

A photograph of a green tractor in a field, partially obscured by a dark green overlay on the left side of the cover. The tractor is positioned in the middle ground, facing right. The background shows a field of tall grass under a dark, overcast sky.

FOUNDERS GUIDE ON AGRITECH IN NIGERIA

DECEMBER 2020



TECH HIVE

ADVISORY

About Tech Hive™

Tech Hive Advisory Limited is a technology advisory firm which provides advisory and support services to private and public organisations with regards to the intersection between technology, business, and law. We focus on how emerging and disruptive technologies are altering and influencing the traditional way of doing things while acting as an innovation partner to our clients. These new technologies often birth new challenges requiring regulations to balance the benefit of innovation and the rights and freedoms of users. Our experience and capability extends across startup advisory, privacy and data protection, data ethics, cybersecurity, intellectual property management and emerging technologies. We ensure our advice serves our clients well by having an excellent understanding not only of their business, but of the markets in which they operate.

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Usage of the Guide

The Guide is general and educational in nature and is not intended to provide, and should not be relied on, as a source of legal or business advice. This information and material provided in the Guide may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.

INTRODUCTION

Innovation remains the bane of success in the 21st century. Thus, industries and sector specific startups are continuously using technology advancements as a leverage to ensure optimum productivity, efficiency and profitability. Nigeria is also not left behind in this trend with the steady rise of tech startups disrupting the Financial Services sector to the Agricultural sector, Property, Insurance, etc.

The 'digitalization' of the agricultural industry as well as other sectors has many negative challenges it would need to overcome. Issues such as cyber security and data protection, labor replacement, re-education and the risk of creating a digital divide between economies are the very reasons why it is important that this digitization process is guided by adaptable rules and regulations. For the purpose of this guide, only laws and policies that affect Agritech startups in their attempt to employ agricultural technologies in meeting local market needs would be highlighted.



LEGAL FRAMEWORK

a) Legislations

The 1999 Constitution of the Federal Republic of Nigeria

Agriculture and Commerce under the Nigerian Constitution is within the purview of the concurrent legislative list and is thus governed by a plethora of laws and regulations at both the federal and states levels.

Companies and Allied Matters Act, 2020

The Corporate Affairs Commission is the body established by Section 1 of the Companies and Allied Matters Act for the administration as well as the regulation and management of companies and more specifically in this case Agritech startups.¹

An Agritech startup may operate as a Sole proprietorship, Partnership or a limited liability company. The type of legal structure has the capacity to directly affect its taxes, liability and ability to raise funds. For a technology startup, the limited liability company is the most suitable structure to enable the founders to create some legal structure around their business.

¹ Section 1 of CAMA 2020

Finance Act, 2020

The Finance Act introduced various changes to the various tax legislations in Nigeria and by extension, some of these changes may affect the tax implication of some startups.

The Act proffers a new basis for computing Company Income Tax with an implication of a 0% tax burden on some startups. The Act exempts small companies (companies with turnovers of less than N25,000,000) from paying minimum tax. In addition, medium sized companies (with turnovers between N25,000,000 and N100,000,000) are now required to pay a lesser rate of 20% as CIT; however, the former CIT rate of 30% is still applicable to large companies (companies with turnover above N100,000,000).

The Act also mandates that payment of company income tax be applicable to companies' online or digital services or goods who have a significant economic presence. This expands the purview of taxable revenue by including tech startups, in this particular case, Agritech startups, e-commerce platforms, cloud storage platforms etc.

Investment and Securities Act, 2007

The Investment and Securities Act 2007 establishes the Securities Exchange Commission as the overall regulator of the capital market and acts as a supervising authority for mergers, acquisitions and business combinations in Nigeria and generally may regulate **investment and securities** in business, especially in the area of Mergers, Acquisitions, Take-Overs, and **Collective Investment Schemes**.

It is pertinent to note that there are a plethora of Agritech startups whose businesses are modelled and formulated around Collective Investment Schemes (Crowdfunding) which brings them under the supervisory and regulatory purview of the Securities Exchange Commission. A draft guideline on Crowdfunding (discussed later in this guide) has since been released by the Securities Exchange Commission for stakeholder comments and concerns in a bid to secure the security and safety of the investing public.

Federal Competition and Consumer Protection Act (FCCPA), 2018

This Act is the regulatory oversight for mergers and acquisitions in Nigeria. The Act functions majorly to eliminate anti-competition practices, regulate mergers, takeovers and acquisition as well as settle disputes in industries.

The Act establishes Federal Competition and Consumer Protection Commission and Consumer Protection Tribunal ("FCCP Tribunal") as independent bodies to, among other things, promote open, free and fair competition in the markets, eliminate monopolies, abuse of Dominant Market Position, price-fixing as well as imposing penalties for these restrictive trade and business practices enshrined in the FCCPA.

The FCCPA thereby encourages Agritech startups by largely eliminating unfavourable market practices and conditions. However, these startups are by the Act mandated to only churn out goods that are impliedly of good and reasonable condition, of good quality, not defective and in good, fit for purpose condition.

Land Use Act, 1978

The Nigerian Constitution and the Land Use Act 1978 (LUA) guarantees the right of every Nigerian, including registered Nigerian companies, to unrestricted access to possess and enjoy land in all parts of Nigeria whether for agricultural or other purposes. This can be done through obtaining a certificate of occupancy from the State Governor or local government to undertake agricultural business.

As is the case for non-Nigerians, they cannot acquire an absolute interest in land under the applicable Native Land Acquisition Laws of each state in Nigeria, but may acquire a leasehold interest. However, if a foreign agricultural company is registered either as a Nigerian company (private or public) under the Companies and Allied Matters Act 1990 CAMA, the foreign company automatically gains the rights and privileges of natural persons, with a right to acquire an interest in land from government or private entities.³

Nigerian Data Protection Regulation, 2019 (NDPR) and CyberCrime Act, 2015

An unavoidable aspect of the digitization of any sector or industry would require customers disclose sensitive private information about themselves over the internet. Such could include: credit card details, bank account details, names, addresses, employment status, age, marital status, family and ethnic background of an individual. As a result of the continuous processing of data, there is a need to actively ensure the safety and security of such data.

The Nigeria Data Protection Regulation, 2019 and the Nigerian CyberCrime Act, 2015 contain certain provisions that aim to ensure that any Agritech startup or entity complies with the relevant data protection principles.

Agritech startups largely classify as data controllers under the NDPR as they are mostly committed to connecting small-scale farmers to finance through peer-to-peer financing systems. Thus, these Agritech startups are obligated under the NDPR to put in place adequate security systems to protect data they process. One of the ways they are expected to do this is by publishing their Privacy Notice which must be in line with the NDPR standards on all platforms through which data is collected or processed. Data controllers must also obtain consent or have a lawful basis or a legitimate interest for using data.

The Regulation also spells out the need to continuously train and build the capacity of staff members on data protection and privacy as well as appoint Data Protection Officers if necessary for the purpose of ensuring compliance with the Regulation.

Furthermore, data controllers may only transfer data to foreign countries or international organizations subject to the supervision of NITDA and the Attorney General of the Federation.

² Section 3 of the Consumer Protection Council Act
³ section 38, CAMA

Labour Act, Cap L1, LFN 2004

The Nigerian Labor Act is the primary legislation which regulates the relationship between an employer and its employees. Thus, the labor-act is instrumental and instructive for any Agritech start up in all matters related to employee contracts, payment of wages, trade unions and other labor associations, rest hours, sick leave, and holidays for employees, maternity and paternity leave, transfer of employment, termination of employment.



Trademarks Act, Cap T13, LFN 2004 and Patent and Design Act, Cap P2, LFN 2004

Since technology startups are focused on innovations, inventions, and transformation of ideas, they are 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. Where there are infringements, an action may be commenced at the Federal High Court for damages and/or an injunction restraining the entity/person from continuing the infringement.



Sales of Goods Act, 1893

Liability can attach under the Sale of Goods Act where the startup sells or deals with third parties who deliver goods that are unfit for the purposes of purchase, un-merchantable and do not match the description. The Act applies to most states in the Northern and Eastern region while The Sale of Goods Law will apply to states in the Western Region.



National Agricultural Seeds Council Act, 2019

The Act generally promotes greater sector participation in the seed subsection in line with the current agricultural seed policy globalization and export trade promotion. The Act itself makes no reference to technology in improving the agricultural sector, however, its provisions to promote the seed industry, protect farmers from poor quality sales, facilitate the production and marketing high quality seeds are in line with Agritech goals. Thus, the provision of the Act can be applied to Agritech startups interested in the seed industry. The Livestock Breeds and Crop Variety Registration, Testing and Release Act also contains some similar provisions.



B. Proposed Legislations

Proposed Rules on Crowdfunding.

In a bid to better regulate crowdfunding in Nigeria, SEC released in March 2020, a new proposed guideline for Micro, Small and Medium Scale Enterprises incorporated in Nigeria with a minimum of two years' operating track record. The proposed guidelines stipulate the requirements for eligibility, one of which is a minimum paid-up share capital of a 100 million naira as well as clarity on the capability of companies not incorporated in Nigeria to engage and trade in crowdfunding.

The proposed guidelines also stipulate that small and medium enterprises can raise funds via crowdfunding up to a maximum of between N50 million (\$127,730) to N100 million (\$255,461) depending on their scale.

The maximum investment limit is also set to not exceed 10% of annual income in a calendar year for retail investors however sophisticated, high net worth and qualified institutional investors are exempted. According to the rules, funding requests must not last beyond 60 days. If it extends, the issuer must close or withdraw the offering and give investors the chance to withdraw their interest within 48 hours.

Plant Variety Protection (PVP) Bill, 2019

The Plant Variety Protection (PVP) Bill, which is currently in the senate, aims to protect patent-like rights of Breeders, Developers and Owners of plant varieties. The Bill seeks to protect the intellectual property of Seed Breeders and developers in order to bring distribution of fake seeds leading to low productivity for farmers and the loss of millions to the barest minimum.

National Fertilizer Bill, 2019

The Fertilizer Control Bill is targeted at establishing an environment conducive for private sector investment in the fertilizer industry. The Bill safeguards the interest of the farmers against nutrient deficiencies, adulteration, misleading claims and short weight of fertilizers thereby ensuring that a minimum standard in terms of nutrient quality is being maintained.



C. Policies

Nigerian Agricultural Policy (2016-2020)

Nigeria has a robust agricultural policy set out in the Nigerian Agricultural Policy 2000, which provides the framework for the implementation of programmes and guidelines for agricultural development. The objectives of the Policy are:

- The achievement of self-sufficiency in basic food supply and attainment of food security;
- Increased production of agricultural raw materials for industries;
- Eradication of poverty;
- Development of the rural economy; and
- Protection of the environment.

This is expected to be achieved through the creation of a conducive macro-environment to stimulate great private sector investment in agriculture. The Nigerian Agricultural Policy does not make mention of Agritech, however, its general provision which is synonymous to any Agritech's goal is to promote the development of the Agricultural sector.

There are also no restrictions on foreign direct investments in agriculture, and under the Agricultural Policy, it is generally welcomed by the Federal and State Governments. A private foreign company wishing to set up business operations in Nigeria must take all steps to become legally incorporated. Until incorporated, the foreign company may not carry on business in Nigeria or exercise any of the powers of a registered company.

State Agricultural Policies

Agriculture is a concurrent matter therefore allowing both Federal and State Governments to make laws concerning agricultural development.⁴ Every State may have its own agricultural policy and accord priority to crops that have comparable advantages, but in most cases, state agricultural policies mirror federal agricultural policies.

Agricultural Transformation Agenda

The Agricultural Transformation Agenda (ATA) seeks to support agriculture by introducing business-like practices to the sector. The policy has prompted a renewed interest in agriculture, particularly among investors. One of the policy's key achievements was to restructure the nationwide fertilizer procurement system.⁵ To combat inefficiencies and fraud with the input subsidy scheme, the government established the Growth Enhancement Support Scheme (GESS) in 2011. Through the GESS, farmers received vouchers for subsidized fertilizers and seeds directly on their mobile phones through an electronic wallet provided by Cellulant, a mobile payments provider.⁶

Agriculture Promotion Policy, 2016

Following the introduction of the ATA, the government launched the Agriculture Promotion Policy (2016–2020) in 2015, as well as several agricultural development initiatives.

National Policy on Biotechnology, 2001

In 2001, Nigeria adopted the national policy on biotechnology and by 2002, had ratified the Cartagena Protocol on Biosafety. It contains the Federal Government's policy on the development, release, and commercialization of living modified organisms (LMOs) and genetically modified organisms (GMOs), including biotechnological products in Nigeria. This policy is adoptable in relation to biotechnology in agriculture.

⁴ (Schedule II, 1999 Constitution of the Federal Republic of Nigeria)

⁵ Tralac (25 July 2016), Nigeria: Agriculture Promotion Policy 2016–2020.

⁶ Tricarico, D. (2016). Market size and opportunity in digitizing payments in agricultural value chains. GSMA

OTHER CONSIDERATIONS

Considerations for Starting an Agritech Business in Nigeria

Starting an Agritech business in Nigeria is similar to starting any other business. The first consideration is the choice of business formation. There is an option to start out under any of the business formations recognised under the law. The Companies and Allied Matters Act 2020 allows a business to set up as either:

- a) Business Name;
- b) Company Limited by Shares;
- c) Limited Partnership; and
- d) Limited Liability Partnership

At this stage, the founding members coming together to establish the business should be considering the ownership structure, obligations and responsibilities, vesting of shareholding, mode of operational activities, etc. These considerations can be contained in agreements such as:

- a) Founders Agreement;
- b) Shareholders Agreement;
- c) Vesting Agreement;
- d) Employment Agreement.

Post-Incorporation Considerations

After incorporation, the newly formed entity is ready to commence business. The immediate pin points will be around getting other necessary approvals and certifications where required.

For example, for a company with foreign shareholding, it would be prudent to register with the Nigeria Investment Promotion Commission ("NIPC") in order to access certain foreign investment incentives available. Also, a company with a foreign employee must apply for a business permit and expatriate quota from the Nigerian Immigration Service in order to legally retain such employee.

Other considerations include registration with the relevant tax authorities within the state of business operations, registration for statutory contributions for employees with the Nigerian Pension Commission, National Housing Fund Scheme, National Social Investment Trust Fund.

In the event of some technology transfer into Nigeria for the purposes of the operations, the company would require registration with the National Office for Technology Acquisition and Promotion (NOTAP).

Furthermore, protecting the intellectual property (copyright, trademark, patent and industrial design) through registration under the appropriate framework of Nigerian law is also paramount to the growth of a business.

Finally, it is important to pay attention to relevant documentation and agreements including but not limited to;

- Privacy Notice
- Terms of Use
- Non-Disclosure Agreements;
- Liability Disclaimers;
- License Agreements;
- Memorandum of Understanding;
- Agreements with vendors and third parties

Raising Capital and Dealing with Investors

Access to capital is one of the biggest challenges start-ups face in Africa. It is even more evident in niche/specialist areas like Healthtech which has received lesser investment when compared to the Fintech space. The reasons for the funding disparity in these sectors are numerous but can be managed effectively with adequate and quality professional advice.

We have highlighted the following items below for special consideration when raising equity or dealing with investors:

- [Traction](#);
- Pitch Deck;
- Investor Network;
- Financial Statements;
- Information Memorandum;
- Term Sheet;
- Memorandum of Understanding;
- Convertible Notes
- Simple Agreement for Future Equity;
- Investment Agreements;
- Joint Venture Agreements
- Loan Agreements;
- Shareholders Agreement;

We have written extensively on [Fundraising](#) mistakes to avoid and on [choosing equity or debt](#) for raising capital for businesses.

Consumer Protection

The Federal Competition and Consumer Protection Commission Act seeks to protect consumer rights in Nigeria. The continuous development of consumer-centric platforms by Agritech companies has made consumer rights very crucial. Without these rights, consumers would be left open to unconscionable and unfair trade practices, price gouging, market competition, distortion, as well as infringement on their rights.

Section 130 to 133 of the Act protects consumers. These provisions place emphasis on timely and quality performance and service, delivery of goods free of defects, merchantable products and delivery of products that comply with prescribed standards and practices. In addition, Section 125 prohibits false, misleading and deceptive marketing to consumers. The implication of this is that Agritech companies and platforms cannot make false representation as to the quality of their products or services.

CONCLUSION

Technology has become instrumental in helping solve long standing problems and the agricultural sector is not left out. In more recent times, Agritech startups have been instrumental in improving yield, efficiency and profitability in the agricultural sector.

However, if these improvements are to continue to change the face of agriculture in the country, there is a need for a more robust framework that defines their mode and pattern of operations, role as well as their limitations.



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