

The Startup Act series

Regulatory framework of the Startup Act

Grow | Protect | **Operate** | Finance

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Introduction

A key consideration for doing business in a country is the sectoral regulatory framework. Accordingly, the recently enacted Startup Act, 2022 (the “Act”), a landmark legislation on the regulation of startups in Nigeria, seeks to create a robust legal framework for key regulatory bodies to provide support to startups in Nigeria. In this third part of our series, we consider the regulatory regime under the Act and the respective roles of the bodies created thereunder.

1. The National Council for Digital Innovation and Entrepreneurship

A key body established by the Act is the National Council for Digital Innovation and Entrepreneurship (the “Council”). The Council is established as a body corporate with perpetual succession and a common seal¹. The Council is headed by the President of the Federal Republic of Nigeria, who serves as the Chairman with the Vice President, Ministers, and other information technology experts represented on the Council.²

The Council is established to ensure the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria, monitor and ensure the implementation of the policies and programs of the secretariat of the Council (i.e., National Information Technology Development Agency). The Council is also designated to support digital technological development through grants to persons, research institutions, and universities pursuing postgraduate programs in the areas of science, technology, and innovation.

1. Section 3 of the Act
2. Section 4 of the Act

The Act also empowers the Council to review policies and directives of Ministries, Departments, and Agencies (“MDAs”) that may affect the operation, establishment, and investments in a startup³. The Council is responsible for assisting and encouraging labeled startups that seek to list on the relevant board of Nigerian Exchange Limited or on similar stock and commodity exchanges operating in Nigeria, to meet up with the eligibility requirements for listing, and the Council may grant such labelled startups incentives that aid their growth and development.⁴

2. National Information Technology Development Agency

Under the Act, the National Information Technology Development Agency, which serves as the Secretariat of the Council (the “Secretariat”), is conferred with wide administrative responsibilities. The Director-General of the National Information Technology Development Agency serves as the head of the Secretariat.

The Secretariat is responsible for managing the process of labeling a startup as provided under the Act. The Secretariat is also responsible for establishing public online platforms and other platforms to provide access to information on matters pertaining to the establishment and development of a startup, incubation, acceleration, and venture-building programs, and to provide access to fiscal and non-fiscal support to startups.

The Secretariat is responsible for collaborating with relevant MDAs and other stakeholders to promote innovation in digital technology and enterprise development for a startup in Nigeria. The Secretariate has the mandate to maintain a directory of startups, incubators, and accelerators in Nigeria and to support research and development activities relating to digital technology innovation undertaken by a startup, among others.

3. Section 7 of the Act

4. Section 36(1) and (2) of the Act



In effectively carrying out its functions, the Secretariat is required to collaborate with some existing regulatory bodies, some of which include:

a. National Universities Commission

The Act requires the Secretariat to collaborate with the National Universities Commission, National Board for Technical Education, and other tertiary institutions' regulatory bodies, to provide adequate facilities for research, and promote multi-disciplinary collaboration among universities, polytechnics, and research institutions.⁵

b. Corporate Affairs Commission

The Secretariat is mandated to collaborate with the Corporate Affairs Commission ("CAC") to designate a separate section on the startup portal to ease the process for labeled startups that conduct transactions with the CAC. The Secretariat shall further ensure that the process and transactions carried out by startups at the CAC are seamless, expedited and in accordance with the provisions of the Act.⁶

c. Nigerian Copyright Commission and the Trademarks, Patents and Design Registries

The Secretariat is also required to collaborate with the Nigeria Copyright Commission and Trademarks, Patents, and Design Registries in ensuring that the startup portal is engaged to ease registration of intellectual property for labeled startups; aid labeled startups to achieve seamless and expedited filing, registration, granting or revocation of their trademarks, and patents as well as the institution of legal action for infringement of any Intellectual Property rights.⁷

d. National Office for Technology Acquisition and Promotion

The Secretariat in conjunction with the National Office for Technology Acquisition and Promotion ("NOTAP") is mandated to ensure that technology transfer registrations and other related activities are seamless and expedited and in accordance with the Act. NOTAP is required to ensure that its services are available on the startup portal to ease technology

transfer registration and discount on all applicable fees for technology transfer and provide technical assistance to labeled startups to enable them to commercialize their research results.⁸

e. The Central bank of Nigeria and the Securities and Exchange Commission

The Secretariat is required to collaborate with the Central Bank of Nigeria ("CBN") and the Nigerian Securities and Exchange Commission to achieve ease in the process of licensing fintech startups and facilitate interactive sessions moderated through the portal and other forums.

The Secretariat is also bound to work with the CBN to guarantee repatriation of investment by foreign investors through the CBN's authorized dealers in freely convertible currency at the CBN official exchange rate. This is however subject to such foreign investor obtaining a Certificate of Capital Importation as evidence that the initial investment fund was injected through the proper channel prescribed by law.⁹

In addition, the Act stipulates that where a labeled startup intends to participate in the CBN's regulatory sandbox or Securities and Exchange Commission's regulatory incubation programs, or any other regulatory sandbox programs set up by other regulators, for which it is qualified to participate, it would be entitled to apply through a fast-track process available on the startup portal.¹⁰

f. Nigeria Export Processing Zones Authority

The Secretariat is also to collaborate with the Nigeria Export Processing Zones Authority to establish a Technology Development Zone to spur the growth and development of startups, accelerators, and incubators.¹¹ Thus, any startup, accelerator, or incubator carrying out any approved activity in a Technology Development Zone is entitled to existing incentives provided under the Nigeria Export Processing Zones Act.

5. Section 9 (2) of the Act
6. Section 30(1) of the Act
7. Section 31 (3) of the Act
8. Section 33(1) of the Act
9. Section 37 of the Act
10. Section 35 of the Act
11. Section 42(1) of the Act

3. The Startup Consultative Forum

The Act makes provision for the establishment of a Startup Consultative Forum (the “Forum”) to provide a platform for information sharing and collaboration in the Nigerian startup ecosystem¹². The Forum will provide information with respect to the qualifications for a labeled startup, applicable incentives and local capabilities, and nomination of representatives to the Council. The Forum will comprise of industry stakeholders and representatives registered on the startup portal from labeled startups, venture capitalists, angel investors, incubators, accelerators, innovation hubs, and two civil society organizations involved in the advancement of technology and innovation. This is a noteworthy provision as it gives members of the tech ecosystem a seat at the table where decisions which affect the startup ecosystem are made.

Conclusion

While the Act provides for increased collaboration among regulatory bodies to ensure that startups can seamlessly interact with relevant regulators in ensuring compliance with applicable laws, there are however concerns as to how these regulatory interactions may be implemented in practice considering the bureaucratic bottlenecks often associated with dealing with regulatory bodies in Nigeria. Nonetheless, there is no doubt that the Act has created and provided the much needed enabling environment for startups in Nigeria. From the incentives available under the Startup Act or open themselves up to equity investment from foreign investors.

12. Section 12 of the Act