

DOES NIGERIA NEED A STARTUP ACT?



Prologue

Startups are young companies that are founded to develop a unique product or service and bring it to the market. In recent years on the African Continent, several startups have been making positive impact in their communities leading to several countries enacting or planning to implement a Startup Act. So, a pertinent question is, should Nigeria jump on the 'Startup Act bandwagon'?

In this article, we will examine this question by; understanding what Startup Acts are, exploring the reasons why countries are trying to implement this peculiar legislation, and explore alternative pathways that can adopt be adopted, and finally conclude with recommendations that ensures Nigeria's nascent tech ecosystem grows into a powerhouse.

Startup Acts Explained

The sentence that perfectly sums up what a Startup Act is can be found in the Startup Act Annual Report 2019-2020 produced by Smart Capital [1]. It describes the Tunisian Startup Act as "an innovative and unique legal framework to promote start-ups..." [2]. Startup Acts promote regulations, policies, and sometimes create novel institutions, which empower the entrepreneurial ecosystem of a country or jurisdiction.

Startup Acts offer incentives and exemptions to start-ups such as tax exemptions and pecuniary incentives.

For instance, the incentive covers the costs for founders, the breakings down of regulatory barriers, establishing bodies and funds which foster entrepreneurship, and creating a fast-track process for registering intellectual property.

Startup Acts are not just created for companies in the technology ("tech") industry as captured in the definitions above. However, due to the entrepreneurial spirit that drive founders of tech companies, most start-ups that take advantage of the laws are tech oriented. Similarly, it has been observed that tech companies grow and scale at a quick rate.

Countries with growing tech ecosystems like Tunisia recognise the impact that a Startup Act can have on its economy and global outlook. Consequently, Tunisia's Startup Act is tailored to cater for the tech ecosystem.

So, what benefits have countries recognised that has sparked the flames and is pushing a number of countries to implement a Startup Act?

[1] Startup Act Annual Report 2019-2020 by Smart Capital, the operator of Startup Tunisia, and the guarantor of the Tunisian Startup Act. The report can be accessed [here](#).

[2] Startup Act Annual Report 2019-2020 by Smart Capital, the operator of Startup Tunisia, and the guarantor of the Tunisian Startup Act. The report can be accessed [here](#).

The Rationale Behind Startup Acts – Tunisia as a model

There are different reasons that prompt countries to set up committees and expend resources to implement a Startup Act. However, we will explore only a few:

1. Investment to Spur Economic Growth:

According to Afrikanheroes, before the implementation of Startup Tunisia which is one of the pillars is the Startup Act of Tunisia, Tunisia was not on any list for top investment destinations in Africa. Upon enacting the Startup Act in 2018/2019, Tunisia received over \$22,400,000 (twenty-two million four hundred thousand United States Dollars) from investors in 2019 alone and is currently one of the top destinations for investors in Africa[3].

The African Tech Startups Funding Report 2020 noted that the number of start-ups receiving funding in Tunisia had a 75% exponential increase as the number increased from eight start-ups in 2019 to fourteen start-ups in 2020.

It also reported that a number of angel investors and startup seed programs became more active in Tunisia in 2020 [4]

Italy, a pioneer of the Startup Act, (since 2012) received over €34,000,000 (thirty-four million Euros) in investments into Italian start-ups from 2012-2015 [5]

When a country receives investments, it may increase the productive capacity of the companies and entities in that country. In order to increase productive capacity, the companies may need to hire more employees among other factors and consequently this may increase the Gross Domestic Product (GDP) of the country in question. With a law that attracts investors, a country can increase its GDP and economic growth may occur.


2. Becoming the new Silicon Valley:

The reason why Silicon Valley is so popular today is because if you need a software or application (app) developer, you could find one in that region.

[3] "What Difference Have Startup Acts Made in African Countries Where they Exist?" by Afrikanheroes, December 13 2020, accessed on 26 February 2021. <https://afrikanheroes.com/2020/12/13/what-difference-have-startup-acts-made-in-african-countries-where-they-exist/>

[4] African Tech Startups Funding Report 2020 by Disrupt Africa, 2021.

[5] The Italian Startup Act: Empirical evidence of policy effects by Francesco Biancalani, Dirk Czarnitzki, Massimo Riccaboni, Ku Leuven FACULTEIT ECONOMIE EN BEDRIJFSWETENSCHAPPEN, Management, Strategy and Innovation (MSI), January 2020.



It is an area with the densest concentration of tech companies in the world, with a proximity to developers and suppliers and fosters the spirit of cooperation and innovation. Silicon Valley is a centre for innovative companies to become highly profitable and creates jobs, more tax revenue, and higher stock price [6]

A Startup Act can be used to create such an area or help in fostering the development of an informal area similar to Silicon Valley. This could create more jobs for the citizens of the country and also create an influx of foreigners who wish to establish companies in the area. This would result in more tax revenue for the country and possibly the development of more high-profile companies' resident in the country who could become Unicorns or Fortune 500 companies.

Startup Tunisia recognises this and has already implemented steps to create a Talent Pool and Innovation Clusters through its Startup Act [7]

3. Creating Solutions through Innovation:

In Tunisia, the government believes that fostering innovation will support the public sector and create disruptive high impact socio-economic projects which can address the problems of the State [8]. Policy makers are constantly pushing for countries especially in Africa, to create laws and regulations that can foster innovation and ensure start-ups survive the effects of the coronavirus [9]. 1. With Startup Acts removing regulatory red tape and easing the tax burdens for entrepreneurs, innovation can easily be channelled which could lead to pivotal solutions for countries and a resolution of their major socio-economic problems through technology.

The few reasons aforementioned are enough to spur any country into implementing a Startup Act. If that country has a budding tech ecosystem and constantly churns out entrepreneurs, Unicorns [10], and million-dollar acquisitions [11], why should it not enact one?

[6] Silicon Valley, America's Innovative Advantage, 5 Reasons Why No One Can Copy Silicon Valley's Success by Kimberly Amadeo reviewed by Robert C. Kelly for the Balance accessed 28 April 2021 <https://www.thebalance.com/what-is-silicon-valley-3305808>

[7] Startup Act Annual Report 2019-2020 by Smart Capital, the operator of Startup Tunisia, and the guarantor of the Tunisian Startup Act.

[8] Startup Act Annual Report 2019-2020 by Smart Capital, the operator of Startup Tunisia, and the guarantor of the Tunisian Startup Act.

[9] African Countries Need Startup Acts more than ever to Support Innovation by Adedana Ashebir accessed 26 February 2021 <https://techcrunch.com/2020/05/19/african-countries-need-startup-acts-more-than-ever-to-support-innovation/>

[10] African payments company Flutterwave raises \$170M, now valued at over \$1B by Tage-Kene Okafor accessed 18 March 2021 <https://techcrunch.com/2021/03/09/african-payments-company-flutterwave-raises-170m-now-valued-at-over-1b/>

[11] Stripe Acquires Paystack for \$200M+, the Biggest Ever Startup Acquisition in Nigeria by Tomiwa Onaleye accessed 18 March 2021 <https://technext.ng/2020/10/15/stripe-acquires-paystack-for-200m-the-biggest-ever-startup-acquisition-in-nigeria/>

Why Nigeria Needs a Startup Act

Various players in the private sector and the tech industry have insisted that Nigeria needs a legal framework that will support founders, entrepreneurs and innovators. These key stakeholders may have even started working on a draft to submit to the legislators in Nigeria. Their reasons vary, but the pertinent reasons are highlighted below:

1. *Potentially Increasing the GDP of Nigeria:*

The National Bureau of Statistics in its Gross Domestic Product Report for Q3 2020 [12], posits that the non-oil sector was mainly driven by Information and Communication and Financial Institutions, the two major sectors tech start-ups in Nigeria fall under. The Economic Recovery and Growth plan of Nigeria plans to use science, technology and innovation to drive growth and increase Nigeria's GDP with a target of 4.62% growth in Nigeria's GDP per year [13]. With tech start-ups generating more revenue than ever, (Flutter Wave's estimated annual revenue is at least \$27,400,000 (twenty four million United States Dollars)) [14] due to the impact of the coronavirus, and the countries

plan to potentially increase its GDP through innovation, a Startup Act is arguably the ideal piece of legislation to create an environment that will push start-ups to generate more revenue which will have an impact on the GDP of Nigeria, and promote the diversification of the Nigerian economy.

2. *Start-up Density:*

Nigeria currently has over 200 fintech companies [15] in its tech ecosystem and there are other start-ups which are part of the tech environment. If we include insur-tech, health-tech, ed-tech, e-commerce platforms, and transport and logistics companies that leverage on technology, the Nigerian tech ecosystem is dense. This has attracted a number of hubs and investors [16] into the country. Therefore, a Startup Act can help these startups scale and grow into 'Unicorns' [17] which will in turn lead to a generation of more revenue for the country through taxation. Call it an investment for the future.

3. *The Regulatory Landscape of Nigeria:*

The regulatory landscape for businesses in Nigeria can be arduous and capital consuming especially for a lot of start-ups that need time to innovate, scale and execute their goods and services.

[12] National Bureau of Statistics, Nigerian Gross Domestic Product Report (Q3 2020), https://www.proshareng.com/admin/upload/report/14210-GDP_Report_Q3_2020-proshare.pdf accessed 1 March 2021

[13] Economic Recovery and Growth Plan 2017-2020 by the Ministry of Budget and National Planning February 2017, https://nigeriaembassygermany.org/mosaic/_M_userfiles/Economic-Recovery-Growth-Plan-2017-2020.pdf accessed 1 March 2021


[14] Flutterwave Competitors, Revenue, Alternatives and Pricing by Growjo <https://growjo.com/company/Flutterwave#:~:text=Flutterwave's%20estimated%20annual%20revenue%20is,venture%20funding%20in%20October%202018> accessed 18 March 2021.

[15] Harnessing Nigeria's fintech potential, by Topsy Kola-Oyeneyin, Mayowa Kuyoro and Tunde Olanrewaju, September 23, 2020

<https://www.mckinsey.com/-/media/McKinsey/Featured%20Insights/Middle%20East%20and%20Africa/Harnessing%20Nigeria's%20fintech%20potential/Harnessing-nigerias-fintech-potential-vf.pdf?shouldIndex=false>

[16] Here's what you need to know about Nigeria's tech start-up ecosystem <https://ventureburn.com/2018/06/heres-need-know-nigerias-tech-startup-ecosystem/> accessed 1 March 2021

[17] A tech company with a billion-dollar valuation.



Stakeholders have constantly mentioned that the regulatory environment does not give room for new start-ups to venture into other businesses with ease, or test the functionalities of their software or product in other sectors of the economy without getting a licence or a permit from a regulator. Such uncertainty (like the ban of motorcycles and tricycles in Lagos which led to the pivoting of Gokada from a ride hailing service to delivery) [18] and lack of creative freedom to innovate, stifles the growth of start-ups and puts them in a box. A Startup Act can free founders from such shackles and allow them to explore by giving them room to innovate and setting clear exemptions from regulatory hurdles for start-ups.

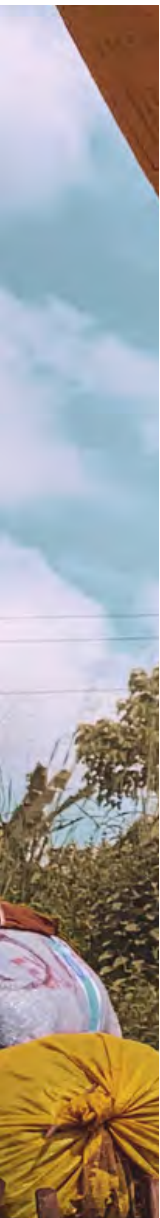
These reasons highlighted above are cogent and provide rational assertions why Nigeria needs a Startup Act. However, instead of a Startup Act what else can be done?

In Lieu of a Startup Act

Well, the answer seems to lie in the amendment of all business enabling laws in Nigeria. If a holistic and robust approach is adopted to amend all the laws that regulate businesses in Nigeria, a Startup Act may not be needed. If the laws take into consideration the life cycle of companies and start-ups and also supports innovators, then Nigeria may dispense with the idea for a Startup Act and though it may seem uncoordinated, it appears this position is being taken by the Nigerian government.

For instance, in 2020, the Companies and Allied Matters Act was amended, introducing provisions that would help foster the development of tech companies like single-shareholder companies, a reduction in the cost of incorporation and filing fees, the introduction of Limited Liability Partnerships, and the exemption of single-shareholder companies from having Annual General Meetings. Also, the Central Bank of Nigeria (“CBN”) in January 2021 launched its Framework for Regulatory Sandbox Operations. According to the apex bank, it wants to use its sandbox to increase the potential for innovative business models that advance financial inclusion and reduce the time-to-market for innovative product [19]

[18] The multifaceted implications of a ban on Okada and tricycles in Lagos by Abubakar Idris accessed 18 March 2021 <https://techcabal.com/2020/02/14/lagos-ban-okada-tricycles-not-solving-problems/>
[19] Central Bank of Nigeria Framework for Regulatory Sandbox Operations, January 2021 <https://www.cbn.gov.ng/out/2021/ccd/framework%20for%20regulatory%20sandbox%20operations.pdf>



The Finance Act of 2019 and 2020 also introduced amendments to our tax laws and exempts companies that have a gross turnover of N25m or less from paying companies income tax, amongst other notable provisions.

Consequently, the argument remains that if Nigeria wants to take the pathway of amending its laws to cater to tech start-ups and its growing tech ecosystem, why bother with a Startup Act?

Epilogue

It is our view that there is no unfavourable outcome if Nigeria decides to explore both pathways. Nigeria can enact a Startup Act that will turn Nigeria into a one stop destination for founders and investors and also amend all its extant laws to ensure that once an entity ends its life cycle as a start-up (usually after 5-8 years), it can begin its life cycle as a company under regulatory provisions that are efficient, friendly, and provides room for innovation and constant growth.



AELEX



Oluwapelumi C. Omoniyi
(Associate, AELEX)

AELEX is a full-service commercial and dispute resolution firm. It is one of the largest law firms in West Africa with offices in Lagos, Port Harcourt and Abuja in Nigeria and Accra, Ghana. A profile of our firm can be viewed [here](#). You can also visit our website at www.aelex.com to learn more about our firm and its services.'

COPYRIGHT: All rights reserved. No part of the publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of AELEX or as expressly permitted by law.

DISCLAIMER: This publication is not intended to provide legal advice but to provide information on the matter covered in the publication. No reader should act on the matters covered in this publication without first seeking specific legal advice.

CONTACT DETAILS

LAGOS, NIGERIA

4th Floor,
Marble House
1, Kingsway Road, Falomo
P. O. Box 52901, Ikoyi
Lagos, Nigeria

Telephone: (+ 234 1) 2793367; 2793368
4736296, 4617321-3;
Facsimile: (+ 234 1) 2692072; 4617092
E-mail: lagos@aelex.com

PORT HARCOURT, NIGERIA

2nd Floor,
Right Wing UPDC Building
26, Aba Road
P.O. Box 12636, Port Harcourt
Rivers State, Nigeria

Telephone: (+234 84) 464514, 464515
574628, 574636
Facsimile: (+234 84) 464516, 574628
E-mail: portharcourt@aelex.com

ABUJA, NIGERIA

4th Floor,
Adamawa Plaza
1st Avenue, Off Shehu Shagari Way
Central Business Area
FCT Abuja, Nigeria

Telephone: (+234 9) 8704187, 6723568,
07098808416
Facsimile: (+234 9) 5230276
E-mail: abuja@aelex.com

ACCRA, GHANA

7th Floor, Suite B701
The Octagon
Accra Central, Accra
P.M.B 72, Cantonment Accra, Ghana

Telephone: (+233-302) 224828, 224845-6
Facsimile: (+233-302) 224824
E-mail: accra@aelex.com