

Business Start-Up Guide

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COMMERCIAL AND LEGAL CONSIDERATIONS FOR START-UPS WHEN
GETTING INVESTMENT READY



Commercial and Legal Considerations for Start-Ups when Getting Investment Ready

There are a number of commercial and legal realities that are important in starting up a business in Nigeria. However, many MSMEs unfortunately ignore these matters and usually run into roadblocks after the business has progressed, sometimes with dire financial consequences. Taking care of these matters early-on makes a start-up investment ready and increases the business' ability to pitch investors. Below are some of these matters:





1. Incorporate a Company

Businesses are better run under corporate structures than in the owner's personal capacity. A company allows a business owner/ operator to separate his/ her business interests from the personal ones. A company also allows the entrepreneur to bring in partners to join in the business – both technical and financial partners, as investors and not simply contractors or lenders. Title to business assets are also better held in the company name so that all business partners have their interests secured in the property. A company is also a better vehicle for seeking funding, investments and loans scaling up is being considered. There are also tax considerations that make a company a better structure to do business with. It is generally commercially advantageous to incorporate a company when doing business in Nigeria.



Joint entrepreneurs and early stage investors are encouraged to enter into agreements (founders agreements or shareholder agreements, depending on which is applicable) which define their rights and obligations to the business and to each other. This is an important early stage endeavour to protect all parties' interests as the business progresses. Founders Agreements and Shareholders Agreements do this by making explicit each party's equity interest in the business/ company as well as how much equity the founders are willing to allot to potential investors. These agreements also discuss the direction of the company and include protections for minority and majority shareholders.

2. Execute Founders Agreement and/ or Shareholders Agreements.



3. Protect all Intellectual Property Rights

Entrepreneurs should also seek to protect whatever intellectual property rights they have developed for the business to protect their exclusive right to use, reproduce and market their business using those properties. This includes copyright, patent, and trademark protections. Registering a trademark protects the entrepreneur's exclusive right to use a particular brand name or logo for its business. Copyright protection grants the entrepreneur the exclusive right to reproduce a literal or artistic work in any other form. Registering a patent grants the entrepreneur the exclusive right to make, use, sell or distribute the patented invention. It is important for early stage entrepreneurs to register their intellectual property rights to prevent exploitation by other parties as the business courts investors.



4. Ensure Regulatory Compliance

Entrepreneurs should ensure that all legal and regulatory requirements are fulfilled or plans are being made to fulfil them using incoming investments. Compliance issues are usually of a legal nature and include matters such as licensing, tax, employee management and corporate filings. A business is exposed to fines and penalties where it is not regulatory compliant.

Should I Hire A Lawyer?



5. Yes, hire a lawyer.

Though listed here as the last, this should be the first step a start-up should take - hire a darn good commercial lawyer. Hiring a lawyer to represent the SME/ startup and its interests with investors and between the founding partners is an important part of getting investment ready. A lawyer will advise on the appropriate structure and assist with investor engagement. A commercially minded lawyer will ensure that both the investor and startup founders understand each other's terms and are in a well-structured partnership. All legal and regulatory matters that are necessary to be investment ready will be quickly anticipated and handled by a lawyer when one is onboarded with the startup in its formation stages.

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