

The Nigerian Startup Act 2022: Notable Provisions and Challenges



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Introduction

Without doubt, the continued increase in the establishment of technology (tech) organizations and startups in Nigeria has been significant. Therefore, the need for a corresponding legislation to regulate and provide a useful framework for Nigeria's rapidly increasing Startup ecosystem become imperative. Hence, in October 2022, the Nigerian Startup Act (the "Act") was assented to by the President of the Federal Republic of Nigeria. From its introductory Sections, the Act clearly aims to provide a legal and institutional framework and an enabling environment for the establishment, development, and operation of startups in Nigeria, amongst other things.

On its applicability, the Act applies to entities registered with the Corporate Affairs Commission (CAC) and granted the Startup label and organizations whose activities affect the creation, support, and incubation of labelled startups in Nigeria. These include Startups which are limited liability companies, partnerships, sole proprietors, accelerators, incubators and tech clusters, hubs, innovation parks and technology Development Zones.

This article would therefore focus on highlighting the innovative provisions of the Act with a focus on the definition of a labelled Startup, which are entitled to the benefits contained in the Act; the regulatory frameworks; tax incentives; and other innovative provisions. This review would also highlight potential challenges to the implementation of the Act.

A Startup

It is useful to begin this review by defining what qualifies as a Startup within the context of the Act. Thankfully, the interpretation Section of the Act defines a startup as a company which has been in existence for a maximum of 10years, with its objectives being the creation, innovation, production, development or adoption of a unique digital technology innovative product, service, or process. However, within the context of the Act, for a Startup to enjoy the benefits and incentives contained in the Act, it must be a **Labelled Startup**. The Act establishes five (5) criteria to qualify as a labelled startup as follows:

- It must be registered as a limited liability company under the Companies and Allied Matters Act.
- It must have been in existence for not more than 10 years from the date of incorporation.
- Its objects must include innovation, development, production, improvement and commercialization of a digital technology innovative product or process.
- It has developed or owns a digital product, process, or a registered software.
- Its ownership consists of at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup.

Notably, a sole proprietorship or partnership, may be granted a pre-label status for a period of six months to enable it to comply with all the above criteria, failing which it would lose the pre-label status granted to it. It should be stated that the Act inputs disclosure and reporting obligations to a labelled startup, where a breach of these obligations occur the Startup's label may be withdrawn.

Regulatory Framework

The first Section of this work would focus on highlighting the role of the various regulatory bodies established under the Act.

The National Council for Digital innovation and Entrepreneurship (the “Council”)

The Act establishes the Council to be a body corporate with perpetual succession headed by the President of the Federal Republic of Nigeria, who serves as the Chairman. It is commendable that members of the **Startup Consultative Forum** (representing the startup ecosystem) and other Information Technology bodies are represented on the Council. The Act empowers the Council to review policies and directives of government Ministries, Department and Agencies (MDAs) which may affect the operation, establishment, and investment in a Startup.

By virtue of the Act, the Council is established to, amongst other thing, formulate and provide general policy guidelines; and provide direction for the harmonization of laws and regulations to encourage the development of startups in Nigeria. The Act also provides that the Council is established to support digital technological development through grants to persons, research institutions and universities pursuing postgraduate programs in the areas of science, technology, and innovation.

Notably, the Council is responsible for the facilitation of listing on the Nigerian Exchange Limited or any other stock and commodity exchanges operating in Nigeria by a labelled startup.

The Secretariat

The Act also confers administrative responsibilities on the **National Information Technology Development Agency (NITDA)** to serve as the Secretariat of the Council with the Director General (DG) of the NITDA acting as its Head. This Section would therefore be focused on discussing the role of the Secretariat as provided for in the Act.

By virtue of the Act, the Secretariat is responsible for managing the process of labelling a startup and withdrawing the label, where necessary. It is also responsible for collaborating with relevant stakeholders to promote innovation in digital technology as well as maintaining a directory of startups, incubators, and accelerators. The Secretariat is also to support research and development activities relating to digital technology innovation undertaken by a startup, amongst others.

Notably, the Secretariat is to ensure that a labelled startup has access to grants and loan facilities administered by the Central Bank of Nigeria (CBN), the Bank of Industry (BOI) or any other body empowered to assist small and medium scale enterprises and entrepreneurs. The secretariat is also to establish a credit guarantee scheme for the development and growth of a startup with the aim of, amongst other things, providing accessible financial and credit information support to a labelled startup.

Furthermore, the Secretariat would collaborate with the Corporate Affairs Commission (CAC) to designate a separate section on the Startup portal to ease the process for labelled startups that conduct transactions with the Commission in a seamless and expedited manner in accordance with the Act. It is also to collaborate with the Nigerian Copyright Commission and the Trademarks, Patents and Design Registries in ensuring that the Startup Portal is engaged to ease registration of intellectual property for labelled startups; aid labelled Startups to achieve the 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 IP Rights.

Furthermore, the Secretariat would also collaborate with National Office for Technology Acquisition and Promotion (NOTAP) to ensure that technology transfer registrations and other related activities are seamless and expedited and in accordance with the Act. It is also to ensure that NOTAP's 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 labelled startups to enable them to commercialize their research results.

With respect to Startups that operate as Financial Technology companies (Fintech Startups), the Secretariat must collaborate with the CBN and the Securities and Exchange Commission (SEC) to achieve ease in the process for licensing Fintech startups and facilitate interactive sessions moderated through the Portal and other forums. Further, the Council must collaborate with the CBN and SEC to ensure that fintech startups are duly notified before any new rules and regulations that affect the establishment, licensing, and operations of fintech startups are issued. In the same vein, it must ensure that the rules and regulations which affect the establishment, licensing, and operation of fintech startups are harmonized by the CBN and SEC.

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

In addition, the Act stipulates that where a labelled startup intends to participate in the CBN's regulatory sandbox or SEC'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.

The Startup Support and Engagement Portal

Another notable provision of the Act is the establishment of the Startup Support and Engagement Portal (the "Portal") by the Secretariat. The Portal is to serve as a platform through which a startup conducts registration process with relevant MDAs such as the CAC, CBN, SEC, NEPC, National Investment Promotion Commission (NIPC), Nigerian Export Processing Zones Authority (NEPZA), etc. In our view, it is a one-stop shop for all

the necessary regulators of a Startup in Nigeria. Amongst other things, the Portal is to provide a platform for interaction between the Startup and other relevant stakeholders. The Portal would also be designed to democratize access to useful information on financing, information, innovation, tools, resources, clearances, approvals, and registration requirements by a startup amongst others.

The portal is also to serve as a centralized feedback mechanism system to receive feedback from stakeholders and the public as well as a platform to provide startups with the opportunity to enter contracts with the Federal Government. The portal is to be managed by a coordinator appointed by the Secretariat with the approval of the Council.

The Startup Consultative Forum (the “Forum”)

The Act also makes provision for the establishment of a Startup Consultative Forum to provide for information sharing and collaboration in the Nigerian Startup ecosystem. The Forum would provide information with respect to the qualifications for a labelled startup, applicable incentives and local capabilities, nomination of representatives to the Council. The Forum is to comprise of industry stakeholders and representatives registered on the Portal from labelled startups, venture capitalists, angel investors, incubators, accelerators, and 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 sit at the table with respect to the making of decisions which affect the Startup ecosystem.

Tax Incentives

Significantly, the Act also makes provisions for tax incentives which labelled Startups are be entitled to. Pursuant to this Section of the Act, a labelled startup which operates in industries captured under the Pioneer Status Incentives Schemes, such as agriculture, manufacturing, trade, construction, etc. is entitled, upon an application to the NIPC, through the Secretariat for the grant of tax reliefs and incentives under the Pioneer Status Scheme.

In addition to the above, a labelled startup may be exempted from the payment of income tax on its income or revenue for a total period of five years commencing on the date of the issuance of the Startup label, if still within the period of a labelled startup. The Act also allows a startup to enjoy full deduction of any expenses incurred

in Nigeria on research and development and notes that the restrictions placed by the Companies Income Tax Act does not apply to a Startup.

Furthermore, non-resident companies (NRCs) which provide technical, consulting, professional or management services to a startup shall be subjected to a five percent (5%) withholding tax (WHT) on income derived from the provision of such services. Notably, the WHT shall be the final tax to be paid by such NRC. The Act also provides that a labelled Startup is exempt from contributions to the Industrial Training Fund where it provides in-house training to its employees for the period where it is designated as a labelled startup.

It is significant to add that labelled startups which are involved in the exportation of products and services which are deemed eligible under the **Export (Incentives and Miscellaneous Provisions) Act** are entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion Grant, and the Export Adjustment Scheme Fund.

The Act also provides for incentives, such as tax credits, to individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators or incubators which invest in a labelled startup or startup ecosystem. It also stipulates that angel investors, venture capitalist, private equity fund, accelerators or incubators which invests in a labelled startup shall be entitled to an investment tax credit equivalent to 30% of their investment in the labelled startup provided that such credit shall be applied to any gains on investment which are subject to tax. It is significant to note that upon disposal of assets by an investor, the gains which accrue to such investor are exempt from capital gains tax, provided the assets have been held in Nigeria for a minimum of 24months.

Innovative Provisions

Startup Investment Seed Fund

A significant point in the Act is the establishment of the Startup Investment Seed Fund (the Fund) which is to be managed by the Nigeria Sovereign Investment Authority. The Act stipulates that on a yearly basis, a minimum sum of ₦10,000,000,000.00 must be paid into the Fund from sources to be approved by the Council. The Fund is to be applied to the provision of funding to a labelled startup; provision of early-stage finance for labelled Startups on the recommendation of the Fund Manager subject

to the approval of the Council; and provide relief to tech laboratories, accelerators, incubators, and hubs.

Training, Capacity Building and Talent Development

Another commendable feature of the Act is the codification of a training, capacity building and talent development framework. Startups may now access trainings for the training of founders and employees. It is commendable that the Act provides that the Secretariat would collaborate with the relevant regulatory bodies for tertiary education in Nigeria with the aim of developing modules, programs and workshops aimed at impacting knowledge necessary for the establishment and running of a startup in Nigeria.

Furthermore, the Act makes provision for the establishment of digital technology skill acquisition centers and for the support of academic research focused on the development of startups.

Crowdfunding

It is noteworthy that the Act makes provisions that allow Startups to raise funds through crowdfunding intermediaries and commodities investment platforms which are licensed by the SEC and be available on the Startup Portal.

Accelerators and Incubators

It is noted that the establishment of accelerators and incubators programs for startups by the Secretariat would be significant in realizing the objectives of the Act. Hence, the Act mandates the Council to develop a national policy for the establishment and development of accelerators and incubators. It also provides for incentives such as grants and aids for research, development, training and expansion projects under the Nigeria Digital Innovation, Entrepreneurship and Startup Policy and other relevant policy.

Clusters, Hubs, Innovation Parks and Technology Development Zones

The Act mandates the Council to issue a framework for the establishment of and operation of Startup innovation clusters, hubs, and parks in each state of the Federation to connect and foster collaboration and generating businesses between a startup and a large company; collate expertise, ideas, and perspectives; provide

startups with access to resources and professional services; and promote collaboration and innovation between startups.

These Clusters, hubs and parks are to provide startups with regulatory framework guidance; free or subsidized workspaces; and assistance and facilitation services for the expansion of a startup into foreign markets, amongst others.

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

Notable Provisions

The Act contains a data protection clause which stipulates that the use and processing of data for the purpose of giving effect to the Act must be in a responsible manner and in compliance with extant data protection laws and regulations in Nigeria.

The Act also provides for the issuance of a minimum of 30days pre-action notice prior to the institution of any civil action against the Council.

Possible Challenges

In all, while the provisions of the Act are generally commendable, and the Act can be said to be a forward-looking legislation. However, as commendable as it is, there are obvious challenges to the implementation and practicality of the Act. Notably, a challenge surfaces with respect to the source of funding for the Startup Fund, the Act only references "sources approved by the Council" but fails to define these approved sources. This portends the possibility of bureaucratic bottlenecks in the administration of the Fund.

Secondly, the application of the Act to the States of the Federation also poses a possible challenge to its implementation. In our view, it appears that the success of its implementation at the State government level is subject to the willingness and readiness of the State Governor to provide an enabling environment for the activation of the Act.

Conclusion

In conclusion, it is worthy of note that the Act is significantly one of the most innovative legislations to have been enacted by the National Assembly. Therefore, all hands must be on deck to facilitate a comprehensive and immediate implementation of all the provisions of the Act. We recommend that the private Sector and the NITDA which drove the promulgation of the Act must be enabled to carry on with the implementation of the Act without the influence of the political class.

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