



Client Update on the Nigeria Startup Act 2022

1. Introduction

Nigeria Startup Act, 2022 (the “**Act**”) is part of the concerted efforts by the Federal Government (the “**Government**”) to promote, harness and provide stability to the startup ecosystem in Nigeria. Nigeria’s startup ecosystem was ranked as the top three most advanced ecosystems in Africa according to StartupBlink’s Global Startup Ecosystem Index 2021. The signing of the Act has been seen as a proactive effort to develop Nigeria’s startup ecosystem by putting in place a unique regulatory and legal framework to bring it up to speed with the best global practices.

The Nigerian startup landscape has grown over the last six years. As of September 2022, at least 481 tech startups were in operation across Nigeria, employing over 19,000 people between them.¹ Furthermore, we experienced an influx of capital in the Nigerian tech ecosystem between 2020 and 2021. Out of about \$4 billion in startup funding raised in Africa in 2021, Nigeria earned the most significant chunk, accounting for 35% of the funds raised to the tune of \$1.37 billion.²

The Nigerian regulatory climate has been noted to be volatile, and the clampdown of regulatory agencies on startups, particularly fintech startups, has caused much uneasiness concerning investment in the Nigerian market. According to the Ease of Doing Business Index rankings by the World Bank, Nigeria ranks 131 among 190 economies.³

¹ The Nigerian Startup Ecosystem Report 2022 & Full Startup List < <https://disruptafrica.gumroad.com/l/rflav> >

² Adeyemi Adepetun “Nigerian startups retain \$1.37bn of Africa’s \$4b funding in 2021” <https://guardian.ng/technology/nigerian-startups-retain-1-37bn-of-africas-4b-funding-in-2021/>

³ Ease of Doing Business < <https://tradingeconomics.com/nigeria/ease-of-doing-business>>

Nonetheless, Nigeria's startup landscape remains an attractive investment destination.

2. Key Provisions in the Nigeria Startup Act 2022

2.1 Startup Labelling/ Licensing Process

2.1.1 The regulatory purview of the Act extends to companies that have been incorporated under the Companies and Allied Matters Act, 2020 (as amended) (the "**CAMA**") and which have been granted the startup label under the Act (subsequently referred to as "**Labelled Startup**"). Organisations and establishments whose activities affect the creation, support and incubation of Labelled Startups in Nigeria also fall within the regulatory ambit of the Act.

2.1.2 A company under the Act can only be referred to as a Labelled Startup if:

- a) it has been registered as a limited liability company under the CAMA;
- b) it has existed for a period of not more than 10 years from the date of incorporation;
- c) its objects are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process;
- d) it is a holder or repository of a product or process of digital technology or the owner or author of a registered software; and
- e) it has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup, and
- f) in the case of a sole proprietorship or partnership, it satisfies the conditions set out in (c, d, and e) above.⁴

2.1.3 A company that wishes to become a Labelled Startup under the Act must apply through the Startup Support and Engagement Portal (the "**Startup Portal**") in the prescribed form with supporting documents. Where the Coordinator is satisfied that the company has met the specified requirements, he shall, with the approval of the Secretariat of the Council (defined below), enter the name and particulars of the applicant in the register of startups kept for that purpose and issue a startup label to the startup. A startup label is a certificate issued by the Secretariat and is valid for 10 (ten) years from the date of issuance.

2.1.4 The Coordinator could withdraw the startup in the event of default by the Labelled Startup of its obligations under the Act. This withdrawal is made after the startup has failed to rectify the default or breach within 30 days from the date of notification.

⁴ Section 13 of the Nigeria Startup Act

3. Obligations of Labelled Startups

A Labelled Startup has the following obligations under the Act:

- a. comply with all the extant laws governing businesses in Nigeria;
- b. provide information annually on the number of human resources, total assets and the annual turnover achieved from the period the startup label was granted;
- c. maintain proper book of accounts in accordance with reporting obligations provided under extant laws and regulations;
- d. provide an annual report on incentives received and advancement made by virtue of the incentives;
- e. notify the Coordinator of any change in structure, composition or objects of the Labelled Startup within a period of one month from the date of such change; and
- f. comply with the obligations set out by the Coordinator after issuance of the startup label.

4. Establishment of the National Council for Digital Innovation and Entrepreneurship (the “Council”)

4.1 The Council has the following powers and functions, among others:

- a) formulate and provide general policy guidelines for the realisation of the objectives of the Act;
- b) give overall directions for the harmonisation of laws and regulations that affect a startup;
- c) ensure the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria; and
- d) support digital technological development through grants to persons, research institutions, and universities pursuing postgraduate programmes in the areas of science, technology, and innovation⁵ etc.

4.2 As part of the operational framework of the Council, the National Information Technology Development Agency (the “**NITDA**”) is the Secretariat of the Council. The Secretariat has several powers outlined in section 9 of the Act.

5. Startup Support and Engagement Portal

5.1 As part of the objectives of the government to promote the ease of doing business in Nigeria, the Secretariat has been mandated under the Act to establish and maintain the Startup Portal subject to the approval of the Council.⁶ The Startup Portal is the platform through which a startup can conduct registration processes

⁵ Section 3, 7 of the Nigeria Startup Act

⁶ Section 10 Nigeria Startup Act

with relevant Ministries, Departments and Agencies (“MDAs”) and interact with the Government, private institutions, angel investors, venture capitalists, incubators, accelerators and other relevant institutions. For the efficient management of the Startup Portal, the Act provides that the Secretariat shall with the approval of the Council appoint a Coordinator for the Startup Portal who shall have at least 10 years’ experience in technology and entrepreneurship.

- 5.2 The Act has also provided elaborately the unique features and functions of the Portal outlined in section 10(2).

6. Establishment of the Startup Investment Seed Fund and Credit Guarantee Scheme

- 6.1 The government has shown willingness to combine its efforts with private finance and venture capitalist firms to provide funding and finance for startups in the ecosystem by establishing the Startup Investment Seed Fund (the “Fund”), which shall be managed by the Nigeria Sovereign Investment Authority (the “Fund Manager”) as prescribed under the Act for the overall management and operations of the Fund.⁷

- 6.2 The minimum threshold that shall be paid into this Fund annually is ₦10,000,000,000 (ten billion Naira) from sources approved by the Council. The Fund shall be applied to provide early-stage finance for Labelled Startups on the recommendation of the Fund Manager, subject to the approval of the Council and provide relief to technology laboratories, accelerators, incubators and hubs. The Fund would also be applied to provide Labelled Startups with capital.

- 6.3 Other than meeting the criteria stated in paragraph 2.1.2 above, the Act does not mention additional criteria that Labelled Startups must meet to qualify for financing under this Fund. The Act does not also provide whether the government will have equity interest in the startups that the Fund has financed.

- 6.4 The Secretariat is required to establish a Credit Guarantee Scheme to provide accessible financial support and create a framework for credit guarantee to Labelled Startups. It will also provide financial and credit information and financial management capacity building programmes to startups.⁸

7. Tax and Fiscal Incentives under the Act

Some of the tax and fiscal incentives provided under the Act include:

- 7.1 a Labelled Startup which qualifies under the Pioneer Status Incentives Scheme may upon application to the Secretariat receive expeditious approval from the Nigerian

⁷ Section 19 of the Nigeria Startup Act

⁸ Section 28 (2) of the Nigeria Startup Act.

Investment Promotion Commission for the grant of tax reliefs and incentives. Some of such incentives include the exemption of dividends paid by the Labelled Startup from withholding tax, deferral of the claim of capital allowances on assets until after the pioneer status period has elapsed, and the right to carry forward tax losses incurred during the tax-free period, indefinitely, even after the tax-free period;

- 7.2 a Labelled Startup, when granted the pioneer status incentive, may be entitled to the exemption from companies income tax as provided under the provisions of the Industrial Development (Income Tax Relief) Act⁹ for a period of 3 (three) years and an additional 2 (two) years;¹⁰
- 7.3 a Labelled Startup on a similar note could be entitled to a full deduction of any expenses on research and development wholly incurred in Nigeria and the restrictions placed by the Companies Income Tax Act shall not apply to a Labelled Startup;
- 7.4 non-resident companies that provide technical, consulting, professional or management services to a Labelled Startup shall be subjected to a reduced withholding tax rate of 5% (five percent), from the generally applicable rate of 10%, on income derived from the provision of such services, which shall be the final tax to be paid by such non-resident companies;
- 7.5 a Labelled Startup shall be exempted from contributing 1% of its annual payroll cost to the Industrial Training Fund as required under the Industrial Training Fund Act (as amended) where it provides in-house training to its employees for the period where it is designated as a Labelled Startup;
- 7.6 Labelled Startups engaged in the exportation of products and services and eligible under the Export (Incentives and Miscellaneous Provisions) Act¹¹ are entitled to receive export incentives and financial assistance from the Export Development Fund, Export Expansion Grant, and the Export Adjustment Scheme Fund;
- 7.7 access to grants and loan facilities administered by the Central Bank of Nigeria (the "**CBN**"), the Bank of Industry or other bodies statutorily empowered to assist small and medium scale enterprises and entrepreneurs; and
- 7.8 startups may raise funds through crowdfunding intermediaries and commodities investment platforms duly licensed by the Securities and Exchange Commission (the "**SEC**") through the Startup Portal.

⁹ Cap. I17, LFN, 2004.

¹⁰ The commencement date of the tax relief must be the date of the issuance of the startup label for this incentive to apply.

¹¹ Cap. E19, LFN, 2004

8. Collaborative Initiative Framework under the Act

- 8.1 The Act establishes a collaborative framework of various relevant agencies to ensure the proper regulation and administration of the startup ecosystem. The Startup Portal, through the following proposed features would serve as an electronic one stop centre to aid the seamless and expedited registration of startups with MDAs within the ecosystem and ease the processes for:
- (a) Labelled Startups to conduct transactions at the Corporate Affairs Commission (the "**CAC**").¹².
 - (b) registration of intellectual property for Labelled Startups in collaboration with the Nigerian Copyright Commission and the Trademarks, Patent, and Design Registries¹³;
 - (c) technology transfer registration for Labelled Startups in collaboration with National Office for Technology Acquisition and Promotion (the "**NOTAP**")¹⁴; and
 - (d) licensing of Labelled Startups that operate as financial technology companies (fintech startups) in collaboration with the CBN and the SEC.

Also, the Council is to collaborate with the SEC to consider rules that fast-track crowdfunding processes for Labelled Startups.

- 8.2 Labelled Startups can participate in the CBN's regulatory sandbox, SEC's regulatory incubation programmes, or any other regulatory sandbox programmes set up by other regulators by applying a fast-track process available through the Startup Portal.
- 8.3 The repatriation of capital and profits from investments made in a Labelled Startup is recognised under the Act. The Secretariat has been mandated to collaborate with the CBN to guarantee the repatriation of investment by a foreign investor through the CBN's authorised dealer in freely convertible currency provided that the foreign investor can present a certificate of capital importation as evidence that the initial investment fund was injected through the proper channel.

9. Accelerator and Incubator Programmes, and Clusters, Hubs, Innovation Parks and Technology Development Zones

- 9.1 The Act proposes establishing accelerator and incubator programmes for startups to develop standards and guidelines to regulate the relationships between accelerators, incubators and startups.

¹² Section 30

¹³ Section 31

¹⁴ Section 33

- 9.2 The Council is mandated to issue a framework for establishing and operating startup innovation clusters, hubs, and physical and virtual innovation parks in each state of the Federation. This innovation aims to foster the business relationship between startups and large companies, collating expertise and ideas and providing a startup with access to resources and professional services.

10. Conclusion

- 10.1 The coming into force of the Act has brought about varying reactions. Nigerian startups could potentially reap the benefits of the Government's concerted efforts in participating actively in investments in startups. Furthermore, the tax breaks provided under the Act would ease the financial burden experienced by startup founders.
- 10.2 The Act, however, comes with tighter regulation of startups. In addition to the current requirements to register with the CAC, CBN, SEC and other regulatory agencies, startups will need to apply for a startup label certificate using the Startup Portal to enjoy the incentives and benefits provided under the Act.
- 10.3 It is also not clear how the collaborative framework of the Act would solve the long-standing scepticism that the CBN and SEC have shown towards online trading and foreign exchange platforms. The Nigeria Startup Act comes with an intention of bringing Nigeria's startup ecosystem to a global standard, however, the implementation of its provisions will determine if this standard would be met in the long term.

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