More than ever, innovation remains one of the key features of the 21st century with technology startups developing solutions which companies are leveraging on to disrupt their industries and consequently, improve service delivery and other socio-economic challenges. Nigeria is not left behind with the steady rise of technology startups from FinTechs disrupting the financial services space to Agritech. Despite the massive impact these startups have on the Nigerian economy, they however, still experience difficulty in procuring the necessary legal/financial expertise to navigate the risks associated with their venture. We have addressed a few legal issues they may need to consider for their venture in Nigeria.
LEGAL STRUCTURE

A legal structure is the entity you set up for your business. Your Startup may operate as a Sole proprietorship (AKA Business Name), Partnership or a limited liability company. The type of legal structure selected for a startup will affect the growth of the startup, with respect to taxes, the amount of paperwork required to do, the personal liability and ability to raise funds.

For a technology startup, the limited liability company is the most suitable structure to enable the founders create some legal structure around their business. Before commencing business, the subscribers must first comply with all the incorporation requirements and other requisite permits and licenses that the company must acquire for its operations which may be dependent on the sector in which the startup intends to operate (for instance, CBN license for FinTechs, NCC license, NOTAP and NITDA approvals). Also the startup must procure expatriate quota for foreign personnel if it intends to bring in foreigners as shareholders.

Registration and Protection of Intellectual Property Rights

Since technology startups are focused on innovations, inventions, and transformation of ideas, it is characterized by the use of distinctive names, logos, slogans, domain names, shape or sound, all of which are registrable with the Patent and Trademark Registry. The registration provides legal protection against thefts and other infringements. Where there are infringements, an action may be commenced at the Federal High Court for damages and/or an injunction restraining the person from continuing the infringement.

Taxation and Tax Exemptions

Apart from the 30% Companies’ Income Tax Act payable by every company, the employees of the company are also subject to personal income tax including the expatriates, if any. However, fiscal incentives in form of duty waivers, tax exemptions/holidays, accelerated capital allowances e.t.c., are available to the companies in business of installation of scientific instruments and communications equipment, manufacture of telecommunications cables, production of ICT equipment, e-commerce services and software development and publishing.

NOTAP Registration

National Office for Technology Acquisition and Promotion regulates the transfer of foreign technology or technical expertise to Nigeria, and the business of technology in Nigeria for now is substantially reliant on the importation of both. These Agreements must be registered with NOTAP as a pre-condition for obtaining approval to repatriate in foreign currency any dividends or fees that may be due to the foreign partner of the startup.

The Role of National Information Technology Development Agency (NITDA)

NITDA registers every technology company in Nigeria and its responsibility also includes regulation, monitoring, evaluation, and verification of the progress made in the technology sector under the supervision and coordination of the Ministry of Communications.

Contractual Arrangements

In ensuring a viable technology business, the following agreements are required both pre and post incorporation as the case may be:

- Shareholders/Founders Agreement contains provisions relating to the decision making powers of the
founders and it is important because it provides for the entire rights and obligations of the founders of the business enterprise and their relationship with the company that is being established.

- Non-Disclosure Agreement (NDA) which usually contain non-circumvention clause protects the confidentiality of information shared between parties. It restricts third party access to the information shared and is enforceable when breached.

- Intellectual Property (IP) Assignment Agreement is used to assign intellectual property rights to the incorporated entity for the benefit of the startup.

- Invention Assignment Agreement assigns the rights that may arise during the lifetime of the startup and is usually drafted in a “futuristic” manner such that it assigns to the company, all intellectual rights that may be developed whilst executing tasks in the ordinary course of the startup’s business.

- Vesting Agreement provides for benefits, privileges, authority, rights, or interest in an asset or property to accrue to a party and at what time. It guarantees the continuous involvement of the original shareholders for a specified period of time and where one of the founders or shareholders decides to disengage from the project before the specified period; he or she is entitled to the shares that have vested as at the time of disengagement from the venture.

Conclusion

The pervasive nature of technology has made it a critical element in driving the 21st century economy. Whilst the vehicle to conduct the business is important there is also need for contractual documentation between founders and service providers which must properly assess and allocate risks to the party most appropriate to bear such risk. Lastly, there is need to navigate the regulatory maze in Nigeria to ensure that the business is compliant.

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