MINERVA LEGAL

A START-UP ACT FOR NIGERIA: NECESSITY OR SUPERFLUOUS?

MAY 2021

It is an undeniable fact that the acquisition of Paystack by Stripe being the first-ever start-up out of Nigeria to get into the Y Combinator accelerator program and the deal in which Flutterwave secured $170 million from a leading group of international investors as part of a successful Series C round, underscores two interesting points. These deals illustrate a landmark achievement for the African start-up scene, and notably, firmly places Nigerian entrepreneurs on the global map.

As more countries adapt to the expanding digital universe created by the COVID-19 pandemic, there has been a boom in the technology ecosystems across the African continent. The proliferation of fintech services across Africa remains at its full potential as investors remain bullish about the opportunities that exist in abundance in the sector. It is, therefore, prudent to create an enabling environment in Nigeria, where start-ups, including those in the fintech industry can flourish by benefitting from tax breaks and lax regulatory environment.

In response to the need to stimulate economic development and innovation, there has been a growing campaign geared towards pushing the Nigerian government to promulgate supportive legislation aimed at fostering the creation and growth of its start-up ecosystem.

Access to capital amongst other factors remains a major constraint for entrepreneurs in Nigeria. This is compounded by the fact that investors are often reluctant to start, grow and scale an innovative business; citing weak infrastructure, instability and regulatory uncertainty as key reasons.

Prior to the COVID -19 pandemic, the greatest concerns for investors across all sectors included but was not limited to regulatory, fiscal and monetary policy, and foreign exchange volatility risks. Undoubtedly, these business risks continue to significantly impact on their confidence to invest in Nigeria to date. The directive by Central Bank of Nigeria issued on the 5th of February 2021, instructing deposit taking banks and other financial institutions to forthwith close all accounts transacting in or operating cryptocurrency exchanges is a good case in point. The decision by Lagos State Government in August 2020 imposing a 10% service tax on Uber, Bolt and all e-taxis further buttresses the regulatory uncertainty that poses concerns for potential investors.

With increasing funding rounds and huge investment potentials, it cannot be overemphasized that there is a compelling argument to increase confidence and sustain optimism for doing business in Nigeria. Informed by this overwhelming economic desideratum; start-up leaders, investors and representatives from the government in May 2021 held a virtual townhall meeting with the theme "Making Laws Work for Start-ups in Nigeria", which focused on the development of a legal framework dealing with majority of the challenges start-ups may encounter in Nigeria.

The virtual meeting concluded on the premise that a comprehensive legislative framework largely informed by the peculiarities of doing business in Nigeria points in the right direction.

It is worth mentioning that Start-up Acts are not an entirely new concept. Italy was the first country to enact a Start-up Act specifically designed to spur innovation and foster entrepreneurship in 2012. The enactment of Start-up Acts in Tunisia and Senegal in 2018 and 2019 respectively, paved the way for multiple proposals in other African countries that reflect growing interest in improving the enabling environment for start-ups and investors.

With the technology sector contributing significantly to Nigeria's overall GDP and the urgency to bolster its innovative ecosystem through supportive legislation, it is imperative that the proposed Start-up Act should be structured in line with global standards, taking into account that most of the funding from venture capitalists emanates from foreign inflows.

While there is no clarity on the provisions of the first draft of the bill, it is however apparent that the Start-up Act is expected to contain provisions addressing access to funding. It is also expected to offer tax incentives and start-up grants to foster overall economic growth and sustain the viability of start-ups.

Further, it is our view that the Start-up Act should bring together relevant government agencies to a single location, similar to the One Stop Investment Centre to provide fast-tracked services for obtaining relevant information, registration documents, business entry approvals, licenses, permits, etc.

It is, however, pertinent to mention that there are extant laws regulating businesses in Nigeria at every stage of their lifecycle such as the Companies and Allied Matters Act 2020 (which governs the formation and management of business entities in Nigeria) and the Finance Act 2019 (which fosters active fiscal supervision geared towards stimulating the economy and creating an enabling environment for sustainable development).

It is also worth mentioning that the laws mentioned in the preceding paragraph were recently enacted to deal with majority of bottlenecks businesses including start-ups may encounter in Nigeria.

The Companies and Allied Matters Act was amended to introduce provisions that would encourage the development of start-ups such as single-shareholder companies, a reduction in the cost of incorporation and filing fees, the introduction of Limited Liability Partnerships, and the exemption of single-shareholder companies from having Annual General Meetings.

The Finance Act of 2019 also introduced amendments to our tax laws such as the exemption of small companies (companies with a gross turnover of NGN25m or less) from paying Companies Income Tax, amongst other notable provisions.

In view of the recently enacted legislations, it is arguable that an alternative to the proposed Start-up Act would be to amend existing business laws to specifically accommodate start-ups and its growing ecosystem. One school of thought is of the view that amendments to our laws may not be sufficient to cater to start-ups considering that they are dynamic, disruptive and its life cycle is usually 5-7 years.

We expect the bill to be ready as early as August 2021 with input from business leaders as well as Federal and State stakeholders from the executive and legislative arms of government.

Given the fact that startups usually find complying with all financial and regulatory requirements onerous, it is our opinion that the Start-up Act should be holistic, and importantly complement existing laws. To this end, a well drafted law specifically suited for start-ups will solve the ecosystem's main bottlenecks, thus creating an enabling environment in which they can flourish through the different stages of its lifecycle, from incorporation to expansion and maturity; and importantly, support efforts to rebuild the economy that has been negatively impacted by the Covid-19 pandemic.

For more information on the regulation of start-ups, visit www.mlpng.com or contact us at Minerva Legal, 18b Hunponu-Wusu Rd, Lekki Phase I, Lagos, Nigeria. Telephone: 01.632.5555.