

REVIEW OF THE NIGERIA START-UP BILL, 2021 (HB. 1886)



The Bill in its explanatory memorandum seeks to provide a legal and institutional framework for the development of start-ups in Nigeria by providing an enabling environment for the establishment, development, and operation of start-ups in Nigeria, providing for the development and growth of technology related talent, and positioning Nigeria's start-up ecosystem as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity

Aims & Objectives

The Bill is sponsored by the Executive arm of government and seeks to harness the potential of the country's digital economy by bridging the gap between regulators and start-ups through co-created regulations. This Bill is in response to the perceived disconnect between the technology ecosystem and its regulators and proposes a more coordinated relationship to ensure that the laws and regulations being developed are clear and support investments in technology start-ups. The Bill went through second reading at the House of Representatives on 22nd March 2022 and was subsequently referred to the House Committee on Information Technology; and Commerce.

According to Clause 2, the Bill clearly defines its scope as applying to companies incorporated under the Companies and Allied Matters Act, 2020 ("CAMA") and registered as start-ups per the provisions of Clause 13 of the Bill, and also organisations whose activities affect the creation, support and incubations of labelled start-ups in Nigeria. Non-technology companies, holding companies or subsidiaries of companies not registered as start-ups are excluded from the scope of the Bill.

Establishment of the National Council for Digital Innovation and Entrepreneurship

Clause 3 of the Bill seeks to establish the National Council for Digital Innovation and Entrepreneurship (the Council). The membership of the Council is comprised of: the President and Vice-President of the Federal Republic of Nigeria; the Ministers for Communications and Digital Economy, Finance, Budget and National Planning, Industry, Trade and Investment, and also the Minister for Science, Technology and Innovation; the Governor of the Central Bank of Nigeria (CBN); three (3) representatives of the Start-up Consultative Forum (to be established under Clause 12 of the Bill); two (2) representatives from the Nigeria Computer Society; and the Director-General of the National Information Technology Development Agency.

The functions and powers of the Council are provided for in Clause 7 (1) and are: formulating and providing general policy guidelines for the realisation of the objectives of the Bill; giving overall direction for the harmonisation of laws and regulations that affect a start-up; approving the programmes of the Secretariat (to be established under Clause 9 of the Bill); monitoring and evaluating the regulatory framework to encourage the development of start-ups in Nigeria; monitoring and ensuring the implementation of the policies and programmes of the Secretariat; supporting digital technological development through

grants to persons, research institutions, and universities pursuing postgraduate programs in the areas of science, technology and innovation; appointing a council agent to carry out such functions as the Council may require; and carrying out such other functions as are necessary or expedient to ensure the efficient performance of the functions of the Secretariat and other bodies to be established under the Bill.

Secretariat of the Council

Further to the functions listed above, the Bill provides in Clause 9 (1) that the National Information Technology Agency (NITDA) shall serve as the Secretariat to the Council and appoints the Director-General of NITDA as the Chairman of the Secretariat. NITDA's selection as the Secretariat to the Council directly compliments its set objectives as the Federal Government agency tasked with implementing the Nigerian Information Technology Policy and co-ordinating the development of information technology in the country. The Secretariat per Clause 9 (2) is responsible for, amongst other things, managing the process of labelling a Start-up; establishing online platforms to provide access to information on matters pertaining to the establishment and development of a Start-up, incubation, acceleration and venture building programmes, and access to fiscal and non-fiscal support; collaborating with relevant Ministries, Departments, Agencies and other relevant stakeholders to promote innovation in digital technology, and enterprise development for a Start-up in Nigeria; and fostering synergy between Start-ups and angel investors, venture capitalists, private equity firms, private investors, development finance institutions and other related institutions..

Start-up Support and Engagement Portal

The Bill in Clause 10 (1) seeks to establish the Start-up Support and Engagement Portal (the "Start-up Portal") to serve as a platform for Start-ups to register

with the relevant Ministries, Departments and Agencies ("MDAs"). In keeping with the nature of Start-ups and the objectives of the Council which are technologically driven, the Start-up Portal is a digital platform allows start-ups easily interact with the MDAs and private institutions, and also facilitate the issuance of permits or licence to labelled start-ups, amongst other listed functions. The use of online portals and registration processes have had some success in recent years, particular reference is made to the Corporate Affairs Commission's (CAC) online portals for pre and post-incorporation matters. If properly implemented, this proposal could greatly simplify and expedite the processes and functions of contained in Clause 10 (2) of the Bill.

The Bill goes further in Clause 11 to appoint a Coordinator of the Start-up Portal responsible for maintaining a register of labelled start-ups in Nigeria and keeping relevant documents/records. The Coordinator must not be below the rank of Assistant Director. However, it is noted that this provision is silent as to a requirement for technological expertise of the Coordinator. Considering the vast applications and intricacies of the Start-up Portal and the pivotal role it will play, we believe that it would be pertinent for the Coordinator to have a technology background in order to be able to understand the value benefits and challenges of Start-ups, and to effectively manage and maintain the Start-up Portal. Given the administrative functions of the Secretariat, we would recommend that the Coordinator adopt a technical support role over than of an administrative manager.

Start-up Consultative Forum

In bridging the gap between regulators and Start-ups the Bill seeks to establish the Start-up Consultative Forum (the "Forum") on the Start-up Portal to provide a platform for information sharing and collaboration in the Nigerian Start-up ecosystem. The Forum will comprise of industry stakeholders and representatives

registered on the Start-up Portal and include the following:

- a. labelled Start-ups;
- b. venture capitalists;
- c. angel investors;
- d. the Nigeria Computer Society;
- e. incubation, accelerators, and innovation hubs; and
- f. two (2) civil society organisations involved in the advancement of technology and innovation.

Start-up Labelling Process

Per Clause 13 (1), for a Start-up to be granted a Start-up label, it must apply on the Start-up Portal, provide documents, and pay the fees to be prescribed by the Secretariat. The Bill in Clause 13 (2) sets out the eligibility requirements for the grant of a Start-up Label, namely:

- a. it must be registered as a limited liability company under the CAMA, and must be less than 10 years old from the date of incorporation;
- b. its objects must include innovation, development, production, improvement, and commercialisation of a digital technology innovative product or processes;
- c. it is a holder or repository of a product or process of digital technology, or the owner or author of a registered software;
- d. it has at least one (1) Nigerian as a founder or Co-founder of the Start-up who must share from profit or revenue from the sale of shares; and
- e. in the case of a sole proprietorship or partnership, it satisfies the conditions set out in paragraphs (b), (c) and (d) of this subsection.

Once a company becomes a labelled Start-up, it is obligated to comply with the provisions of the Bill and all the compliance and disclosure requirements contained therein. This includes, amongst others, annually providing information on incentives received and advancement made, its staff strength, total assets, and annual turnover from when the Start-up label was granted. The said Start-up Label is valid for a period of ten (10) years from the date of issuance and allows the bearer access to the financial, technical, tax and fiscal incentives provided under the Bill. These are incentives are explained in the subsequent paragraphs.

Establishment of Start-up Investment Seed Fund

The Bill in Clause 19 seeks to establish the Start-up Investment Seed Fund (“the Fund”) to be managed by the Nigeria Sovereign Investment Authority. The Fund may provide financial support and early-stage finance to labelled Start-ups, and also provide relief to technology laboratories, accelerators, incubators and hubs. The Bill also requires the Secretariat to ensure that labelled Start-ups have access to grants and loan facilities administered by the CBN, the Bank of Industry or other bodies statutorily empowered to assist small and medium scale enterprises and entrepreneurs. Start-ups may also raise funds through crowdfunding intermediaries and commodities investment platforms duly licensed by the Securities and Exchange Commission (SEC).

Training, Capacity Building and Talent Development

The Secretariat is tasked under Clause 21 of the Bill with designing and implementing a training and capacity building program for Start-ups; collaborating with the National Universities Commission and relevant institutions within Nigeria to develop modules, programs and hold workshops aimed at impacting knowledge necessary for the establishment

and running of a Start-up in Nigeria. The Secretariat is also obligated to establish centres for the acquisition of digital technology across the six geopolitical zones of Nigeria for the promotion of digital technology utilization.

Tax and Fiscal Incentives

The Bill provides several tax and fiscal relief for labelled Start-ups. For instance, labelled Start-ups which fall within industries captured under the extant Pioneer Status Incentives (PSI) Scheme may apply to the Nigerian Investment Promotion Commission (NIPC) for the grant of the tax reliefs and incentives under the PSI Scheme in accordance with Clause 24. Per Clause 25 (2), a Start-up may also be exempted from the paying income tax or any other tax chargeable on its income or revenue for period of four (4) years, subject to certain qualifications.

While the above listed incentives are not exhaustive, it should be noted that the incentives conceived under the Bill apply not just to the Start-ups, but also the wider ecosystem. Employees of and investors in labelled Start-ups also have incentives to encourage their involvement in the ecosystem. For instance, eligible employees of a labelled Start-up are entitled to a personal income tax exemption of 35% on the income of the employee for a period of two (2) years from the date of engagement by a labelled Start-up, while certain investors in a labelled Start-up are entitled to an investment tax credit equivalent to 30% of the investment in the Start-up.

In support of its objective to bridge the gap between regulators and Start-ups, the Bill enjoins several regulators to buy into and support the ecosystem by integrating into the Start-up Portal and thereby creating a unique relationship between them. Clauses 33 – 40 of the Bill require the CAC, CBN, Nigerian

Copyright Commission (NCC), Trademarks, Patent and Design Registries (the Registry), Securities and Exchange Commission (SEC), Nigerian Exchange Limited (NGX), and the National Office for Technology Acquisition and Promotion (NOTAP) to set up separate sections on the Start-up Portal thereby creating a digital one-stop-shop for all activities under the mandate of the various regulators. This proposal if implemented would significantly ease administrative bottlenecks associated with individually applying to the various regulators and shows a significant commitment on the part of the Federal Government.

Conclusion

With the development of a national accelerator and incubator policy for the establishment and development of accelerators and incubators and the establishment and operation of Start-up innovation clusters, hubs, physical and virtual innovation parks in each state of the Federation under Clauses 41 and 43, the Bill proposes a solid framework and infrastructure base for the development and deepening on the Start-up ecosystem in Nigeria. The timeliness of the Bill cannot be understated, especially as the Nigerian technology ecosystem is possibly the largest in Africa having birthed several unicorn status companies in 2021 – Flutterwave, Andela, and Opay. Should this Bill come into law, it will represent a significant reform of Nigeria's innovation space and digital economy and is likely to boost the confidence of both local and foreign investors in the Nigerian technology sector.

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