the Secretariat shall ensure that a Labeled Startup has access to grants and loan facilities administered by the Central Bank of Nigeria (CBN), the Bank of Industry or other Bodies statutorily empowered to assist small and medium scale enterprises and entrepreneurs.

5.1.4 CREDIT GUARANTEE SCHEME

The Secretariat is required to establish a Credit Guarantee Scheme for the development and growth of a Labelled Startup; the main objectives of the Scheme is the provision of accessible financial support to a Labelled Startup; creation of a framework for credit guarantee for a Labelled Startup; provision of financial and credit information to Startups; and provision of Financial Management Capacity Building Programmes to Startups.



5.2 INCENTIVES AND RELIEFS FOR INVESTORS INVESTING IN A LABELLED STARTUP

Section 30 provides “the Federal Government, through the Federal Ministry of Finance and other Ministries, Departments and Agencies (MDAs) shall develop and implement a national policy for incentives for individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators or Incubators who invest in a labelled startup or in the startup ecosystem to enjoy tax credits on their investment. The section further provides that notwithstanding the provisions of the Companies Income Tax Act, an angel investor, venture capitalist, private equity fund, accelerators or incubators which invests in a labelled startup shall be entitled to an investment tax credit equivalent to 30% of the investment in the labelled startup. Moreso, Capital gains tax shall not be charged on gains that accrue from the disposal of assets by an angel investor, venture capitalist, private equity fund, accelerators or incubators with respect to a labelled startup.

5.3 TAX INCENTIVES FOR EMPLOYEES OF A LABELLED STARTUP

By virtue of Section 31, an eligible employee of a Labelled Startup shall be entitled to personal income tax exemption of 35% on the income of the employee for a period of two years from the date of engagement by a labelled startup. The criteria for the eligibility of the employee is to be determined by the Secretariat and the Joint Tax Board and consideration will be given to the minimum salary threshold; the level of technical skills and expertise; and compliance with registration formalities as may be required by the Secretariat, from time to time.

5.4 TAX INCENTIVES FOR EXTERNAL SERVICE PROVIDERS

Notwithstanding the provisions of any other law, foreign entities which provide technical, consulting, professional or management services to a Labeled Startup shall be subjected to a five percent (5%) withholding tax on income derived from the provision of such services, provided that the payment of the withholding tax, shall qualify as the final tax to be paid by a company not registered in Nigeria.



6. COLLABORATION WITH RELEVANT REGULATORS AND INVESTMENT PLATFORMS

The Act seeks to ease administrative and compliance processes for Labelled Startups, by designating separate sections on the Portal for relevant Regulators. Essentially, Labelled Startups can now rely on the Portal as a one-stop shop that eases access to other Regulators. Accordingly, there will be a designated section on the Portal for the Corporate Affairs Commission, the Nigerian Copyright Commission, the Trademark, Patent and Designs Registries, the National Office for Technology Acquisition and Promotion, the Securities and Exchange Commission, and the CBN. Specifically, Labelled Fintech Startups will benefit from a designated section in the Portal that eases licensing procedures and regulatory interface.

CONCLUSION

Considering the anticipation of the Act since its presentation at the National Assembly in 2021, the provisions of the Act are no doubt revolutionary as well as impactful to investors, founders and other stakeholders in the Nigerian business environment.

This write up was done by the Finance, Corporate and Commercial & Securities, Mergers and Acquisitions Team of TOLG's Transactions Practice



TOLG Advisors is pleased to officially announce the closing of the N10 billion Shelter Afrique Facility in favour of BB Landmark Realty Limited.

We acted as Transaction Counsel on this deal and we are proud to be the law firm to have advised on this deal.



We are pleased to officially announce the closing of the N4.88 billion series 1 Commercial Paper Issuance exercise under the N20 billion Commercial Paper Programme.

We acted as transaction counsel on this deal and we are proud to have advised on this deal.



TOLG Knowledge Sharing Session

The firm organized an enlightening and intriguing session on “Real Estate Financing; Overview, Dynamics, Structuring and Documentation” which was undertaken by Head of Corporate Finance, Landmark Group, Senami Amusu.



Quarterly TGIF Hangout

In line with the Firm’s Culture of Energy, Fun and Sophistication, a football and pool tournament amongst the Staff of the Firm and associating Firms (BEX, FMO and AX) was organized. This facilitated team bonding and enabled the Staff unwind from the activities of the previous quarter.

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