

THE NIGERIA STARTUP ACT 2022: HIGHLIGHTS OF ITS FRAMEWORK AND NOTES ON ITS PROSPECTS



BACKGROUND

On 19 October 2022, the President of the Federal Republic of Nigeria gave his assent to the Nigeria Startup Bill 2021 (the **Bill**), effectively signing it into law as the Nigeria Startup Act 2022 (the **Act**). In the main, the Act serves to establish a legal and institutional framework for the advancement of labelled startups¹ in Nigeria, and to create an environment that encourages the formation, growth and operation of startups in Nigeria. More so, the Act seeks to foster the growth of tech-related skills and place the Nigerian startup ecosystem as the foremost digital technology hub in the continent.²

In this newsletter, we highlight some of the notable provisions of the Act, and their potential impacts on key stakeholders.

HIGHLIGHTS OF THE ACT

Establishment of the National Council for Digital Innovation and Entrepreneurship

Notable among the key provisions in the Act is the establishment of the National Council for Digital Innovation and Entrepreneurship (the **Council**),³ which is comprised of the President and Vice-President of the Federal Republic of Nigeria serving respectively as Chairman and Vice-chairman of the Council, as well as other stakeholders.⁴ Chief among the functions of the Council include:

- a) the formulation of policies for the realisation of the objectives of the Act, and ensuring implementation of these policies;
- b) the creation of a pathway for the harmonisation of laws which regulate startups; and

1. A startup 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 product, service or process.

2. Section 1 of the Act

3. Section 3 of the Act.

4. Section 4 of the Act.

- c) the provision of support in form of grants to persons, research institutions and universities for the furtherance of technological development.⁵

The Act also onboards the National Information Technology Development Agency (**NITDA**), making it the Secretariat of the Council. The Secretariat's roles have been designed to help operationalise the function of the Council.

Applicability of the Act and Startup Labelling

By section 2 of the Act, the Act is applicable to companies incorporated under the Companies and Allied Matters Act that are granted the startup label⁶. This is perhaps the hallmark of the Act given that only startups that have received a startup label will qualify for the incentives provided in the Act⁷. Notably, the applicability of the Act seems to extend to startups set up as sole proprietorships and partnerships⁸, however, only a 'pre label' status will be granted for a period of six months until the sole proprietor or partnership is registered as a company and can meet the conditions set in paragraph 6 below⁹. The Act also applies to organisations whose activities affect the creation, support and incubation of labelled startups such as venture capitalists, accelerators, incubators and equity funds ¹⁰.

A startup is eligible for labelling if:

- i. it is registered as a limited liability company in Nigeria and has been in existence for a period not more than ten years from the date of incorporation;

- ii. its objects are innovation, development, production, improvement and commercialisation of digital technology innovative products or processes;
- iii. it is a holder or repository of a product or process of digital technology or the owner or author of a registered software; and
- iv. the founder or cofounder of the startup is Nigerian and holds at least one-third of its shareholding.¹¹

To be granted a startup label, the startup is required to apply on the Startup Support and Engagement Portal (the **Portal**).¹² The Portal Coordinator¹³ shall, with the approval of the Secretariat¹⁴, enter the name and particulars of the applicant in the register of startups and issue a startup label to the applicant. This label (certificate) is valid for ten years and will be prima facie evidence that the startup has complied with all the requirements for labelling and has been labelled according to the Act.¹⁵

If a labelled startup defaults in its obligations under the Act and fails to regularise the default within thirty days of notification from the Portal Coordinator, the Secretariat is empowered to withdraw the startup label.¹⁶ A startup whose label is withdrawn may however apply to the Secretariat for a re-issuance of the startup label after rectifying the default.¹⁷

The Startup Support and Engagement Portal

One of the roles of the Secretariat is to set up the Portal, with the approval of the Council.¹⁸ The Portal will serve

5. Section 7 of the Act.

6. Section 2(a) of the Act.

7. Section 13 of the Act; A startup label is a certificate issued by the Secretariat to a startup upon meeting labelling requirements under the Act.

8. Section 13(2)(e) of the Act.

9. Section 13(4) of the Act.

10. Section 2(b) of the Act.

11. Section 13 (2) of the Act.

12. Section 14 of the Act.

13. The Portal Coordinator is charged with, among other things, maintaining a register of labelled startups in Nigeria.

14. Section 47 of the Nigeria Startup Act 2022 defines the Secretariat as the secretariat of the Council established under section 9 of this Act

15. Section 15 of the Act.

16. Section 17 of the Act.

17. Section 18 of the Act.

18. Section 10 of the Act.

as a platform for labelled startups to register with the Ministries, Departments and Agencies and will facilitate the acquisition of required permits and licenses by labelled startups. Through the Portal, labelled startups can also interface with the Federal Government, private equity funds, venture capital funds, angel investors, accelerators, incubators, and other relevant stakeholders. Implicitly, we anticipate that in addition to labelled startups, other private sector stakeholders in the ecosystem will have to register on the Portal.

The Secretariat is also required to set up the Startup Consultative Forum (the **Forum**)¹⁹ on the Portal, comprising representatives from labelled startups, venture capitalists, angel investors, incubators, accelerators, innovation hubs and other relevant industry stakeholders. The Forum will serve primarily as an avenue for information sharing on matters affecting labelled startups, the nomination of Council representatives, and canvassing policy proposals, among other functions.

The Platform and Forum are a welcome development as they avail labelled startups with an all-inclusive avenue to interface with private and public stakeholders.

Establishment of the Startup Seed Investment Fund, the Credit Guarantee Scheme and Access to Government Grants

The Act establishes the Startup Seed Investment Fund (the **Fund**)²⁰ to be managed by the Nigeria Sovereign Investment Authority (**NSIA** or the **Fund Manager**)²¹ which will serve to provide funding for labelled startups and provide relief to technology labs, accelerators, incubators, and hubs. The purpose of the Fund is to, as much as possible, ameliorate the challenges faced by labelled startups, technology laboratories, accelerators, incubators, and hubs with regard to access to funding to facilitate the growth of the tech ecosystem. A sum of not less than ₦10,000,000,000 (ten billion Naira), from sources to be approved by the Council, shall be paid into

the Fund on an annual basis. We note, however, that the absence of precise sources of the Fund leaves same to the discretion of the Council. Regarding how the Fund will be dispensed, the Fund Manager is charged with issuing a framework setting out the modalities to fund, manage, and access the Fund.

Further, the Act establishes a Credit Guarantee Scheme (the **Scheme**), intended to help labelled startups access financial support, credit guarantees, and financial management capacity building programmes.²² Through this Scheme, labelled startups can access funding, provided they meet the eligibility requirements to be prescribed by the Secretariat. Notably, chattels, registered intellectual property, assignment of shares or other instruments recognised by the collateral registry, are all accepted as sufficient collateral. In addition, the Secretariat is required to facilitate access by labelled startups to grants or loans administered by the Central Bank of Nigeria (**CBN**), Bank of Industry (**BOI**) and other regulatory bodies.²³

Training, Capacity Building and Talent Development

The Secretariat is required to design and implement a training and capacity building program for startup entrepreneurs and their employees, through the Portal.²⁴ The Secretariat is further required to collaborate with the National Universities Commission, Universities and Polytechnics within Nigeria to develop modules, programmes, and hold workshops aimed at impacting knowledge necessary for the establishment and running of a startup in Nigeria.²⁵

The Secretariat shall also establish centres in the six geopolitical zones in Nigeria to promote the utilisation of digital technology and strengthen the nation's digital technology management capability.²⁶

19. Section 12 of the Act.

20. Section 19 of the Act.

21. Section 19(1) of the Act.

22. Section 28(1) of the Act.

23. Section 27 of the Act.

24. Section 21 of the Act.

25. Section 22 of the Act.

26. *Ibid.*

Further, the Act is emphatic on the promotion of research and development in relation to the activities of startups in Nigeria. In this regard, the Secretariat is obliged to support the activities of academic research institutions focused on the development of startups in Nigeria by providing financial support for the acquisition or establishment of research facilities, developing human resources and research capacity in areas of science, technology and innovation, and linking such research institutions to relevant stakeholders in the startup ecosystem²⁷. Section 25(3) of the Act also recognises that labelled startups shall be entitled to full deduction of any expenses wholly incurred on research and development in Nigeria and excludes the applicability of the restrictions in the Companies Income Tax Act on research to labelled startups²⁸.

Incentives for Labelled Startups and Investors

The Act provides for simplified and expedited tax incentives applicable to labelled startups. Labelled startups operating in industries that qualify under the extant Pioneer Status Incentives (PSI) Scheme will enjoy expeditious approval for grant of those tax incentives.²⁹ Also, a labelled startup that engages in the exportation of eligible goods and services is entitled to incentives from certain dedicated funds.³⁰ Labelled startups may also be exempted from the requirement to pay income tax or other charges payable on their revenue, for at least three years from the acquisition of a startup label. After the expiration of three years, such income tax relief can be extended for another two years if the labelled startup is still within the label period.³¹

Furthermore, a labelled startup that provides in-house training to its employees is exempted from contributing to the Industrial Training Fund during the period it is a labelled startup.³² Non-resident companies engaged in the provision of technical, consulting or other services to labelled startups are required to pay withholding tax of 5% on the income derived from the services, and the

withholding tax shall then be the final tax to be paid by such offshore service provider.

All investors in labelled startups are also assured of certain incentives under the Act. They are entitled to an investment tax credit equivalent to 30% of their investment in the labelled startup. This tax credit is to be applied to the gains of any of their investment subject to tax.³³ Where investors dispose of assets held with respect to a labelled startup, and so held within Nigeria for a minimum of twenty-four months, such investors are not required to pay capital gains tax. Amidst national concerns about the repatriation of capital and profits, the Act mandates the Secretariat to collaborate with the CBN, in ensuring seamless repatriation for foreign investors.³⁴

These incentives could significantly reduce the cost of doing business in Nigeria, improve the success rate of startups, and attract even more local and foreign investments.

Collaboration with Relevant Regulators and Investment Platforms

The Act seeks to ease administrative and compliance processes for labelled startups, by designating separate sections for relevant regulators in the Portal. Essentially, labelled startups can now rely on the Portal as a one-stop-shop that eases access to other regulators. Accordingly, there will be a designated section on the Portal for the Corporate Affairs Commission,³⁵ the Nigerian Copyright Commission,³⁶ the Trademark, Patent and Designs Registries,³⁷ the National Office for Technology Acquisition and Promotion,³⁸ the Securities and Exchange Commission,³⁹ and the CBN⁴⁰. Specifically, labelled fintech startups will benefit from a designated section in the Portal that eases licensing procedures and regulatory interface.⁴¹

27. Section 23 of the Act.

28. Section 25(3) of the Act.

29. Section 24 of the Act.

30. Section 26 of the Act. The dedicated funds include the Export Development Fund, Export Expansion Grant, and Export Adjustment Scheme Fund.

31. Section 25(2) of the Act.

32. Section 25(5) of the Act.

33. Section 29(2) of the Act.

34. Section 37 of the Act.

35. Section 30(1) of the Act.

36. Section 31(3) of the Act.

37. *Ibid.*

38. Section 33(1)(a) of the Act.

39. Section 34(1)(a) of the Act.

40. *Ibid.*

41. *Ibid.*

The Portal is also expected to accommodate crowdfunding intermediaries and commodities investment platforms duly licensed by SEC.⁴² This way, labelled startups can easily engage these platforms to raise funds from members of the public.

Accelerators and Incubator Programmes

In a bid to grow startups and expose them to innovative ideas, the Secretariat is obliged to establish accelerator and incubator programmes. To realise this, the Secretariat is to collaborate with privately established accelerator and incubator programmes, develop guidelines to regulate the relationship between accelerators, incubators and startups, and provide information on the Portal on existing accelerator and incubator programmes. Accordingly, all startup accelerators and incubators that are registered with the Secretariat and have contributed duly to the startup ecosystem, shall be entitled to Federal Government incentives. Additionally, they are entitled to grants for research, development, training, and project expansion. They are also entitled to other grants under the Nigeria Digital Innovation, Entrepreneurship and Startup Policy.

Startup accelerator and incubator programmes focus on grooming early-stage startups with viable products or services to achieve their full potential, and these

provisions in the Act channelling efforts towards developing such programmes are laudable.

Clusters, Hubs, Innovation Parks and Technology Development Zones

The Council is to issue a framework for the establishment of startup innovation clusters, hubs, and innovation parks across all states.⁴⁷ These facilities will serve as an avenue for startups to collaborate and share resources with one another and with larger firms, provide workspaces for employees of startups and foster innovation in Nigeria.⁴⁸

Separately, the Secretariat is required to collaborate with the Nigeria Export Processing Zones Authority to establish a Technology Development Zone (the **Zone**).⁴⁹ The primary aim of the Zone is to spur the growth and development of startups, accelerators, and incubators established within the Zone. The Zone is to grant licenses to startups, accelerators, or incubators prior to the commencement of an approved activity.⁵⁰ Also, startups, accelerators, and incubators carrying out an approved activity in a Zone shall be entitled to incentives under the Nigeria Export Processing Zones Act.⁵¹

42. Section 32(1) of the Act.

43. Section 38(1) of the Act.

44. Section 38(3)(b) of the Act.

45. Section 39(2)(a) of the Act.

46. Section 39(2)(b) and (3) of the Act.

47. Section 40(1) of the Act.

48. Section 40(2) of the Act.

49. Section 42(1) of the Act.

50. Section 42(2) of the Act.

51. Section 42(3) of the Act.

CONCLUSION


The Act has been one of the most anticipated laws in the past year, since its presentation at the National Assembly in 2021. It introduces bespoke provisions that will significantly enhance the growth of the startup ecosystem in Nigeria—evidence that the government and key stakeholders are desirous of repositioning the country's startup ecosystem. While the Act is a step in the right direction for the Nigerian startup ecosystem, the timely implementation of the provisions in the Act is even more critical particularly given the silence in the Act as to timelines for the constitution of the Council, creation of

the Portal and commencement of operations of NITDA as Secretariat. With an efficient implementation of the Act, it is expected that there will be increased foreign capital inflows to startups given the certainty in legal framework introduced by the Act and this will improve the country's ranking from 61st position in the 2022 Global Startup Ecosystem Index.

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