

NIGERIA STARTUP ACT, 2022: A ROADMAP TO TECHNOLOGICAL INCLUSION IN THE NIGERIAN ECONOMY



The Nigerian Startup Act, 2022 (the “Act”) was signed into law by President Muhammadu Buhari on 19 October 2022. The Act aims to provide a legal and institutional framework for the development of startups in Nigeria by providing an enabling environment for the establishment, development, and operation of startups in Nigeria, providing for the development and growth of technology-related talent, and positioning Nigeria’s startup ecosystem as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity.

Aims & Objectives

The overarching objective of this law is to bridge the gap between startups and regulators in order to harness the potential of the country’s digital economy by bringing both sides together at one table to co-create regulations. This is a welcome development following the perceived disconnect between a thriving technology ecosystem in Nigeria and the Federal Government. The Act aims to foster a more coordinated relationship to ensure that the laws and regulations being developed are clear and support investments in technology startups.

From Section 2 the Act, it is clear that the law only applies to companies incorporated under the Companies and Allied Matters Act, 2020 (“CAMA”)

and registered as startups per the provisions of Section 13 of the Act, and also organisations whose activities affect the creation, support and incubations of labelled startups in Nigeria. Non-technology companies, holding companies or subsidiaries of companies not registered as startups are excluded from the scope of the Act. It is perhaps important to note that Section 13 (2)(d) of the Act requires Nigerian(s) to hold at least one-third of the issued shares in the startup as founder or co-founder – thereby making Nigerian participation a pre-requisite to access the benefits provided under the Act.

Establishment of the National Council for Digital Innovation and Entrepreneurship

Section 3 of the Act establishes 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 Startup Consultative Forum (to be established under Section 12 of the Act); 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 Section 7 (1) and are: formulating and providing general policy guidelines for the realisation of the objectives of the Act; giving overall direction for the harmonisation of laws and regulations that affect a startup; approving the programmes of the Secretariat (to be established under Section 9 of the Act); monitoring and evaluating the regulatory framework

to encourage the development of startups 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 Act.

The composition of the Council to include members of the Executive arm of Government, various Federal Ministries, and the CBN Governor, amongst others, I believe was intentional and well-considered. In making the President and Vice President of the Federal Republic of Nigeria the Chairman and Vice-Chairman respectively, the Council can draw on the support of the Executive Government to push policy. By including the Ministers of Finance, Budget and National Planning, Industry, Trade, and Investment, and the CBN Governor, the Council can foster cohesion in terms of economic policy and its potential impact on the Financial Technological market in Nigeria and the wider economy. The inclusion of representatives of private sector, particularly representatives of the Startup Consultative Forum, ensures that the startup ecosystem is ably represented and promotes rich dialogue in Council meetings. This integration is a masterstroke by the draftsmen and encourages greater collaboration between State and private sector actors as no policy proposal would be considered as legitimate within the Nigerian startup ecosystem if it is done without the input of the of key stakeholders such as the private sector.

Secretariat of the Council

Further to the functions listed in the above

subheading, the Act provides in Section 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 Section 9 (2) is responsible for, amongst other things, managing the process of labelling a startup; establishing online platforms to provide access to information on matters pertaining to the establishment and development of a startup, 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 startup in Nigeria; and fostering synergy between startups and angel investors, venture capitalists, private equity firms, private investors, development finance institutions and other related institutions.

Startup Support and Engagement Portal

Section 10 (1) of the Act establishes the Startup Support and Engagement Portal (the "Portal") to serve as a platform for startups to register with the relevant Ministries, Departments and Agencies ("MDAs"). In keeping with the nature of startups and the objectives of the Council which are technologically driven, the Startup Portal is a digital platform allows startups easily interact with the MDAs and private institutions, and also facilitate the issuance of permits or licence to labelled startups, 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.

The Act goes further in Section 11 to appoint a Coordinator of the Portal responsible for maintaining a register of labelled startups 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 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 startups, and to effectively manage and maintain the 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.

The Portal, while commendable, has been received with mixed reviews. As a foundational element integral to the application of the Act, the Portal must be properly implemented in order to simplify and expedite the processes and functions of contained in Section 10 (2) of the Act. Many will remember their frustrations and experiences in the earlier days of CAC's digital transition. It is imperative that the Portal is well designed to accommodate the online traffic that is likely to be associated with a one-stop-shop. It is equally important that the Coordinator of the Portal is hands on and assiduously monitors the happenings on the Portal to ensure that any issues that may cause down-time are resolved timeously. My humble recommendation be that the Coordinator be selected through an open bidding process whereby a company/entity with experience and a proven track record of effective delivery is appointed.

Startup Consultative Forum

In bridging the gap between regulators and startups the Act establishes the Startup Consultative Forum (the "Forum") on the Startup Portal to provide a

platform for information sharing and collaboration in the Nigerian startup ecosystem. The Forum will comprise of industry stakeholders and representatives registered on the Startup Portal and include the following:

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

Startup Labelling Process

Section 13 (1) provides that for a startup to be granted a startup label, it must apply on the Startup Portal, provide documents, and pay the fees to be prescribed by the Secretariat. The Act in Section 13 (2) sets out the eligibility requirements for the grant of a Startup 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 startup who must hold at least one-third of the 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 startup, it is obligated to comply with the provisions of the Act 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 startup label was granted. The said Startup 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 Act. These are incentives are explained in the subsequent paragraphs.

This labelling requirement I imagine will be very attractive to foreign investors looking to come into the Nigerian tech-ecosystem. It almost acts like “blue tick” on verified Twitter profiles – if you are labelled, you have already gone through a screening and verification process and on the face of it are eligible for further investment. The Nigerian Government will also benefit from this as there are costs and levies associated with the labelling process, so a new income stream is welcome, especially in today’s economic environment. The Act propels startups, encouraging their growth, while simultaneously adding to government coffers – win for all involved.

Establishment of Startup Investment Seed Fund

The Section 19 of the Act establishes the Startup Investment Seed Fund (“the Fund”) to be managed by the Nigeria Sovereign Investment Authority. Under Section 19 (2) the Act provides that not less than N10,000,000,000 (Ten Billion Naira) shall be annually paid into the Fund through resources approved by the Council. This is an interesting provision as the Act does not provide for a source of funding for the Council. Considering the structure of the Council, I hypothesise that this may have been intentional to allow both State and private sector

actors work together to provide funding.

The Fund may provide financial support and early-stage finance to labelled startups, and also provide relief to technology laboratories, accelerators, incubators and hubs. The Act also requires the Secretariat to ensure that labelled startups 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. Startups 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 Section 21 of the Act with designing and implementing a training and capacity building program for startups; 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 startup 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 Act provides several tax and fiscal relief for labelled startups. For instance, labelled startups 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 Section 24

of the Act. Per Section 25 (2) of the Act, a startup may also be exempted from the paying income tax or any other tax chargeable on its income or revenue for up to (5) years, subject to certain qualifications.

While the above listed incentives are not exhaustive, it should be noted that the incentives conceived under the Act apply not just to the startups, but also the wider ecosystem. While the Act maintains the previous provision under the NSB allowing certain investors in a labelled startup an investment tax credit equivalent to 30% of the investment in the startup, it removes the Act removes the previous personal income tax exemption to employees. Under Section 25 (5) of the Act, where a labelled startup provides in-house training to its employees, it is exempted from contributions to the Industrial Training Fund for the period where it is designated as a labelled startup.

Regulatory Collaboration

In support of its objective to bridge the gap between regulators and startups, the Act enjoins several regulators to buy into and support the ecosystem by integrating into the Portal and thereby creating a unique relationship between them. Sections 33 – 40 of the Act 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 Startup Portal thereby creating a digital one-stop-shop for all activities under the mandate of the various regulators.

The Act is careful not to create any new regulators, rather it works to foster collaboration and integration with the extant regulators, bringing everyone together.

In theory, startups can advance and grow their business with the support of regulators as they also have a vested interest. While that is the hope, in practical terms, for this to work as the Act envisions, the operative environment in the country must be greatly improved. Ease of access to regulators does not necessarily translate into ease of doing business. If properly implemented, the Act 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.

It should be noted that there is no obligation for startups to become labelled, rather it is a voluntary venture necessary for them to access the benefits of being labelled startups. As the Act does not create a regulator for this process, there is the potential for abuse in that regulators may then require all startups or technology companies to obtain labelled status as a pre-requisite to obtain certain approvals. While this is a valid concern, I believe that situations such as these are easily mitigated by the collaborative composition of the Council. The representatives of the ecosystem are the voice of the startup community tasked with speaking in the best interests of those they represent as the decisions of the Council will also impact them directly.

Conclusion

The development of a national accelerator and incubator policy for the establishment and development of accelerators and incubators and the establishment and operation of startup innovation clusters, hubs, physical and virtual innovation parks in each state of the Federation under Section 38 and 40 of the Act presents a solid framework and infrastructure base for the development and deepening on the startup ecosystem in Nigeria. The timeliness of

this legislation cannot be understated and will no doubt catalyse the Nigerian digital economy for a new wave of growth.

The Nigerian technology ecosystem is the largest in Africa, having birthed several unicorn-status companies in 2021 – Flutterwave, Andela, and Opay. The Act represents 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.

If properly implemented, this Act has the capacity to have a ripple effect across various sectors of the Nigerian economy.

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