

TEMPLARS Legislative Watch: “Start-Up” Bill Passes 2nd Reading

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INTRODUCTION

29th March 2022: The Nigerian Senate announced through its official Twitter handle that the Bill for an Act to Provide for the Creation and Development of an Enabling Environment for Technology-Enabled Start-ups in Nigeria and for related matters, 2022 (the “**Start-Up Bill**” or “**Bill**”) has passed its second reading. The Bill is a joint initiative by the government and the Nigerian tech community aimed at creating a clear regulatory framework for the Nigerian tech ecosystem.

NOTABLE PROVISIONS

Under the Bill, a start-up is defined as 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 technology innovative production, service, or process.¹

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

The Bill seeks to establish a council known as the National Council for Digital Innovation and Entrepreneurship (the “Council”). The Council shall include the President, the Vice-President, Specific Ministers, the Governor of the Central Bank of Nigeria, the Director-General of the National Information Technology Development Agency and representatives of the Start-Up Consultative Forum.

¹ Section 50 of the Start-Up Bill.

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The Council shall be responsible for formulating and providing general policy guidelines for the realization of the objectives of Act (when eventually passed) and the review of policies and directives of Ministries, Departments, and Agencies (MDAs) which may affect the operation and establishment of start-ups including investments in the start-up ecosystem.²

2. STARTUP LABELLING PROCESS

The Bill provides for a start-up labelling process whereby eligible start-ups are granted a label for the purpose of accessing the benefits and incentives under the Bill.

For a start-up to be eligible for such labelling, it must be a Nigerian company incorporated under 10 years previously with at least one Nigerian as a founder or co-founder and its objects must border on innovation, development, production, improvement and commercialization of a digital technology innovative product or process; it is a holder of a repository of product or process of digital technology or is the owner or author of a registered software.³ Labelling is a prerequisite to benefit under the proposed law.

3. INCENTIVES

The Bill provide incentives for labelled start-ups as well as investors by way of tax reliefs and/or tax rebates. For example, a labelled start-up may be entitled to exemption from the payment of companies income tax or any other tax chargeable on its income or revenue for a period of 4 years.

Where the labelled start-up has a minimum of ten employees, 60% of which are with no work experience or within three years of graduation, it would enjoy tax relief from income tax of 5% of its assessable profits for a maximum period of years.⁴ Labelled start-ups also have access to grants and loan facilities from the Central Bank of Nigeria (CBN), the Bank of Industry, and other statutory bodies empowered to assist small and medium scale enterprises. Additionally, angel investors, venture capitalists, private equity funds, accelerators, or incubators that invest in labelled start-ups could be entitled to an investment tax credit.⁵

² Section 7 of the Startup Bill.

³ Section 13 of the Startup Bill.

⁴ Section 25 & 26 of the Startup Bill.

⁵ Section 30 of the Startup Bill.

4. INTELLECTUAL PROPERTY RIGHTS

The Bill recognises the importance of intellectual property rights to the growth of start-ups and has made provision for easy and timely registration of intellectual property such as copyrights, trademarks, and patents for labelled start-ups. This will be done in collaboration with the Nigerian Copyright Commission (NCC). The idea is to create an ease of registration portal for labelled start-ups.

5. STARTUP SUPPORT AND ENGAGEMENT PORTAL

A start-up portal will be created to serve as a platform through which start-ups could complete mandatory registration processes with relevant Ministries, Departments and Agencies⁶ including the CBN and the National Office for Technology Acquisition and Promotion.

6. CROWDFUNDING

The Bill provides an opportunity for start-ups to raise funds through crowdfunding intermediaries and commodities investment platforms (“platforms”) duly licensed by the Securities and Exchanges Commission (SEC), such that these platforms will be available on the start-up portal.⁷

7. TRANSFER OF FOREIGN TECHNOLOGY

The Bill provides for a seamless process and ease of technology transfer registration and provides a discount on all fees for labelled start-ups.⁸

8. ESTABLISHMENT OF TECHNOLOGY DEVELOPMENT ZONE

The Bill seeks to introduce a free zone element into the start-up ecosystem, such that where a start-up, accelerator, or incubator is carrying out approved activities within the technology development zone, they will be entitled to incentives that are provided under the Nigerian Export Processing Zones Act.⁹

The introduction of a bespoke regulatory framework for start-ups is on the rise. For example, Tunisia became the first African country to pass the Start-up Act and subsequently, other African

⁶ Section 10 of the Startup Bill.

⁷ Section 35 of the Startup Bill.

⁸ Section 36 of the Startup Bill.

⁹ Section 45 of the Start-up Bill.

countries like Senegal, Kenya, and Ethiopia have taken steps in this direction. Therefore, it is safe to suggest that the Nigerian start-up bill is a step in the right direction with the objective of codifying the desire to provide an enabling environment for start-ups in Nigeria.

CONCLUSION

The law making process requires that a bill passes through the first reading, the second reading, the committee stage, the third reading and passage. Given the bicameral nature of Nigeria's legislature (The Senate and House of Representatives (HOR)), once a bill is passed by one chamber, it is forwarded to the sister chamber for concurrence before it is deemed passed after which it is presented to the President for assent

Although the Bill has passed second reading, it is still expected to go through the committee stage, third reading and concurrence by the HOR before presidential assent. Based on the current status and considering the fast approaching electioneering season, it is unlikely that this Bill will be passed and presented for assent before Q4 2022 unless it due to political will, it is subjected to an accelerated process.

We follow the progress of the Bill in the National Assembly and provide updates when necessary.